

OPINION NO. 69-016**Syllabus:**

Any motor vehicle purchased pursuant to Section 307.41, Revised Code, at a cost in excess of two thousand dollars must be obtained through competitive bidding pursuant to Section 307.86, Revised Code.

To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio
By: Paul W. Brown, Attorney General, February 11, 1969

I have before me your request for my opinion on the following question: Does Section 307.86, Revised Code, prohibit the County Commissioners from purchasing motor vehicles without having competitive bidding under Section 307.41, Revised Code, if the amount is in excess of \$2000.00?

Section 307.41, Revised Code, reads as follows:

"Whenever the board of county commissioners deems it necessary to purchase motor vehicles except for its use or for the use of any department under its direct control it shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each. Upon adoption of the resolution the board may purchase such vehicles.

"If the board deems it necessary to purchase motor vehicles for its use or for the use of any department under its direct control, application shall be made by the board to a judge of the court of common pleas of such county. Upon hearing the application, if such judge finds it necessary and expedient to purchase such vehicles, he shall so order, and fix the number and kind of such vehicles, and the amount to be expended for each."

Section 307.86, Revised Code, which outlines the requirements of competitive bidding, reads as follows:

"Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of two thousand dollars, except as otherwise provided in section

307.02, 3501.301 ~~3501.30.17~~, 3505.13, 5543.19, 5555.71, 5713.01, or 6137.05, of the Revised Code, shall be obtained through competitive bidding. However, competitive bidding is not required when:

"(A) The board of county commissioners, by a unanimous vote of its members, makes a determination that a real and present emergency exists and such determination and the reasons therefor are entered in the minutes of the proceedings of the board, when:

"(1) The estimated cost is less than ten thousand dollars or

"(2) There is actual physical disaster to structures;

"(B) Such purchase consists of supplies or a replacement or supplemental part or parts for a product or equipment owned or leased by the county and the only source of supply for such supplies, part, or parts is limited to a single supplier;

"(C) Such purchase is from the federal government, state, another county or contracting authority thereof, a board of education, township, or municipal corporation;

"(D) Such lease is a renewal of a lease for electronic data processing equipment, services, or systems."

While there are certain exceptions to the prohibitions outlined in Section 307.86, supra, none of them would apply to the purchase of motor vehicles under Section 307.41, supra. Thus, within the explicit terms of Section 307.86, supra, any motor vehicle purchased at a cost in excess of two thousand dollars must be obtained through competitive bidding. Section 307.86, supra, does apply to a purchase of motor vehicles pursuant to Section 307.41, supra.

Some reference has been made to the fact that competitive bidding may be impossible if pursuant to Section 307.41, supra, the judge of the court of common pleas fixes the amount to be expended for each vehicle. Of course, if the amount to be expended for each vehicle is less than two thousand dollars, competitive bidding is not required. However, in the more likely situation, where the amount to be expended on each vehicle is greater than two thousand dollars, competitive bidding is required as follows: The judge of the court of common pleas would fix the amount to be expended and such a figure would be the ceiling under which competitive bids would be received. If a bid that is received is lower than the figure set by the judge, then it would be used. If all of the bids received are higher than the ceiling set by the judge, then the Board of County Commissioners should either obtain approval of the lower of these high bids, adjust the ceiling upward or seek lower bids elsewhere.

In conclusion, it is my opinion and you are hereby advised that any motor vehicle purchased pursuant to Section 307.41, Revised Code, at a cost in excess of two thousand dollars must be obtained through competitive bidding pursuant to Section 307.86, Revised Code.