

OPINION NO. 82-017**Syllabus:**

A board of county commissioners is authorized by R.C. 307.03 to provide space in a building under its control without charge to a nonprofit organization which, in its judgment, performs a public purpose.

To: John A. Pfefferte, Erie County Prosecuting Attorney, Sandusky, Ohio
By: William J. Brown, Attorney General, April 6, 1982

I have before me your request for my opinion concerning the authority of a board of county commissioners to provide otherwise unused space in a building under the control of the board to certain nonprofit organizations free of charge. Specifically, you inquire whether R.C. 307.03 permits the board to provide the local humane society, and the local organization which provides services to victims of domestic violence, with office space free of charge.

R.C. 307.03 provides, in pertinent part, that "[t]he board of county commissioners may, by resolution, permit the use of public . . . buildings under its control for . . . any . . . public purpose, upon such terms as it prescribes." By the plain language of the section, the board is authorized to permit the use of its buildings for any public purpose, upon passage of a resolution authorizing such use and prescribing any terms limiting that use.

I am aware of no statute, and have found no case law, which expressly defines the term, "any public purpose," as used in this section. However, as I recently noted in 1981 Op. Att'y Gen. No. 81-033, "[t]he courts as a rule have attempted no judicial definition of a public as distinguished from a private purpose, but have left each case to be determined by its own peculiar circumstances." Op. No. 81-033 at 2-127, quoting from *State ex rel. Gordon v. Rhodes*, 156 Ohio St. 81, 100 N.E.2d 225 (1951). That opinion continued to note that "[w]hether a public purpose exists, and whether the actions taken are designed to achieve such a purpose, are matters within the discretion of the particular administrative authority and 'will not be rejected or reversed by the court unless manifestly arbitrary or unreasonable.'" *Id.*, quoting *Gordon*, 156 Ohio St. at 97, 100 N.E.2d at 233. See also 1982 Op. Att'y Gen. No. 82-006.

Accordingly, if the board of county commissioners determines by the adoption of a resolution that a given nonprofit organization would perform a public purpose in rendering its services, and that it wishes to provide office space in a building under its control to that organization free of charge, the board has the authority to provide space to that group under R.C. 307.03. Its decision in such matters cannot be disturbed, unless the board has unquestionably abused its discretion.

Your request focuses upon two specific nonprofit organizations, namely, a local humane society, and a local organization which provides services to victims of domestic violence. As noted above, whether these specific organizations perform a public purpose is a matter committed to legislative discretion, and is not, therefore, the type of question upon which I can properly opine. I note, however, that the General Assembly has authorized a board of county commissioners to make appropriations to both types of organizations. See R.C. 1717.15; R.C. 3113.35. Implicit in these authorizations to appropriate public funds to those nonprofit organizations is a legislative determination that such groups render services which constitute a public purpose.

I would note in passing that you have used the term "rent free" in characterizing this provision of office space. Because it is clear from the remainder of your request that you are concerned only with the authority of the board of county commissioners to provide office space to nonprofit organizations under R.C. 307.03, and not with a situation entailing a formal lease of county space to these organizations, I do not address the applicability of R.C. 307.09 and related

provisions. Under R.C. 307.03, if at some time in the future the board of county commissioners decided, for example, to impose a usage fee, or to withdraw entirely the use of county space from such organizations, it may do so in its discretion by a simple resolution under that section.

Therefore, it is my opinion, and you are advised, that a board of county commissioners is authorized by R.C. 307.03 to provide space in a building under its control without charge to a nonprofit organization which, in its judgment, performs a public purpose.