

OPINION NO. 90-076**Syllabus:**

1. A county which provides the service of dispatching towing companies for municipal corporations is not required to enter into competitively bid contracts with the towing companies pursuant to R.C. 307.86.
2. The county may use a rotation system for the dispatch of towing companies on behalf of a municipal corporation if the municipal corporation has the authority to use a rotation system for the dispatch of towing companies on its own behalf.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 9, 1990

You have requested my opinion on the following questions:¹

1. Is a county which provides the service of dispatching towing companies for municipal corporations required to enter into competitively bid contracts with the towing companies pursuant to R.C. 307.86?
2. If the answer to the first question is no, may the county use a rotation system for such dispatch?

A member of your staff has provided the information that Miami County has undertaken to act as a central dispatching agency for the police departments of

¹ With your concurrence, I have reworded your questions for ease of analysis.

municipal corporations within the county. The county dispatcher, upon the request of the police department of a municipal corporation, contacts a private towing company and dispatches it to the location of the vehicle to be towed. Generally, the fee for the tow is paid directly to the towing company by the owner of the vehicle pursuant to municipal ordinance. In some cases, the municipal corporation which requested the dispatch pays the fee of the towing company. Since the towing company performs the service directly for the municipal police department, the county pays nothing to the towing company. The service provided by the county, therefore, is limited to contacting the towing company and dispatching it to a particular location on behalf of the municipal corporation.

In order to answer your questions, I must first examine the authority of the county to provide a dispatch service for a municipal corporation. Although I am not aware of a statute which directly grants the county such power, R.C. 307.15 generally authorizes the board of county commissioners to exercise powers of and perform functions on behalf of a municipal corporation. The statute provides in specific part as follows:

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation...whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render....

Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly....

Thus, pursuant to an agreement made under the authority of R.C. 307.15, the board of county commissioners may undertake to dispatch towing services on behalf of a municipal corporation provided the municipal corporation has authority to dispatch towing companies on its own behalf. See, e.g., 1963 Op. Att'y Gen. No. 16, p. 88 (pursuant to an agreement under R.C. 307.15 and R.C. 307.16, the board of county commissioners may operate a base radio station to receive and transmit official fire activity messages from and to the fire departments of political subdivisions in the county). For purposes of this opinion, therefore, I assume that the board of county commissioners has entered into an agreement pursuant to R.C. 307.15 with the municipal corporations for which it provides a dispatch service and that the municipal corporations have the authority to dispatch towing companies.

With the foregoing in mind, I now turn to your first question. You ask whether a county which provides the service of dispatching towing companies for municipal corporations is required to enter into competitively bid contracts with the towing companies pursuant to R.C. 307.86. R.C. 307.86 requires competitive bidding when anything is "*purchased...including, but not limited to, any...service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, 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 ten thousand dollars, except as otherwise provided in [sections of the Revised Code not relevant here]...*" (Emphasis added.) "Contracting authority" is defined as "any board, department, commission, authority, trustee, official, administrator, agent or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof." R.C. 307.92. However, in the situation you have presented, the towing service is not purchased "by or on behalf of the county or contracting authority." R.C. 307.15. The county merely performs the function of contacting the towing company on behalf of the municipal corporation. I find therefore, that the county is not required to enter into a competitively bid contract with the towing company.

Your second question asks if the county is not required to enter into a competitively bid contract with the towing company may the county use a rotation system to dispatch such services. A member of your staff has provided the additional information that a rotation system is a system whereby all towing companies that are available to tow vehicles at the request of a municipal corporation are included in numerical order on a designated towing list. Each company on the list is contacted in numerical sequence until all companies have been called upon once to provide services, whereupon the sequence begins anew.

R.C. 307.15 specifies that the board of county commissioners, within the limitations prescribed by the agreement entered into under authority of that section, "may exercise the same powers as the [municipal corporation] possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the [municipal corporation] directly...." The board of county commissioners, therefore, is authorized by R.C. 307.15 to dispatch towing services on behalf of a municipal corporation in the same manner and to the same extent that the municipal corporation is authorized to dispatch towing services for itself. *See, e.g.*, 1986 Op. Att'y Gen. No. 86-012 (pursuant to R.C. 307.15, the board of county commissioners, acting on behalf of the board of library trustees of a free public library, must comply with the requirements of a statute which governs the board of library trustees). *See also* 1986 Op. Att'y Gen. No. 86-084 (R.C. 307.15 does not enlarge the authority otherwise conferred upon cities and counties but merely permits one subdivision to assume the authority of another subdivision). Thus, when acting on behalf of the municipal corporation pursuant to R.C. 307.15, the county must comply with the law which governs the municipal corporation with respect to the particular service or function being performed for it by the county. Therefore, the county may use a rotation system for the dispatch of towing services on behalf of a municipal corporation if the municipal corporation has authority to use a rotation system for such dispatch.

I note that the Attorney General is authorized by statute to advise only state officers, boards, and commissions, R.C. 109.12, county prosecuting attorneys, R.C. 109.14, and, when so required by resolution, either house of the General Assembly, R.C. 109.13. The authority of the Attorney General to advise prosecuting attorneys extends only to matters "respecting their duties." R.C. 109.14; 1988 Op. Att'y Gen. No. 88-008. As the prosecuting attorney has no duty to represent municipal corporations, R.C. 309.09, the Attorney General has no authority to opine on a municipal corporation's use of a rotation system for the dispatch of towing services.

It is therefore my opinion, and you are hereby advised, that:

1. A county which provides the service of dispatching towing companies for municipal corporations is not required to enter into competitively bid contracts with the towing companies pursuant to R.C. 307.86.
2. The county may use a rotation system for the dispatch of towing companies on behalf of a municipal corporation if the municipal corporation has the authority to use a rotation system for the dispatch of towing companies on its own behalf.