

**OPINION NO. 81-048****Syllabus:**

R.C. 5126.06(D) authorizes a county board of mental retardation and developmental disabilities to reimburse its employees for damage done to personal property by clients of the board when such damage results in an actual and necessary expense incurred in the performance of the employees' official duties.

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**To: Lynn Charles Slaby, Summit County Pros. Atty., Akron, Ohio**  
**By: William J. Brown, Attorney General, August 31, 1981**

I have before me a request from your predecessor for my opinion concerning the authority of a county board of mental retardation and developmental disabilities to reimburse its employees for damage done by clients to the employees' personal property as a result of occasional assaults, resistance, or other behavior occurring while the employees are on duty. Your letter indicates that such property would normally include clothing, eyeglasses and watches.

As a creature of statute, a county board of mental retardation and developmental disabilities has only those powers expressly granted by statute or

necessarily implied from such express powers. See State ex rel. Hall v. Geaubeaux, 110 Ohio St. 287, 144 N.E. 251 (1924); Portage County v. Gates, 83 Ohio St. 19, 93 N.E. 255 (1910); 1974 Op. Att'y Gen. No. 74-015. Thus, a county board of mental retardation and developmental disabilities may not expend funds to reimburse its employees without specific statutory authorization to do so.

The General Assembly has recently enacted legislation which empowers a county board of mental retardation and developmental disabilities, through its superintendent, to reimburse its employees for certain expenses. S.B. 160, 113th Gen. A. (1980) (eff. Oct. 31, 1980). The newly enacted R.C. 5126.06 reads in pertinent part:

The superintendent of the county board of mental retardation and developmental disabilities shall:

. . . .

(D) Approve compensation for employees within the limits set by the salary schedule and budget set by the board and ensure that all employees and consultants are properly reimbursed for actual and necessary expenses incurred in the performance of official duties;

. . . .

The superintendent may authorize the payment of board obligations by the county auditor. (Emphasis added.)

A county board of mental retardation and developmental disabilities may, therefore, reimburse its employees out of board funds for those "expenses incurred in the performance of official duties."

An "expense," as defined in Webster's New World Dictionary 493 (2d college ed. 1978), is "a cause of spending; drain on one's finances." Damage caused by a client to the personal property of an employee is "a cause of spending" to the employee and would, therefore, fall within the definition of expense. To "incur" means "to come into or acquire." Webster's New World Dictionary 713 (2d college ed. 1978). Thus, for an expense to be reimbursable under R.C. 5126.06(D), the employee must "come into or acquire" the expense in the course of performing his official duties. Clearly, an expense resulting from damage done to the property of an employee, while that employee is engaged in activities within the scope of his employment, results in a "cause of spending" which the employee "come[s] into" during the performance of official duties. Therefore, the damage caused by clients is an expense "incurred in the performance of official duties" and may be reimbursed from board funds pursuant to R.C. 5126.06(D).

Whether a particular damage expense falls within the category of expenses described above, and whether it is an "actual and necessary" expense, are issues which must be considered prior to reimbursement. However, the resolution of those questions involves determinations of fact which can only be adequately addressed at the local level.

Therefore, it is my opinion, and you are advised, that R.C. 5126.06(D) authorizes a county board of mental retardation and developmental disabilities to reimburse its employees for damage done to personal property by clients of the board when such damage results in an actual and necessary expense incurred in the performance of the employees' official duties.