

OPINION NO. 70-062**Syllabus:**

1. A county board of mental retardation does not possess the power or authority to purchase a site for the construction of a permanent improvement for the mentally retarded. Such power and authority is possessed only by the board of county commissioners.

2. A county board of mental retardation does not possess the power or authority to contract with an architect or engi-

neer to assist in the construction of a permanent improvement for the use of the mentally retarded.

To: George J. Demis, Tuscarawas County Pros. Atty., New Philadelphia, Ohio
By: Paul W. Brown, Attorney General, June 11, 1970

I have your letter explaining that the Board of County Commissioners of Tuscarawas County authorized a one-mill levy to "provide a site and to construct a facility for a school and training center, including a work shop for the mentally retarded of Tuscarawas County, Ohio," which levy was passed by the voters. Your request for my opinion reads, in part, as follows:

"(1) May the Tuscarawas County Board of Mental Retardation contract for the purchase of a site for the construction of a permanent facility for the mentally retarded of Tuscarawas County, Ohio?

"(2) May the Tuscarawas County Board of Mental Retardation enter into a contract with an architectural firm for the design and all other services required by an architect and/or structural engineer for the construction of such facility?

"(3) May the Tuscarawas County Board of Mental Retardation enter into a contract with a construction firm for the construction of such facility?"

In Opinion No. 70-019, Opinions of the Attorney General for 1970, in answer to a similar question, I stated the following:

"1. A resolution of necessity of a taxing authority of a subdivision for the stated objective of constructing, furnishing, and equipping of a training center, workshops, clinic, and residential facilities for mentally retarded persons, including the acquisition and improvement of a site, constitutes adequate compliance with and is authorized by Subsection (F) of Section 5705.19, Revised Code.

"2. The Board of County Commissioners, having declared by resolution the necessity and object for which the levy was proposed and subsequently authorized, is responsible for and must appropriate or expend the proceeds of said levy in conformity with law."

The Tuscarawas County Board of Mental Retardation derives its powers from, and its duties are assigned in, Section 5126.03, Revised Code. There is no mention therein or in any other section of the Revised Code of any power granted to such board to purchase real property or to construct permanent improvements. Neither is there any language used from which such power may be reasonably implied. Pertinent parts of Section 307.02, Revised Code, read as follows:

"The board of county commissioners of any

county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, community mental health facility or community mental retardation facility, other necessary buildings * * * and sites therefor, such real estate adjoining an existing site as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress, and egress; * * *

"* * * * * * * *"
(Emphasis added.)

Chapter 153 of the Revised Code, must be followed in the construction of state or county-owned permanent improvements.

Section 153.21, Revised Code, reads as follows:

"When the board of county commissioners has determined to erect a courthouse or other county building, or to make an addition to, or to make an improvement of any existing county owned building, the board may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and serve until the courthouse or other county building, or the addition thereto, or the improvements thereof are completed. Not more than two of such appointee shall be of the same political party."
(Emphasis added.)

The appointment of a building commission is permissive and not mandatory. (Opinion No. 6738, Opinions of the Attorney General for 1956.) Should the county commissioners desire to construct an improvement without the services of such commission, the responsibility for proceeding with the project is placed on the board of county commissioners by Section 307.02, supra. Previously, when Section 153.21, supra, contained a \$100,000 limitation, the Attorney General held the provision mandatory if the established cost exceeded that amount. (Opinion No. 2997, Opinions of the Attorney General for 1962.)

From the foregoing, it is my opinion and you are advised that:

1. A county board of mental retardation does not possess the power or authority to purchase a site for the construction of a permanent improvement for the mentally retarded. Such power and authority is possessed only by the board of county commissioners.

2. A county board of mental retardation does not possess the power or authority to contract with an architect or engineer to assist in the construction of a permanent improvement for the use of the mentally retarded.