

OPINION NO. 81-040**Syllabus:**

1. A board of county commissioners may hire a legislative analyst pursuant to R.C. 9.36 to assist in the fiscal and managerial operations of the county.
2. A board of county commissioners may hire a legislative analyst pursuant to R.C. 305.13 to perform any function which the county commissioners may require to assist them in carrying out their statutory responsibilities. (1937 Op. Att'y Gen. No. 134, vol. I, p. 179 overruled.)
3. Expenditures for the compensation and expenses of a legislative agent are valid if such expenditures are connected with duties of the agent which are authorized by statute.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio

By: William J. Brown, Attorney General, July 14, 1981

I have before me your request for my opinion concerning the employment of a legislative lobbyist by a board of county commissioners. In particular, you ask whether the county commissioners have the authority to hire such an individual.

As a preliminary matter, it is necessary to address the issue of terminology. Your letter refers to the position in question as that of a "lobbyist," while the county commissioners have chosen the job title of "legislative analyst." The exact job title is, of course, of minor importance to the resolution of your question. However, it is important to note at the outset that the job description furnished by your office includes lobbying as just one of a variety of duties to be performed by the individual holding the position. Therefore, although this opinion will focus on what I understand to be your primary concern—the authority of a county to employ persons who serve lobbying functions—I have chosen to use the more encompassing term of "legislative analyst" when referring to the position in question.

The registration of lobbyists and their employers and the disclosure of certain lobbying expenditures is required by R.C. 101.70-.77. These statutes use the term "legislative agent," rather than "lobbyist." Under R.C. 101.70(F), a "legislative agent" is defined as "any individual who is engaged during at least a portion of his time to influence legislation as one of his main purposes." To "[i]nfluence means to promote, advocate, or oppose the passage, defeat, or executive approval or veto of any legislation by direct communication with any member of the general assembly, the governor, a member of the governor's staff, or the director of any department listed in section 121.02 of the Revised Code." R.C. 101.70(E). R.C. 101.70(G)

indicates that a legislative agent may be employed by another person for the purpose of influencing legislation. "Person" is defined in R.C. 101.70(A) to include "any county, township, municipal corporation, school district, or any other political subdivision of the state" (emphasis added). Thus, the General Assembly, when it enacted R.C. 101.70-.77, clearly assumed that counties would be among those entities which could employ an individual whose function would be to "promote, advocate or oppose the passage, defeat or executive approval or veto of any legislation" and, accordingly, made provisions for the registration of such county-employed agents. R.C. 101.72.

The statutes discussed above permit lobbying in Ohio, with some minimal regulation. It is apparent from this acceptance of lobbying activities that the Ohio legislature views the process as a legitimate activity. This view was shared by the Ohio Supreme Court in Bigelow v. Brumley, 138 Ohio St. 574, 593, 37 N.E.2d 584, 594 (1941), wherein the court stated that "[t]here is nothing immoral or disgraceful in accepting pay to influence in a legitimate manner the deliberations of a legislative body." Thus, both statutory and case law make clear that, in Ohio, lobbying is a lawful activity which is generally available to any person who desires to influence legislation and who has the necessary authority to do so. More importantly, the statutes which regulate lobbying show recognition on the part of the General Assembly that lobbying may be undertaken by a county employee.

Although a private individual may participate in lobbying without a specific grant of authority by statute, the same is not true of county officials. A board of county commissioners has only those powers expressly granted by statute or necessarily implied therefrom. State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). The fact that the legislature considered the possibility of employment of a "legislative agent" by counties and did not prohibit such activity does not, of course, act as an authorization for a county to hire a legislative analyst who performs a lobbying function. A separate grant of the power to hire such an individual must be found before the county can act.

I am aware of two possible sources of authority for the employment of a legislative analyst: R.C. 9.36 and R.C. 305.13. R.C. 9.36 permits the board of county commissioners to "contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties." As I noted in 1977 Op. Att'y Gen. No. 77-098, the enactment of R.C. 9.36 seems to have been a legislative response to the conclusion of 1974 Op. Att'y Gen. No. 74-065 that a board of county commissioners did not have the authority to contract for consultant services.

The term "fiscal and management consultant" has not been defined by the General Assembly nor has the meaning of this term been addressed by any court. As was discussed in 1978 Op. Att'y Gen. No. 78-021, "the exact meaning of 'fiscal and management' consultant is not yet clearly delineated." In the absence of any clear legislative or judicial definition of a statutory term, the next step is to look at the plain meaning of the language in question. Baker v. Powhatan Mining Co., 146 Ohio St. 600, 67 N.E.2d 714 (1946). The term "fiscal" clearly relates to financial concerns. "Management" may be defined as "the act, art or manner of managing, or handling, controlling, directing, etc." and "consultant" as "an expert who is called on for professional or technical advice or opinion." Webster's New World Dictionary 305, 859 (2d college ed. 1978). Thus, a fiscal and management consultant, for purposes of R.C. 9.36, is one whose skill and expertise in financial and administrative matters are applied to the operation of county government.

At least some of the duties of a legislative analyst set forth in the job description which you have provided clearly fall within the concept of a fiscal and management consultant. The job description provides for the analyst to inform county officials of legislation which affects county rights and obligations. In addition, the analyst is to assist the county in preparing for the impact of bills voted into law. The county commissioners might reasonably conclude that county

government would be improved if they could anticipate changes in the law. By knowing what would be required of it in the future, a county could ensure an adequate budget to cover all its responsibilities and could adjust its operations to conform with changes in the statutory authority of the county. By the terms of the job description, the legislative analyst is to act as a conduit for the passage of information between the county and the state legislature, seeking to inform legislators of the problems faced by counties and the impact of proposed legislation on those counties. To the extent that the duties of a legislative analyst are designed to help the county organize its finances and operations to meet changes in state law and to attempt to alleviate county problems by bringing them to the attention of the state legislature, I conclude that a legislative analyst does qualify as a fiscal or management consultant. A county does, therefore, have the authority to contract for the services of a legislative analyst for the purposes authorized by R.C. 9.36.

An additional source of authority for obtaining the services of a legislative analyst is contained in R.C. 305.13, which provides that the county commissioners may appoint a full-time clerk "and such necessary assistants as the board deems necessary. Such clerk shall perform the duties required by sections 305.10 and 305.11 of the Revised Code and by the board" (emphasis added). The language "by the board," then codified in G.C. 2409, was analyzed by the Court of Appeals of Cuyahoga County in *State ex rel. Spira v. Board of Commissioners*, 32 Ohio App. 382, 168 N.E. 210 (1929). The court noted, at 32 Ohio App. 387, 168 N.E. 212, that this phrase had been included in the statute in order to allow the county commissioners "to add to the duties imposed upon the clerk and his assistants by law, and thus assist the commissioners to more efficiently perform their duties." Therefore, under this language, the clerk is not limited to the performance of duties specified by statute but, rather, may also carry out those obligations, imposed by the county commissioners, which assist the commissioners in the efficient performance of their responsibilities. The county commissioners could reasonably conclude that a legislative analyst would aid the county commissioners in managing the operations of the county. The analyst would, therefore, be "assist[ing] the commissioners to more efficiently perform their duties." An individual employed under this section could perform any function which the commissioners may lawfully require to assist them in their duties. There is nothing in the job description furnished by your office which is inconsistent with the statutory authorization of R.C. 305.13.

In 1937 Op. Att'y Gen. No. 134, vol. I, p. 179, a prior Attorney General concluded that a board of county commissioners could not appoint an assistant clerk whose duties would include conferring with legislators. This conclusion was based on the assumption that a clerk and his assistants would "perform only such duties as are delegated to the clerk by statute." 1937 Op. No. 134 at p. 181. This reasoning renders the "by the board" language of R.C. 305.13 (then G.C. 2409) meaningless. It is a well-settled rule of statutory construction that each portion of a statute should be given meaning whenever possible. "[A] construction should be avoided which will render a part of the statutory law inoperative, meaningless, nugatory, purposeless, unnecessary or useless unless such a construction is manifestly required." *State v. Smith*, 66 Ohio L. Abs. 170, 173, 116 N.E.2d 451, 454 (C.P. Butler County 1953) (quoting 37 O. Jur. 617, Sec. 341). The reasoning of 1937 Op. No. 134 violates this principle. Moreover, the conclusion of 1937 Op. No. 134 directly contradicts the previously discussed holding of *State ex rel. Spira*. For these reasons, the conclusion of 1937 Op. Att'y Gen. No. 134, p. 179 is inaccurate and must be overruled.

From the foregoing, it is obvious that a board of county commissioners may contract with a legislative analyst pursuant to R.C. 9.36 to provide fiscal or management consulting services, and may employ a legislative analyst pursuant to R.C. 305.13 to assist the commissioners in the performance of their duties. This statutory authority is, of course, subject to the general limitation derived from Ohio Const. art. VIII, §4, 6 that public funds may be expended only in furtherance of a public purpose. *Kohler v. Powell*, 115 Ohio St. 418, 154 N.E. 340 (1926).

There is clearly a public purpose for the payment of compensation to an individual employed as a legislative analyst pursuant to R.C. 9.36 or R.C. 305.13. The General Assembly, in enacting those statutes, made a determination that it is in the public interest to permit counties to contract for the services of fiscal and management consultants and to hire personnel to assist the county commissioners in performing their duties. In the face of such a clear grant of authority, the issue of public purpose cannot be questioned.

In addition to compensation, a county is also authorized to provide its employees with traveling expenses when such expenses are connected with statutory duties and reasonably necessary to the performance of those duties. See, e.g., State v. McKelvey, 12 Ohio St. 2d 92, 93, 232 N.E.2d 391, 391 (1967) ("county travel expense money is to be paid only to county officials, their deputies and employees, actually incurring authorized travel expense. . ."); 1970 Op. Att'y Gen. No. 70-149 ("employees can lawfully be reimbursed for travel incurred while . . . engaged in legitimate purposes. . ."). Therefore, a legislative lobbyist may be reimbursed for those expenses which are related to travel in furtherance of county business.

Whether the wide variety of expenses which might be incurred by a legislative analyst, other than those directly related to travel, may be reimbursed in conformance with the public purpose doctrine is largely a question of fact. The key inquiry of course, is whether the particular expenditure in question is connected with the duties of a legislative agent which are authorized by statute. Such a determination is largely dependent on the resolution of issues of fact and is not, therefore, the proper subject for an opinion of the Attorney General. Such questions are better left to the authority of local officials who are more familiar with the facts of each particular case and can apply those facts within the confines of the statutory authorization and the public purpose doctrine.

Therefore, it is my opinion, and you are advised, that:

1. A board of county commissioners may hire a legislative analyst pursuant to R.C. 9.36 to assist in the fiscal and managerial operations of the county.
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