

OPINION NO. 2011-042**Syllabus:**

2011-042

1. Real property acquired by an alcohol, drug addiction, and mental health services board pursuant to R.C. 340.031(B) is not “real property belonging to the county” for purposes of R.C. 307.09, and the sale of such property is not subject to R.C. 307.09 and R.C. 307.10.
2. An alcohol, drug addiction, and mental health services board selling real property pursuant to R.C. 340.031(B) may, in its discretion, sell the property at public auction or pursuant to competitive bidding, after appropriate public notice, or utilize another process for selling the property that is reasonable.
3. An alcohol, drug addiction, and mental health services board lacks statutory authority to finance the purchase of real property being sold by the board pursuant to R.C. 340.031(B) and to accept payments from the buyer.
4. Absent circumstances specifically limiting a private entity’s use of its own funds, moneys paid by an alcohol, drug addiction, and mental health services board to a private entity, pursuant to a contract, as reasonable compensation for services rendered or facilities provided may be used by that entity to make mortgage payments and pay for ongoing repairs and maintenance with respect to real property formerly owned by the board and sold to the entity pursuant to R.C. 340.031(B).

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio

December 2011

By: Michael DeWine, Ohio Attorney General, November 22, 2011

I am in receipt of your request for an opinion regarding the disposition of real property by an alcohol, drug addiction, and mental health services board (“ADAMHS board”). My understanding is that, pursuant to R.C. 340.031(B), the Trumbull County ADAMHS board used grant moneys from the State of Ohio to acquire three separate properties in the 1990s. The State holds a forty-year mortgage on each of these properties, which are used to provide mental health and addiction services. These services and the maintenance of the properties are paid for with funds derived from a special levy certified by the Trumbull County Board of Commissioners and approved by county voters. *See* R.C. 5705.221. The Trumbull County ADAMHS board has expressed an interest in selling or leasing these properties to the private entities that the board contracts with for the provision of mental health and addiction services and that currently use the properties. In this context, you have asked the following questions:

1. If an ADAMHS board elects to sell real property pursuant to its authority under R.C. 340.031(B), is the board required to comply with the requirements in R.C. 307.09 and R.C. 307.10?
2. If the answer to question one is in the negative, is the Trumbull County ADAMHS board required to engage in another type of public sale procedure, or may the board sell the properties in question to the private service providers currently occupying the properties for the appraisal price listed on the Trumbull County Auditor’s website?
3. Should an independent financial analysis be obtained prior to any sale or conveyance to determine whether the contemplated sale, lease, or conveyance is in the best interests of Trumbull County?
4. If an ADAMHS board enters into a contract to sell real property, may the board finance the purchase and accept payments from the buyer, or must the board require separate financing to enable payment in full at the time of closing?
5. Even if the buyer of real property obtains separate financing, is the buyer permitted to make mortgage payments and pay for ongoing repairs and maintenance of the properties using funds derived from a contract between the buyer and the ADAMHS board for the provision of mental health and addiction services?

R.C. 340.01(B) provides for the establishment of an alcohol, drug addiction, and mental health service district on either a single-county or a joint-county basis. Each district is overseen by an ADAMHS board appointed pursuant to R.C.

340.02. An ADAMHS board shall “[s]erve as the community mental health planning agency for the county or counties under its jurisdiction.” R.C. 340.03(A)(1). This responsibility involves evaluating the community’s mental health needs and developing a community mental health plan to be submitted to the Department of Mental Health. *See* R.C. 340.03(A)(1)(a)-(c); 1997 Op. Att’y Gen. No. 97-008, at 2-48. An ADAMHS board “shall implement the plan approved” by the Department of Mental Health. R.C. 340.03(A)(1)(c). In conjunction with implementing its community mental health plan, an ADAMHS board is instructed to “[p]romote, arrange, and implement working agreements with social agencies, both public and private, and with judicial agencies.” R.C. 340.03(A)(1)(d); *see also* R.C. 340.03(A)(8)(a) (an ADAMHS board shall “[e]nter into contracts with public and private facilities for the operation of facility services included in the board’s community mental health plan and enter into contracts with public and private community mental health agencies for the provision of community mental health services . . . included in the board’s community mental health plan”). Similar responsibilities are imposed on an ADAMHS board with respect to alcohol and drug addiction services. *See, e.g.*, R.C. 340.033(A)(1) (ADAMHS board shall “[a]ssess alcohol and drug addiction service needs and evaluate the need for alcohol and drug addiction programs”); R.C. 340.033(A)(3) (board shall “[s]ubmit the plan for alcohol and drug addiction services . . . and implement the plan as approved by” the Department of Mental Health); R.C. 340.033(A)(5) (board shall “[e]nter into contracts with alcohol and drug addiction programs for the provision of alcohol and drug addiction services”); *see also generally* 1997 Op. Att’y Gen. No. 97-008, at 2-49 to 2-50.

The sole statutory provision discussing the sale or lease of real property by an ADAMHS board is R.C. 340.031, which states that a board may:

(B) Acquire, convey, lease, or enter into a contract to purchase, lease, or sell property for community mental health and alcohol and drug addiction services and related purposes, and enter into loan agreements, including mortgages, for the acquisition of such property.

See also 1989 Op. Att’y Gen. No. 89-063, at 2-272 n.3. Your first three questions relate generally to the process by which an ADAMHS board may sell real property. Your last two questions relate to how any such sale may be financed. We discuss these two categories of questions in turn.

Sale of Real Property by an ADAMHS Board

Your first question asks whether an ADAMHS board is subject to the provisions of R.C. 307.09 and R.C. 307.10 when selling real property. R.C. 307.09(A) provides that the “board of county commissioners may sell any real property belonging to the county and not needed for public use.” The sale of real property belonging to the county requires a “resolution adopted by a majority of the board of county commissioners” authorizing the sale. R.C. 307.10(A). Subject to certain exceptions not relevant here, the board of county commissioners may sell county property either by (1) “deed[ing] the property to the highest responsible bidder, after advertisement once a week for four consecutive weeks in a newspaper of general

circulation in the county or as provided in [R.C. 7.16],” or (2) “offer[ing] the real property for sale at a public auction, after giving at least thirty days’ notice of the auction by publication in a newspaper of general circulation in the county.” *Id.*; see also 1999 Op. Att’y Gen. No. 99-016 (syllabus, paragraph 3) (the sale of real property pursuant to R.C. 307.10 “must be made either at public auction or pursuant to competitive bidding, after appropriate public notice”).

R.C. 340.031 does not state whether the sale of real property under that section is subject to R.C. 307.09 and R.C. 307.10. In some instances, the Revised Code specifically indicates when the sale of real property is subject to these sections. See R.C. 5547.05 (board of county commissioners may convey property no longer needed by the county for road purposes; “[a]ll such conveyances or grants or permits to use shall be made with competitive bidding as required by [R.C. 307.10]”). In other instances, however, the Revised Code specifies that the sale of real property is not subject to competitive bidding requirements. See R.C. 5126.051(A) (county board of developmental disabilities “is not required to comply with provisions of [R.C. Chapter 307] providing for competitive bidding or sheriff sales in the acquisition, lease, conveyance, or sale of property under this division”); R.C. 5722.07 (an “electing subdivision may, without competitive bidding, sell land acquired by it as part of its land reutilization program”).

By their plain terms, R.C. 307.09 and R.C. 307.10 apply only to the sale of real property belonging to the county. Thus, we must determine whether property purchased by an ADAMHS board pursuant to R.C. 340.031 is real property belonging to the county. See *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) (“[w]here the wording of a statute is clear and unambiguous, [the] only task is to give effect to the words used”).

As a general rule, title to county property is held by the board of county commissioners:

The board of county commissioners is the body—the *quasi* corporation—in whom is vested by law the title of all the property of the county. In one sense they are the *agents* of the county, and in another sense they are the *county itself*. It is in this latter sense that they acquire, and hold in perpetuity, the title to its property. In this capacity they not only act *for* the county, but also act *as* the county. A devise to the county is a devise to the commissioners of the county, and vests the title in them, for the uses of the county.

Carder v. Board of Comm’rs, 16 Ohio St. 353, 369-70 (1865) (emphasis in original); accord 2008 Op. Att’y Gen. No. 2008-023, at 2-248; see also 2006 Op. Att’y Gen. No. 2006-001, at 2-3 (the ownership of county property is vested in the county’s board of commissioners, “regardless of which county office or entity customarily uses or occupies particular county property”).

There are limited exceptions, however, to the rule that title to real property vests in the board of county commissioners. In 2006 Op. Att’y Gen. No. 2006-001, at 2-4 n.4, the Attorney General recognized that a county board of developmental

disabilities may hold title to real property independently of a board of county commissioners. *See also* R.C. 5126.051(A) (board of developmental disabilities “may acquire, convey, lease, or sell property for residential services and supported living and enter into loan agreements, including mortgages, for the acquisition of such property”).

Similar to a board of developmental disabilities, an ADAMHS board is expressly authorized to “[a]cquire . . . or enter into a contract to purchase . . . property . . . , and enter into loan agreements, including mortgages, for the acquisition of such property.” R.C. 340.031(B). R.C. 340.031(B) also gives an ADAMHS board authority to “convey [or] lease, or enter into a contract to . . . lease[] or sell” real property. R.C. 340.031(B) does not expressly authorize an ADAMHS board to own or hold title to real property. However, one of the common, everyday meanings of the term “title” is “[t]he union of all elements . . . constituting the legal right to control and dispose of property.” *Black’s Law Dictionary* 1493 (7th ed. 1999). Thus, an ADAMHS board’s authority to hold title to real property independently of a board of county commissioners may be inferred from an ADAMHS board’s express authority to independently acquire, control, and dispose of real property. *Cf. Minamax Gas Co. v. State ex rel. McCurdy*, 33 Ohio App. 501, 507, 170 N.E. 33 (Scioto County 1929) (a public entity’s right “to alien [real property] follows necessarily as an incident to ownership”); 1984 Op. Att’y Gen. No. 84-054, at 2-179 n.2 (“[i]t has long been accepted that the power to acquire and own real property carries with it the implied power of alienation”). Accordingly, property acquired by an ADAMHS board pursuant to R.C. 340.031(B) is not real property belonging to the county for purposes of R.C. 307.09, and the sale of such property is not subject to R.C. 307.09 and R.C. 307.10.

This conclusion is further supported by the overall structure of R.C. 307.09 and R.C. 307.10. R.C. 307.09 and R.C. 307.10 must be read *in pari materia* with each other and with R.C. 340.031(B). In construing these statutes *in pari materia*, we “must give them a reasonable construction so as to give proper force and effect to each and all of the statutes.” *State ex rel. Herman v. Klopffleisch*, 72 Ohio St. 3d 581, 585, 651 N.E.2d 995 (1995). R.C. 307.09 and R.C. 307.10 set forth comprehensive and integrated requirements for the sale of “real property belonging to the county.” R.C. 307.09(A). In addition to requiring that sales of real property be accomplished by public auction or competitive bidding, R.C. 307.10(A) specifies that real property belonging to the county cannot be sold absent an authorizing resolution by the board of county commissioners. By contrast, R.C. 340.031(B) authorizes an ADAMHS board to convey or enter into contracts to sell real property without first obtaining approval of the board of county commissioners. If property purchased by an ADAMHS board were property belonging to the county under R.C. 307.09, then a conflict would exist between the authorizing resolution required by R.C. 307.10(A) and the authority granted to an ADAMHS board in R.C. 340.031(B). Resolution of this conflict would necessarily result in one of these statutory provisions not being given full force and effect. This conflict is avoided if we conclude that property purchased by an ADAMHS board pursuant to R.C. 340.031(B) is not property belonging to the county under R.C. 307.09. *See* R.C. 1.51 (“[i]f a general

provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both’); *State ex rel. Slagle v. Rogers*, 103 Ohio St. 3d 89, 2004-Ohio-4354, 814 N.E.2d 55, at ¶14 (‘‘when two statutes, one general and the other special, cover the same subject matter, the special provision is to be construed as an exception to the general statute which might otherwise apply’’). Thus, the more reasonable interpretation, and the one that gives full force and effect to the relevant statutes, is that R.C. 307.09 and R.C. 307.10 do not apply to the sale of real property by an ADAMHS board.

Your second question asks, if an ADAMHS board is not required to comply with R.C. 307.09 and R.C. 307.10, whether the Trumbull County ADAMHS board is required to utilize some other type of public sale procedure when selling board-owned property, or whether the board may sell the properties in question to the contract services providers currently occupying the properties for the appraisal price listed on the Trumbull County Auditor’s website. Your third question asks whether an independent financial analysis should be obtained prior to any sale or conveyance by the Trumbull County ADAMHS board to determine whether the contemplated sale, lease, or conveyance of the properties in question is in the best interests of Trumbull County. We read these questions as variations on a more fundamental question: What must an ADAMHS board do to ensure that a sale of real property pursuant to R.C. 340.031(B) is lawful?

R.C. 340.031(B) does not specify the process an ADAMHS board must follow when selling real property. A fundamental principle of Ohio law is that, when ‘‘authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner.’’ *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). This principle has been repeatedly applied to the sale of property. *See* 1984 Op. Att’y Gen. No. 84-054, at 2-179 n. 2 (‘‘[i]t has long been accepted that the power to acquire and own real property carries with it the implied power of alienation and the discretion to use any reasonable method in disposing of such property’’ (citing 1981 Op. Att’y Gen. No. 81-106, 1980 Op. Att’y Gen. No. 80-028, 1974 Op. Att’y Gen. No. 74-020, and 1972 Op. Att’y Gen. No. 72-051)); *see also* 2008 Op. Att’y Gen. No. 2008-026, at 2-281 (the board of health of a general health district has discretion to determine when personal property owned by the district ‘‘is obsolete . . . and to establish an appropriate process for disposing of such property’’); 1986 Op. Att’y Gen. No. 86-061 (syllabus, paragraph 2) (a board of county commissioners that leases county-owned property ‘‘may, in its discretion, advertise and bid such lease if it so desires, or choose such other method of leasing real property as is reasonable’’). Thus, an ADAMHS board must act in a reasonable manner when selling real property pursuant to R.C. 340.031(B).

Whether an act is reasonable depends upon the totality of the circumstances, not the performance of any one, specific act. *See* 2005 Op. Att’y Gen. No. 2005-029, at 2-304 (if a county chooses to use competitive bidding for a contract that is not statutorily required to be bid, the reasonableness of the procedure chosen will depend on many factors); 1983 Op. Att’y Gen. No. 83-034, at 2-133 (when a statute requires competitive bidding but does not specify the procedure that must be used,

the procedure need only be reasonable “in light of the particular facts involved in each situation”); *see also State ex rel. Citizens for Open, Responsive & Accountable Gov’t v. Register*, 116 Ohio St. 3d 88, 2007-Ohio-5542, 876 N.E.2d 913, at ¶20 (what constitutes reasonable notice under Civil Rule 30(B)(1) “depends upon the facts and circumstances of each case”); *Krischbaum v. Dillon*, 58 Ohio St. 3d 58, 68, 567 N.E.2d 1291 (1991) (in determining if a testator was subject to undue influence, “the focus is whether the influence was reasonable, given all the prevailing facts and circumstances”). In partial answer to your specific questions, therefore, so long as the process used is reasonable, an ADAMHS board selling real property pursuant to R.C. 340.031(B) is not required to utilize a public sales procedure or obtain an independent financial analysis confirming the sale, lease, or conveyance of property is in the best interests of the territory served by the ADAMHS board.

This answer, however, still leaves open the question of the type of process that may be considered reasonable under R.C. 340.031(B). It is beyond the scope of the formal opinion process to make findings of fact or to determine the reasonableness or lawfulness of actions either taken or contemplated by a public body. *See* 2011 Op. Att’y Gen. No. 2011-009, at 2-73; 2005 Op. Att’y Gen. No. 2005-043, at 2-472; 2005 Op. Att’y Gen. No. 2005-002, at 2-12; 2003 Op. Att’y Gen. No. 2003-029, at 2-249 n.9; 1998 Op. Att’y Gen. No. 98-035, at 2-209. Thus, the Attorney General cannot direct what type of process an ADAMHS board should follow in the disposition of real property. We can, however, briefly discuss general principles of law relevant to this question. *See* 2011 Op. Att’y Gen. No. 2011-009, at 2-73.

The General Assembly has approved the sale of real property at its appraised fair market value in situations arguably comparable to the one you have described. *See* R.C. 5126.051(A) (board of developmental disabilities “is not required to comply with provisions of [R.C. Chapter 307],” but the “conveyance[] or sale must be at fair market value determined by appraisal of one or more disinterested persons appointed by the board”); R.C. 5722.07 (an “electing subdivision may, without competitive bidding, sell any land acquired by it as part of its land reutilization program . . . Except with respect to a sale by a county land reutilization corporation, such land shall be sold at not less than its fair market value”).

Fair market value is the amount of money which could be obtained on the open market at a voluntary sale of the property. It is the amount that a purchaser who is willing, but not required to buy, would pay and that a seller who is willing, but not required to sell, would accept, when both are fully aware and informed of all circumstances involving the value and use of the property. Market value is determined by the most valuable and best uses to which the property could reasonably, practically, and lawfully be adapted which is referred to as “the highest and best use.”

Masheter v. Ohio Holding Co., 38 Ohio App. 2d 49, 53, 313 N.E.2d 413 (Franklin County 1973); *accord Bd. of Trs. of Sinclair Cmty. College Dist. v. Farra*, Montgomery No. 22886, 2010-Ohio-568, at ¶52 (Ct. App. Feb. 19, 2010); *see also Masheter v. Cleveland Bd. of Educ.*, 17 Ohio St. 2d 27, 29, 244 N.E.2d 745 (1969).

The determination of fair market value is not an exact science. There are at least three well-recognized appraisal methods. *See Bd. of Trs. of Sinclair Cmty. College Dist. v. Farra*, 2010-Ohio-568, at ¶53 (methods employed by real estate appraisers for calculating fair market value include: “(1) [the] cost of reproducing the property, less depreciation; (2) [the] market data approach utilizing recent sales of comparable property; and (3) the income or economic approach based upon the capitalization of net income” (citations omitted)). Fair market value is a question of fact, and in making such a determination, the finder of fact “must be free to consider all valuation methods and to determine which witnesses are credible and what evidence is competent and probative.” *DAK, PLL v. Franklin Cty. Bd. of Revision*, 105 Ohio St. 3d 84, 2005-Ohio-573, 822 N.E.2d 790, at ¶19. In addition, there is no guarantee the most recent appraisal by the county auditor accurately reflects the current fair market value of a property. *See, e.g., Myers v. Keith*, Montgomery No. 22826, 2009-Ohio-3435, at ¶¶25-26 (Ct. App. July 10, 2009) (affirming decision rejecting county auditor’s valuation); *RDSOR v. Knox Cty. Auditor*, Knox No. 08-CA-23, 2009-Ohio-2310, at ¶¶36-37 (May 13, 2009) (same); *In re Complaint Against the Valuation of Real Property of Elizabeth C. Houston*, Madison No. CA2004-01-003, 2004-Ohio-5091, at ¶29 (Sept. 27, 2004) (same). Thus, if the Trumbull County ADAMHS board foregoes a public sale process, it would be prudent to obtain a second appraisal from a disinterested source and not to rely on the most recent county auditor appraisal. *See* R.C. 5126.051.

Further, Ohio public policy favors competitive bidding for public contracts:

Competitive bidding serves the public interest in a number of ways: “among the purposes of competitive bidding legislation are the protection of the taxpayer; prevention of excessive costs and corrupt practices; and the assurance of open and honest competition in bidding for public contracts so as to save the public harmless, as well as bidders themselves, from any kind of favoritism, fraud or collusion.”

2005 Op. Att’y Gen. No. 2005-029, at 2-299 to 2-300 (quoting *Danis Clarkco Landfill Co. v. Clark Cty. Solid Waste Mgmt. Dist.*, 73 Ohio St. 3d 590, 602, 653 N.E.2d 646 (1995)); *see also* 2008 Op. Att’y Gen. No. 2008-026, at 2-281 (“[o]ne or more types of competitive processes, such as a public auction or sealed bids, would help assure the best possible price for the health district while preventing fraud and collusion”). Therefore, even though the Trumbull County ADAMHS board is not bound by R.C. 307.10, it may wish to follow one of the procedures set forth in R.C. 307.10(A) or engage in another type of public sale process. *See* 2008 Op. Att’y Gen. No. 2008-026, at 2-281 to 2-282 (“[a]lthough a board of health is not required to abide by R.C. 307.12 [when selling personal property], it may wish to proceed with a competitive process and incorporate any statutory or other reasonable provisions it finds appropriate”); 1994 Op. Att’y Gen. No. 94-021, at 2-95 (“given the strong policy reasons for competitive bidding in instances in which public money is expended, the board of directors of a joint solid waste management

district should give serious consideration to awarding contracts on a competitive basis”); 1986 Op. Att’y Gen. No. 86-061 (syllabus, paragraph 2) (board of county commissioners leasing certain county-owned real property pursuant to R.C. 307.09 may “advertise and bid such lease if it so desires”).

Financing a Buyer’s Purchase of Real Property Owned by an ADAMHS Board

Your fourth question asks whether an ADAMHS board that sells real property pursuant to R.C. 340.031(B) may finance the buyer’s purchase and accept payments from the buyer, or whether the board must require that the buyer obtain separate financing. As your opinion request indicates, a question similar to this was addressed in 1988 Op. Att’y Gen. No. 88-045. There, the Attorney General addressed whether an ADAMHS board has the authority either to loan or donate funds to a private, nonprofit mental health agency for the purpose of expanding the agency’s facility. The Attorney General began by noting an ADAMHS board is a creature of statute and has only those powers expressly granted by statute and those that may be necessarily implied. 1988 Op. Att’y Gen. No. 88-045, at 2-212. The Attorney General cited the fundamental principle “that a public body may expend public funds only pursuant to clear statutory authority.” *Id.* (citations omitted). After a careful review of R.C. Chapter 340, the Attorney General concluded there is no statutory authority for an ADAMHS board “to loan or donate funds to a private, nonprofit agency, which provides mental health services and facilities, for expansion of the agency’s facilities.” *Id.* (syllabus).

It is true that 1988 Op. Att’y Gen. No. 88-045 contemplated the affirmative disbursement of public funds to a private entity, while your question asks whether an ADAMHS board may finance the purchase of board-owned property. Nonetheless, the reasoning of 1988 Op. Att’y Gen. No. 88-045 has equal application to your question. The rule that an expenditure of public funds requires clear statutory authority is derived from the broader principle that all transactions involving public funds or public property must be clearly authorized by statute. *See State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph 1) (“[a]ll public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund . . . Said trust fund can be disbursed only by clear authority of law”); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) (“[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county”). The sale of real property owned by an ADAMHS board is the disposition of an asset held in trust for the benefit of the public. If an ADAMHS board were to finance such a purchase and accept payments from the buyer, then the board would be foregoing immediate payment in full and risking future nonpayment by the buyer. We believe this type of transaction, similar to the loaning or granting of funds described in 1988 Op. Att’y Gen. No. 88-045, requires explicit approval from the General Assembly.

An ADAMHS board has statutory authority both to lease real property it

owns and to “enter into loan agreements, including mortgages, for the acquisition” of property. R.C. 340.031(B). Nothing in R.C. 340.031(B) or elsewhere authorizes an ADAMHS board to accept installment payments or act as a mortgagee in conjunction with the sale of board-owned property. *Cf.* R.C. 140.05(D) (a public hospital agency owning a hospital facility may lease the facility to certain public entities, and the terms of the lease may further provide for the sale of the leased facility “pursuant to an option to purchase, lease-purchase, or installment purchase” arrangement); R.C. 307.09(A) (a board of county commissioners may dispose of real property belonging to the county pursuant to a lease-purchase agreement in appropriate circumstances). Thus, an ADAMHS board is without statutory authority to finance the purchase of real property being sold by the board pursuant to R.C. 340.031(B) and to accept payments from the buyer. *See, e.g., State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E. 2d 265 (1944) (syllabus, paragraph 8) (“[t]here is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for”); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 67, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result)

Finally, your fifth question asks, even if a buyer obtains separate financing, whether the buyer of board-owned property may make mortgage payments and pay for repairs and maintenance on the property using funds derived from a contract between the buyer and the ADAMHS board for the provision of mental health and addiction services. The answer to this question is also suggested by 1988 Op. Att’y Gen. No. 88-045.

As just noted, 1988 Op. Att’y Gen. 88-045 concluded an ADAMHS board may not loan or donate funds to a private, nonprofit agency for the purposes of expanding its facilities. The Attorney General went on to explain, however, that an ADAMHS board has authority to “[e]nter into contracts with public and private agencies for the provision of mental health services and facilities.” 1988 Op. Att’y Gen. No. 88-045, at 2-214 (quoting former R.C. 340.03(G)).¹ The Attorney General further stated that “[n]o statute of which I am aware prohibits the use of funds provided under R.C. 340.03(G) from being used for expansion of the contracting agency’s facilities.” *Id.* Thus, the opinion clearly implied that, so long as the contract was reasonable, the nonprofit agency could pay for the expansion using moneys it was paid pursuant to its contract with the ADAMHS board. *See id.*

This concept was expanded upon and explicitly endorsed in 1997 Op. Att’y Gen. No. 97-008. The issue in 1997 Op. Att’y Gen. No. 97-008 was whether funds paid by an ADAMHS board to a private service provider retained their character as public funds, subject to control by the board, or whether such funds became private funds. Reviewing the statutory powers of an ADAMHS board, the Attorney Gen-

¹ The current analog to former R.C. 340.03(G) is R.C. 340.03(A)(8)(a). While former R.C. 340.03(G) has been amended, the basic authority of an ADAMHS board to contract for the provision of mental health facilities and services remains unchanged.

eral noted that nothing in R.C. 340.03 grants an ADAMHS board continuing control or ownership of moneys paid to an agency for the provision of mental health services or facilities, and nothing in R.C. 340.033 gives an ADAMHS board continuing control or ownership of moneys paid to an agency for the provision of drug addiction services. 1997 Op. Att’y Gen. No. 97-008, at 2-49 to 2-50. In accordance with well-settled Ohio law, therefore, the Attorney General concluded: “Absent specific contractual terms providing otherwise, funds paid by an [ADAMHS] board to a private entity, pursuant to contract, as reasonable compensation for services rendered or facilities provided become the property of the private entity and may be used by the private entity for any purposes for which that entity may properly expend its money.” *Id.* (syllabus).

The reasoning and conclusions in 1997 Op. Att’y Gen. No. 97-008 and 1988 Op. Att’y Gen. No. 88-045 are accurate and persuasive. These opinions are also consistent with Attorney General opinions in other contexts concluding that moneys paid to a private entity by a public body pursuant to a lawful contract are private funds that generally are not subject to the statutory restrictions imposed on public funds. *See* 1989 Op. Att’y Gen. No. 89-010, at 2-41 (“[y]ou have raised a question concerning the expenditure of certain moneys that were paid to a private fire company under the terms of a particular contract. If the moneys were properly paid to the fire company, in accordance with the terms of the contract, as reasonable compensation for services rendered, they became the property of the fire company. The restriction on the purpose for which moneys derived under R.C. 5705.19(I) may be expended was satisfied when the moneys were paid to the fire company in exchange for fire and rescue services. The moneys then became available for expenditure by the fire company for any purpose for which the company was authorized to expend its funds”); 1983 Op. Att’y Gen. No. 83-069 (syllabus, paragraph 2) (“[a] board of township trustees may not use funds derived from a levy adopted under R.C. 5705.19(I) to simply donate a fire station, fire equipment or apparatus, or maintenance services to a private volunteer fire company, but the board may contract with a private volunteer fire company . . . upon any terms and conditions which the board, in the reasonable exercise of its discretion, deems appropriate. Such terms and conditions may make funds derived from a levy adopted under R.C. 5705.19(I) available for the purchase of property or maintenance services for the fire company”).²

Nothing in R.C. Chapter 340 or elsewhere prohibits a private entity from using moneys lawfully paid to it by an ADAMHS board for the purpose of making mortgage payments or paying repair and maintenance costs on real property owned

² Of course, the General Assembly has the authority to, and sometimes does, impose conditions or obligations on private entities receiving public moneys pursuant to a contract with a public body. *See, e.g.*, R.C. 149.431(A) (specified nonprofit corporations and associations that contract with a public entity must keep financial records); R.C. 307.851(C) (a corporation or association that contracts with a board of county commissioners for the provision of certain services is required to keep financial records and is subject to an annual audit).

by that entity. Accordingly, absent circumstances specifically limiting a private entity's use of its own funds, moneys paid by an ADAMHS board to a private entity, pursuant to a contract, as reasonable compensation for services rendered or facilities provided may be used by that entity to make mortgage payments and pay for ongoing repairs and maintenance with respect to real property formerly owned by the board and sold to the entity pursuant to R.C. 340.031(B).

Conclusion

In sum, it is my opinion, and you are hereby advised as follows:

1. Real property acquired by an alcohol, drug addiction, and mental health services board pursuant to R.C. 340.031(B) is not "real property belonging to the county" for purposes of R.C. 307.09, and the sale of such property is not subject to R.C. 307.09 and R.C. 307.10.
2. An alcohol, drug addiction, and mental health services board selling real property pursuant to R.C. 340.031(B) may, in its discretion, sell the property at public auction or pursuant to competitive bidding, after appropriate public notice, or utilize another process for selling the property that is reasonable.
3. An alcohol, drug addiction, and mental health services board lacks statutory authority to finance the purchase of real property being sold by the board pursuant to R.C. 340.031(B) and to accept payments from the buyer.
4. Absent circumstances specifically limiting a private entity's use of its own funds, moneys paid by an alcohol, drug addiction, and mental health services board to a private entity, pursuant to a contract, as reasonable compensation for services rendered or facilities provided may be used by that entity to make mortgage payments and pay for ongoing repairs and maintenance with respect to real property formerly owned by the board and sold to the entity pursuant to R.C. 340.031(B).