

**OPINION NO. 2005-025****Syllabus:**

1. Pursuant to R.C. 307.84 and R.C. 307.842, a county department of job and family services established under R.C. 329.01 may not enter into a contract for automatic data processing equipment or services without prior approval from the county automatic data processing board.
2. A county automatic data processing board may not access data in the computer information systems of the Ohio Department of Job and Family Services, unless the access is permitted under 12 Ohio Admin. Code 5101:1-1-03, Ohio Admin. Code 5101:9-9-38, or another federal or state statute or administrative rule and the conditions and requirements of the statute or rule authorizing the access are satisfied.

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**To: Paul J. Gains, Mahoning County Prosecuting Attorney, Youngstown, Ohio**

**By: Jim Petro, Attorney General, June 8, 2005**

You have requested an opinion whether a county department of job and family services established under R.C. 329.01 must obtain the approval of the county automatic data processing board before entering into a contract for automatic data processing equipment or services.<sup>1</sup> In addition, you wish to know whether a county automatic data processing board may access data in the computer information systems of the Ohio Department of Job and Family Services (ODJFS).

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<sup>1</sup> *Webster's New World Dictionary* 360 (2nd college ed. 1986) defines "data processing" as "the recording and handling of information by means of mechanical or electronic equipment." As explained in 1984 Op. Att'y Gen. No. 84-042 at 2-136 (quoting 4 *McGraw-Hill Encyclopedia of Science and Technology* 28 (5th ed. 1982)), data processing systems are described as follows:

Electronic, electromechanical, or mechanical machines for transforming information into suitable forms in accordance with procedures planned in advance. The term data-processing system is also applied to the scheme, or procedure, that prescribes the sequence of operations to be performed in processing the information.

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Data processing systems can be broadly classified as manual, semiautomatic, or automatic, depending on the degree of human effort required to control and execute the procedures. The trend is to reduce human effort, and automatic methods are becoming the dominant mode of processing.... Automatic systems are usually built around electronic digital computers and termed electronic data-processing (EDP) systems.

Pursuant to R.C. 307.84 and R.C. 307.842, a county department of job and family services established under R.C. 329.01 may not enter into a contract for automatic data processing equipment or services without prior approval from the county automatic data processing board. Also, a county automatic data processing board may not access data in the computer information systems of ODJFS, unless the access is permitted under 12 Ohio Admin. Code 5101:1-1-03, Ohio Admin. Code 5101:9-9-38, or another federal or state statute or administrative rule and the conditions and requirements of the statute or rule authorizing the access are satisfied.

#### **Powers and Duties of a County Automatic Data Processing Board**

In order to address your specific questions, we must examine the statutes governing the powers and duties of a county automatic data processing board. R.C. 307.84, which authorizes a board of county commissioners to establish a county automatic data processing board,<sup>2</sup> provides, in part:

The board of county commissioners of any county may, by resolution, establish a county automatic data processing board. The board shall consist of the county treasurer or the county treasurer's representative, the county recorder or the county recorder's representative, the clerk of the court of common pleas or the clerk's representative, a member or representative of the board of county commissioners chosen by the board, two members or representatives of the board of elections chosen by the board of elections one of whom shall be a member of the political party receiving the greatest number of votes at the most recent general election for the office of governor and one of whom shall be a member of the political party receiving the second greatest number of votes at such an election, if the board of elections desires to participate, and the county auditor or the county auditor's representative who shall serve as secretary. The members of the county automatic data processing board may by majority vote add to the board any additional members whose officers use the facilities of the board.

After the initial meeting of the county automatic data processing

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<sup>2</sup> A board of county commissioners is not required to establish a county automatic data processing board. Instead, "[t]he permissive language of R.C. 307.84 indicates that the authority thereby conferred upon a board of county commissioners to establish a county automatic data processing board is purely discretionary, and in no circumstance does R.C. 307.84 impose a mandatory duty upon the county commissioners to form such a board." 1990 Op. Att'y Gen. No. 90-034 at 2-134; *accord Campanella v. Cuyahoga County*, 57 Ohio Misc. 20, 22, 387 N.E.2d 254 (C.P. Cuyahoga County 1977) ("R.C. 307.84 is on its face permissive and not mandatory. No county is required to establish a data processing board"), *aff'd*, No. 38439, 1978 Ohio App. LEXIS 10447 (Cuyahoga County June 15, 1978); 1977 Op. Att'y Gen. No. 77-030 at 2-110 ("the creation of the county automatic data processing board is permissive on the part of the board of county commissioners. Moreover, there is nothing in the [Ohio] Constitution or in R.C. 307.84 that would preclude the county commissioners from abolishing the board at any time after its creation").

board, no county office shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board.

A county automatic data processing board is authorized to do the following:

The county automatic data processing board shall coordinate the use of all automatic data processing equipment in use throughout the county offices at the time the board is established.

The board may, in writing, authorize any county office to contract for automatic data processing services, or operate or acquire automatic data processing equipment, where the board determines such action is desirable. The authorization shall be signed by a majority of the members of the board and shall be filed in the office of the board of county commissioners.

The county automatic data processing board may establish an automatic data processing center which shall provide a centralized system for the use of automatic data processing equipment for all county offices.

R.C. 307.842; *see also* R.C. 307.844 (providing for the operation of a county automatic data processing center); R.C. 307.845 (providing for the funding of a county automatic data processing center).

Thus, when a board of county commissioners establishes a county automatic data processing board, "automatic data processing is to be made available to county offices in accordance with the terms of R.C. 307.842." 1990 Op. Att'y Gen. No. 90-034 at 2-135. This means that a county automatic data processing board may make automatic data processing available to a county office by (1) authorizing the county office to contract for automatic data processing services, (2) authorizing the county office to operate or acquire automatic data processing equipment, or (3) establishing an automatic data processing center which is to provide a centralized system for the use of automatic data processing equipment by the county office.<sup>3</sup> *See* R.C. 307.842; 1990 Op. Att'y Gen. No. 90-034 at 2-135.

In addition to providing automatic data processing services to county offices, a county automatic data processing board may enter into contracts to provide such services to other governmental entities:

The county automatic data processing board may enter into a contract with the legislative authorities of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, part district, soil and water conservation district, conservancy district, other taxing district, regional council established pursuant to [R.C. Chapter 167] or otherwise,

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<sup>3</sup> A county office that receives automatic data processing services from a county automatic data processing board may be charged for such services. R.C. 307.846; *see* 1968 Op. Att'y Gen. No. 68-029 (syllabus, paragraph two).

or with the board of county commissioners or the automatic data processing board of any other county, or with any other federal or state governmental agency, and such authorities may enter into contracts with the county automatic data processing board, to provide automatic data processing services to any of them. The board shall establish a schedule of charges upon which the cost of providing such services shall be based. All moneys collected by the board for services rendered pursuant to contracts entered into under this section shall be deposited in the county general fund; however, such moneys may be segregated into a special fund in the county treasury until the end of the calendar year. County offices may also be charged for such services and the appropriation so charged and the appropriation of the board so credited.

R.C. 307.846; *see, e.g.*, 1971 Op. Att’y Gen. No. 71-086 (syllabus) (a county automatic data processing board may “enter into a contract to provide automatic data processing service to an areawide coordinating agency formed under the provisions of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3331 *et seq.*”).

R.C. 307.84-.846 thus creates a comprehensive statutory scheme under which a county automatic data processing board coordinates and approves the acquisition and operation of automatic data processing equipment and services by county offices and between the county and other local governmental entities. *Campanella v. Cuyahoga County*, No. 38439, 1978 Ohio App. LEXIS 10447, at \*3-5 (Cuyahoga County June 15, 1978); 1977 Op. Att’y Gen. No. 77-030 at 2-111 and 2-112. *See generally* 1971 Op. Att’y Gen. No. 71-086 at 2-295 (“[t]he paramount object of the General Assembly in authorizing the establishment of county automatic data processing boards was obviously the promotion of efficiency in the operations of county and local governments”). Moreover, under R.C. 307.84-.846, the power to provide automatic data processing services to county offices is vested exclusively within the county automatic data processing board. *See Campanella v. Cuyahoga County*, No. 38439, 1978 Ohio App. LEXIS 10447, at \*3-5; 1977 Op. Att’y Gen. No. 77-030 at 2-112.

**A County Department of Job and Family Services May Not Enter Into a Contract for Automatic Data Processing Equipment or Services Without Prior Approval from the County Automatic Data Processing Board**

Let us now turn to your first question, which asks whether a county department of job and family services established under R.C. 329.01 must obtain the approval of the county automatic data processing board before entering into a contract for automatic data processing equipment or services. Pursuant to R.C. 307.84 and R.C. 307.842, a county department of job and family services established under R.C. 329.01 may not enter into a contract for automatic data processing equipment or services without prior approval from the county automatic data processing board.

R.C. 307.84 provides that, “[a]fter the initial meeting of the county automatic data processing board, no *county office* shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior ap-

proval of the board.” (Emphasis added.) R.C. 307.842 further provides that a county automatic data processing board “may, in writing, authorize any *county office* to contract for automatic data processing services, or operate or acquire automatic data processing equipment, where the board determines such action is desirable.” (Emphasis added.) R.C. 307.84 and R.C. 307.842 thus require a county office to obtain the approval of the county automatic data processing board before entering into a contract for automatic data processing equipment or services. *See generally* 1983 Op. Att’y Gen. No. 83-027 (syllabus, paragraph four) (“[a]s provided in R.C. 9.35,<sup>4</sup> and *subject to any limitations imposed under R.C. 307.84*, the county engineer may, pursuant to a resolution duly adopted by the board of county commissioners, contract with a person, firm, or corporation engaged in the business or capable of rendering electronic data processing or computer services for the performance of mechanical, clerical, or record-keeping services necessary in the performance of his duties” (footnote and emphasis added)); 1970 Op. Att’y Gen. No. 70-091 (syllabus, paragraph one) (“[t]he county auditor, pursuant to [R.C. 9.35], *but subject to the provisions of [R.C. 307.84]*, is the public official authorized to contract for and engage the services of a financial institution, or other person, firm or corporation engaged in the business or capable of rendering electronic data processing or computer services, to perform any or all of the ministerial functions considered necessary by such public official for the preparation of the county tax lists and duplicates required by [R.C. 319.28, R.C. 319.29, and R.C. 319.34]” (emphasis added)).

As used in R.C. 307.84-.846, a “county office” is “any officer, department, board, commission, agency, court, or other office of the county, other than a board of county hospital trustees.” R.C. 307.84. In other words, a “county office,” as defined in R.C. 307.84, is an entity that is a subordinate unit of the county, rather than an entity separate and distinct from the county. 1996 Op. Att’y Gen. No. 96-052 at 2-202; *see, e.g.*, 1997 Op. Att’y Gen. No. 97-029 at 2-174 (a general health district is not a county office as defined in R.C. 307.84 “because it is an entity separate and distinct from the county”); 1971 Op. Att’y Gen. No. 71-085 at 2-291 (“[t]he court of appeals and the court of common pleas are ... offices of the State and not county offices as that term is used in [R.C. 307.84]”); 1968 Op. Att’y Gen. No. 68-105 at 2-152 (“since a county board of education is only responsible to the state board of education and the county commissioners have no control over the activities of the county board of education, it is not a ‘county office’ within the meaning of [R.C. 307.84]”).

1996 Op. Att’y Gen. No. 96-052 at 2-202, which advised that a soil and water conservation district created pursuant to R.C. 1515.03 is not a county office for purposes of R.C. 307.84, advised that the following criteria set forth in 1993 Op. Att’y Gen. No. 93-050 at 2-243 may be used to determine whether an entity is a

<sup>4</sup> R.C. 9.35(B) authorizes certain public officials to “contract for and engage the services of a financial institution, or other person engaged in the business or capable of rendering electronic data processing or computer services, to perform the mechanical, clerical, or record-keeping services necessary in the performance of [their] duties.”

subordinate unit of the county: “(1) whether the territory that comprises the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county.” *See* 1999 Op. Att’y Gen. No. 99-028 at 2-186; 1992 Op. Att’y Gen. No. 92-060 at 2-247. 1996 Op. Att’y Gen. No. 96-052 at 2-202 further elaborated that, “none of the criteria mentioned is critical in determining whether an entity is a subordinate unit of the county, rather, if an examination of these criteria reveals, on balance, that the entity is a subordinate unit of the county, then it is likely that the entity is a part of county government.” *Accord* 1993 Op. Att’y Gen. No. 93-050 at 2-244. *But see generally* 1999 Op. Att’y Gen. No. 99-028 (syllabus) (“[a] nonprofit corporation that is recognized by a board of county commissioners as a convention and visitors’ bureau and receives public funds from a county hotel lodging excise tax levied pursuant to R.C. 5739.024(A), but that is not organized and controlled by the county, is not a ‘county board’ that is entitled to legal advice or representation from a county prosecuting attorney under R.C. 309.09(A)”).

An examination of a county department of job and family services established under R.C. 329.01 with respect to the aforementioned criteria discloses that it is a subordinate unit of the county, rather than an entity separate and distinct from the county.<sup>5</sup> *See generally* R.C. 5153.15 (“[t]he powers and duties enumerated in [R.C. 5153.16-.19] with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of county government, namely, a county department of job and family services or a county children services board”); 1987 Op. Att’y Gen. No. 87-090 at 2-598 (“[a] county human services department<sup>6</sup> is a county board within the meaning of R.C. 309.09(A)” (footnote added)); 1983 Op. Att’y Gen. No. 83-078 at 2-318 (“[t]he director of a county

<sup>5</sup> Instead of establishing a county department of job and family services under R.C. 329.01, a board of county commissioners may, in accordance with R.C. 307.981, designate a private or government entity within the state to serve as the county department of job and family services. *See* R.C. 329.01(A) (as used in the Revised Code, “[c]ounty department of job and family services’ means the county department of job and family services established under this section, including an entity designated a county department of job and family services under [R.C. 307.981]”). An assistant prosecuting attorney on your staff has informed us that the board of county commissioners has not designated a private or government entity to serve as the county department of job and family services, but rather, has established such a department pursuant to R.C. 329.01. This opinion, therefore, does not consider whether a private or government entity designated under R.C. 307.981 to serve as a county department of job and family services is a subordinate unit of the county.

<sup>6</sup> County departments of human services are now county departments of job and family services. 1999-2000 Ohio Laws, Part II, 4045 (Am. Sub. H.B. 470, eff. Mar. 14, 2000); 1999-2000 Ohio Laws, Part II, 4177 (H.B. 471, eff. July 1, 2000); *see also* R.C. 329.011 (“[w]henver the ... county department of human services ... is referred to or designated in the Revised Code or any rule, contract, or other docu-

department of welfare<sup>7</sup> is an officer within the judicial definition of county officer” (footnote added)). R.C. 329.01 states, in part, “[i]n each county there shall be a county department of job and family services which, when so established, shall be governed by [R.C. Chapter 329].” Because a county department of job and family services exists in each county, *see* R.C. 329.01, the territory over which the department has jurisdiction is coextensive with the territorial limits of the county. *Cf.* 1993 Op. Att’y Gen. No. 93-050 at 2-244 (the jurisdiction of a local cluster established pursuant to R.C. 121.37 is coextensive with the geographic boundaries of the county since each county is required to establish such a cluster). A county department of job and family services established pursuant to R.C. 329.01 thus satisfies the first factor—whether the territory that comprises the entity is coextensive with the territorial limits of the county—considered in determining whether an entity is a subordinate unit of the county.

The county also is responsible for the organization and supervision of a county department of job and family services established under R.C. 329.01. Pursuant to R.C. 329.04(B), “[t]he powers and duties of a county department of job and family services are, and shall be exercised and performed, under the control and direction of the board of county commissioners.” *See generally* R.C. 329.04(A)(6) (a county department of job and family services must submit an annual account of its work and expenses to the board of county commissioners). To this end, the board of county commissioners may appoint a county director of job and family services, R.C. 329.01, who, “[u]nder the control and direction of the board of county commissioners, ... shall have full charge of the county department of job and family services[,]” R.C. 329.02. *See also* R.C. 329.021 (“[t]he board of county commissioners serving a county with a population of more than one million people may, in addition to the county director of job and family services, appoint not more than five administrators to oversee services provided by the county department of job and family services”).

In addition, the board of county commissioners may assign responsibilities and duties to the county department of job and family services. *See, e.g.,* R.C. 307.981 (a board of county commissioners may designate the county department of job and family services as the county’s child support enforcement agency or public children services agency); R.C. 329.03(B) (“[a] board of county commissioners

ment, the reference or designation shall be deemed to refer to the county department of job and family services”).

<sup>7</sup> The county director of welfare is now the county director of job and family services. *See* Am. Sub. H.B. 470 (changing the name of the county department of human services to the county department of job and family services); H.B. 471 (same); 1983-1984 Ohio Laws, Part II, 3692 (Am. Sub. H.B. 401, eff. July 20, 1984) (changing the name of the county department of welfare to the county department of human services); *see also* R.C. 329.011 (“[w]henver the ... county director of welfare ... is referred to or designated in the Revised Code or any rule, contract, or other document, the reference or designation shall be deemed to refer to the ... county director of job and family services”).

may by adoption of a resolution require the county department of job and family services to establish a direct deposit system for distributing cash assistance payments under Ohio works first, disability financial assistance, or both, unless the director of job and family services has provided for those payments to be made by electronic benefit transfer pursuant to [R.C. 5101.33]’); R.C. 329.04(A)(7) (a county department of job and family services is required to “[e]xercise any powers and duties relating to family services duties or workforce development activities imposed upon [it] by ... resolution of the board of county commissioners’); R.C. 329.04(B) (a board of county commissioners may “assign to the county department [of job and family services] any power or duty of the board regarding family services duties and workforce development activities’). Moreover, the board of county commissioners, except as provided in R.C. Chapter 329, “may provide by resolution for the coordination of the operations of the [county] department [of job and family services] and those of any county institution whose board or managing officer is appointed by the board of county commissioners.” R.C. 329.02.

In light of the foregoing, a county is responsible for the organization and supervision of a county department of job and family services established under R.C. 329.01. Accordingly, the second factor—whether the county is responsible for the organization and supervision of the entity—used in determining whether an entity is a subordinate unit of the county is also satisfied.

Finally, funding for the administrative expenses of a county department of job and family services established under R.C. 329.01 is derived primarily from or through the county. R.C. 329.02 requires the county director of job and family services to “prepare the annual budget estimate of the department and submit it to the board of county commissioners.” The submitting of such an estimate is done in order to assist the board of county commissioners, as the taxing authority of the county for purposes of R.C. Chapter 5705 (tax levy law), *see* R.C. 5705.01(C), in adopting the county’s annual tax budget.<sup>8</sup> *See generally* R.C. 5705.28(C)(1) (in order to assist the board of county commissioners in preparing the county’s annual tax budget, “the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of [the county] shall file with the [board] ... before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year”).

Once the board of county commissioners adopts the tax budget,

the tax budget must be submitted to the county auditor, R.C. 5705.30, who presents to the county budget commission “the annual tax budgets submitted to him under [R.C. 5705.01-.47].” R.C.

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<sup>8</sup> In certain limited instances, a board of county commissioners may not be required to adopt a tax budget. *See, e.g.*, R.C. 5705.281. Nevertheless, the county director of job and family services is required by R.C. 329.02 to prepare an annual budget estimate of the county department of job and family services and submit it to the board of county commissioners so as to aid the board in appropriating moneys to the department.



5705.31. The county budget commission then, *inter alia*, “adjust[s] the estimated amounts required from the general property tax for each fund, as shown by budgets, so as to bring the tax levies required therefor within the limitations specified in [R.C. 5705.01-.47], for such levies, but no levy shall be reduced below a minimum fixed by law. The commission may revise and adjust the estimate of balances and receipts from all sources for each fund and *shall determine the total appropriations that may be made therefrom.*” R.C. 5705.32 (emphasis added). The budget commission then certifies its action to the taxing authority of each subdivision or taxing unit. R.C. 5705.34. (Footnote omitted.)

1994 Op. Att’y Gen. No. 94-007 at 2-26; *accord* 2000 Op. Att’y Gen. No. 2000-009 at 2-43.

Pursuant to R.C. 5705.35(A), the certification of the county budget commission shall, with certain exceptions, show the various funds of the county and set forth on the credit side of each fund the estimated unencumbered balances and receipts, and, if a tax is levied for the fund, the estimated revenue to be derived from the levy. On the debit side of each fund, the certification shall show the total appropriations that may be made from such fund. R.C. 5705.35(A). Thereafter, based upon the tax budget, as reviewed and adjusted by the county budget commission, and the official certificate of estimated resources or amendments thereto, as prepared by the county budget commission, the board of county commissioners must adopt the county’s appropriation measure, which sets forth the amount of moneys to be appropriated to each office, department, or division within the county. R.C. 5705.38.<sup>9</sup>

Accordingly, the county director of job and family services prepares and submits the annual budget estimate of the county department of job and family services to the board of county commissioners, *see* R.C. 329.02, and the board and county budget commission review the budget and appropriate moneys to fund the

<sup>9</sup> R.C. 5705.392, in part, authorizes a board of county commissioners to adopt, as part of its annual appropriation measure, a county spending plan “setting forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the county general fund.” R.C. 5705.392 further provides:

The spending plan shall be classified to set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and within each, the amount appropriated for personal services. Each office, department, and division shall be limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule established in the spending plan shall serve as a limitation during a quarter on the making of contracts and giving of orders involving the expenditure of money during that quarter for purposes of [R.C. 5705.41(D)].

operations of the department, *see* R.C. 5705.28-.38. Therefore, because a county department of job and family services established under R.C. 329.01 is funded by and through the county, the final factor—whether the entity is funded by or through the county—considered in determining whether an entity is a subordinate unit of the county lends additional support to a determination that such a department is a subordinate unit of the county.

A consideration of all the factors for determining whether an entity is a subordinate unit of the county leads to the conclusion that a county department of job and family services established under R.C. 329.01 is a subordinate unit of the county, and thus, a “county office,” as that term is used in R.C. 307.84 and R.C. 307.841.<sup>10</sup> Accordingly, pursuant to R.C. 307.84 and R.C. 307.842, a county department of job and family services established under R.C. 329.01 may not enter into a contract for automatic data processing equipment or services without prior approval from the county automatic data processing board.

**Except as Provided by Law, a County Automatic Data Processing Board May Not Access Data in the Computer Information Systems of ODJFS**

Your second question asks whether a county automatic data processing board may access data in the computer information systems of ODJFS.<sup>11</sup> A county

<sup>10</sup> The Ohio Department of Job and Family Services (ODJFS) also has responsibility for the supervision of, and may provide funding to, a county department of job and family services. *See, e.g.*, R.C. 5101.10 (ODJFS may make grants to public entities); R.C. 5101.11 (ODJFS may collect and disburse federal moneys to a county department of job and family services); R.C. 5101.14 (ODJFS may distribute funds to counties for a part of the counties’ costs for children services); R.C. 5101.16(E) (ODJFS shall credit to a county the amount of federal reimbursement the Department receives from the federal government for the county’s expenditures for administration of food stamps and Medicaid); R.C. 5101.213 (ODJFS may provide financial assistance to a county when there is no fiscal agreement in effect); R.C. 5101.216 (ODJFS may enter into an operational agreement with a board of county commissioners to improve the county’s performance of its family services duties); R.C. 5101.22 (ODJFS may establish performance and administrative standards for county agencies that perform family services duties); R.C. 5101.23 (ODJFS may provide annual financial, administrative, or other incentive awards to county family services agencies and workforce development agencies); R.C. 5101.24 (ODJFS may take action against a county agency for failing to perform certain duties). Although ODJFS is required to oversee the operations of, and may provide financial assistance to, a county department of job and family services, it nonetheless remains that county officials are predominantly responsible for organizing, supervising, and funding county departments of job and family services.

<sup>11</sup> A member of your staff has explained to us that ODJFS has provided the county department of job and family services with access to data in the computer information systems of ODJFS so as to enable the county department to provide public assistance and other services to eligible persons. *See, e.g.*, R.C. 5101.27(B); R.C.

automatic data processing board may not access data in the computer information systems of ODJFS, unless the access is permitted under 12 Ohio Admin. Code 5101:1-1-03, Ohio Admin. Code 5101:9-9-38, or another federal or state statute or administrative rule and the conditions and requirements of the statute or rule authorizing the access are satisfied.

No statute expressly or impliedly authorizes or requires a county automatic data processing board to access data in the computer information systems of ODJFS. To the contrary, a myriad of federal and state statutes and administrative rules indicates that a large amount of the information in these systems is confidential and may only be released by ODJFS or a county department of job and family services in certain limited circumstances.

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5101.30(A); 10 Ohio Admin. Code 4141-43-02; 12 Ohio Admin. Code 5101:1-1-03(B); 12 Ohio Admin. Code 5101:1-1-36(B); 12 Ohio Admin. Code 5101:1-31-80. The county is considering purchasing scanning equipment that is compatible with ODJFS' computer equipment to enhance the county department of job and family services' provision of public assistance and other services. It is the contention of the county automatic data processing board, however, that the board already has sufficient scanning equipment to perform any tasks that the county department needs to perform and that the purchase of the scanning equipment is unnecessary. The county automatic data processing board thus has refused to approve the purchase of the scanning equipment. *See* R.C. 307.84; R.C. 307.842.

Instead, the county automatic data processing board has proposed using its personnel and equipment to scan and download any data in ODJFS' computer information systems that the county department of job and family services needs. The county department of job and family services and ODJFS have informed the board that this is not acceptable since the board is not authorized to access data in the computer information systems of ODJFS, except as provided by law.

By way of example,<sup>12</sup> R.C. 5101.27, which regulates the use of information pertaining to public assistance recipients,<sup>13</sup> provides, in part:

(A) Except as permitted by this section, [R.C. 5101.28-.29], or the rules adopted under [R.C. 5101.30(A)], or required by federal law, *no person or government entity shall solicit, disclose, receive, use, or knowingly permit, or participate in the use of any information regarding a public assistance recipient for any purpose not directly connected with the administration of a public assistance program.*

(B) To the extent permitted by federal law, the department of job and family services and county agencies shall do all of the following:

(1) Release information regarding a public assistance recipient for purposes directly connected to the administration of the program to a government entity responsible for administering that public assistance program;

(2) Provide information regarding a public assistance recipient to a law enforcement agency for the purpose of any investigation, prosecu-

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<sup>12</sup> It is impracticable in a formal opinion to review the language of every federal and state statute or administrative rule that governs the status of data in the computer information systems of ODJFS and the specific instances in which ODJFS or a county department of job and family services may release or authorize access to data within these systems. The following is a partial, and by no means exhaustive, enumeration of these statutes and rules: 42 U.S.C. § 503; 42 U.S.C. § 602; 42 U.S.C. § 608; 42 U.S.C. § 654; 42 U.S.C. § 654a; R.C. 2151.421; R.C. 3701.243; R.C. 3722.15; R.C. 4141.162; R.C. 4141.21-.22; R.C. 5101.182; R.C. 5101.27-.31; R.C. 5101.572; R.C. 5153.17; R.C. 5733.42; 7 C.F.R. § 272.1; 20 C.F.R. § 603.6; 20 C.F.R. § 603.7; 20 C.F.R. § 609.13; 20 C.F.R. § 614.14; 20 C.F.R. § 658.413; 29 C.F.R. § 37.37; 42 C.F.R. § 431.300; 42 C.F.R. §§ 431.305-.306; 45 C.F.R. Part 164; 45 C.F.R. § 205.50; rule 4141-43-02; rule 5101:1-1-03; rule 5101:1-1-36; 12 Ohio Admin. Code 5101:1-29-071; rule 5101:1-31-80; 12 Ohio Admin. Code 5101:1-37-01.1; 13 Ohio Admin. Code 5101:2-34-38; [2004-2005 Ohio Monthly Record] Ohio Admin. Code 5101:4-1-13 at 260; 14 Ohio Admin. Code 5101:4-7-09. Accordingly, before ODJFS or a county department of job and family services may release or authorize access to specific data in the computer information systems of ODJFS, a careful review of all the statutes and rules governing the management and control of the data in question should be made to ensure that no statute or rule prohibits or limits the release or the granting of access to the data.

<sup>13</sup> As used in R.C. 5101.26-.30, a “[p]ublic assistance recipient” is “an applicant for or recipient or former recipient of public assistance.” R.C. 5101.26(G). For purposes of these same statutes, “[p]ublic assistance” means financial assistance, medical assistance, or social services provided under a program administered by the department of job and family services or a county agency pursuant to [R.C. Chapters 329, 5101, 5104, 5107, 5108, 5111, or 5115] or an executive order issued under [R.C. 107.17].” R.C. 5101.26(F).

tion, or criminal or civil proceeding relating to the administration of that public assistance program;

(3) Provide, for purposes directly connected to the administration of a program that assists needy individuals with the costs of public utility services, information regarding a recipient of financial assistance provided under a program administered by the department or a county agency<sup>14</sup> pursuant to [R.C. Chapters 5107 or 5108] or [R.C. 5115.01-.07] to an entity administering the public utility services program.

(C) To the extent permitted by federal law and [R.C. 1347.08], the department and county agencies shall provide access to information regarding a public assistance recipient to all of the following:

- (1) The recipient;
- (2) The authorized representative;
- (3) The legal guardian of the recipient;

(4) The attorney of the recipient, if the attorney has written authorization that complies with [R.C. 5101.271] from the recipient.

(D) To the extent permitted by federal law and subject to division (E) of this section, the department and county agencies may do both of the following:

(1) Release information about a public assistance recipient if the recipient gives voluntary, written authorization that complies with [R.C. 5101.271];

(2) Release information regarding a public assistance recipient to a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need or for the purpose of protecting children to a government entity responsible for administering a children's protective services program. (Emphasis and footnote added.)

Additionally, pursuant to R.C. 5101.99(B), "[w]hoever violates [R.C. 5101.27(A)] is guilty of a misdemeanor of the first degree." The General Assembly has thus made it a criminal offense for a person to solicit, disclose, receive, use, or knowingly permit, or participate in the use of any information regarding a public assistance recipient for any purpose not directly connected with the administration of a public assistance program. This means that personnel of ODJFS and county departments of job and family services may be subject to criminal prosecution if they improperly disseminate information regarding a public assistance recipient.

Accordingly, under R.C. 5101.27 and numerous other federal and state

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<sup>14</sup> The term "county agency," as used in R.C. 5101.26-.30, means "a county department of job and family services or a public children services agency." R.C. 5101.26(A).

statutes and administrative rules, *see* note twelve, *supra*, ODJFS and a county department of job and family services may not disclose data in the computer information systems of ODJFS to a county automatic data processing board, unless the disclosure is permitted by statute or rule. *See generally* 1983 Op. Att’y Gen. No. 83-071 (syllabus, paragraph one) (pursuant to 12 Ohio Admin. Code 5101:1-1-03 and related statutory provisions, a county department of job and family services “is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of Aid to Families with Dependant Children or poor relief, unless such law enforcement personnel are prosecuting public fraud or seeking child support, or the applicant or recipient has expressly consented in writing to the disclosure”); 1983 Op. Att’y Gen. No. 83-071 (syllabus, paragraph two) (pursuant to 12 Ohio Admin. Code 5101:4-1-13, a county department of job and family services “is prohibited from disclosing to law enforcement personnel personal information about applicants for or recipients of food stamps unless such law enforcement personnel are directly connected with the enforcement of the Food Stamp Act or regulations, other federal assistance programs, or general relief programs that are subject to joint processing requirements, or unless the applicant or recipient has executed a written waiver consenting to the release”).

We are aware of two situations in which a county automatic data processing board may be granted access to data in the computer information systems of ODJFS. First, a particular federal or state statute or administrative rule may authorize ODJFS or a county department of job and family services to grant the board limited access for a specific purpose. For instance, R.C. 5101.30 authorizes the Director of ODJFS to adopt an administrative rule permitting the board to access information pertaining to public assistance recipients:<sup>15</sup>

(A) The director of job and family services *shall adopt rules* in accordance with [R.C. Chapter 119] implementing [R.C. 5101.26-.30] and *governing the custody, use, and preservation of the information generated or received by the department of job and family services, county agencies, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance programs. The rules shall specify conditions and procedures for the release of information.* The rules shall comply with applicable federal statutes and regulations. To the extent permitted by federal law:

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(2) *The rules may permit a contractor, grantee, or other state or*

<sup>15</sup> As used in R.C. 5101.30, a public assistance recipient is an applicant for or recipient or former recipient of financial assistance, medical assistance, or social services provided under a program administered by ODJFS or a county agency pursuant to R.C. Chapters 329, 5101, 5104, 5107, 5108, 5111, or 5115 or an executive order issued under R.C. 107.17. *See* note thirteen, *supra* (defining the terms “[p]ublic assistance recipient” and “[p]ublic assistance” for purposes of R.C. 5101.26-.30).

*county entity limited access to information that is essential for the contractor, grantee, or entity to perform administrative or other duties on behalf of the department or county agency.* A contractor, grantee, or entity given access to information pursuant to division (A)(2) of this section is bound by the director's rules, and disclosure of the information by the contractor, grantee, or entity in a manner not authorized by the rules is a violation of [R.C. 5101.27]. (Emphasis added.)

In accordance with this authority, the Director of ODJFS has adopted and promulgated 12 Ohio Admin. Code 5101:1-1-03. This rule authorizes the disclosure of recipient information and records for the disability financial assistance program established under R.C. Chapter 5115, the Ohio works first program established under R.C. Chapter 5107, and the prevention, retention, and contingency program established under R.C. Chapter 5108 to county entities that perform administrative or other duties on behalf of ODJFS or a county department of job and family services:

(B) Allowable disclosure of information

In accordance with [R.C. 5101.30] and in addition to [R.C. 5101.27 and R.C. 5101.28], *recipient information and records for any of the programs identified in paragraph (A) of this rule may be released to the following entities identified in paragraphs (B)(1) to (B)([9]) of this rule.* However, only the minimum information necessary to fulfill the need for the sharing of information as allowed by this rule may be released:

....

(2) Any private contractor, grantee, or *other state or county entity, performing administrative or other duties on behalf of the Ohio department of job and family services (ODJFS) or a county department of job and family services (CDJFS) when in compliance with paragraphs (B)([2])(a) to (B)([2])(d) of this rule.* Access under this paragraph includes but is not limited to exchange of information pursuant to [R.C. 307.987]. Information that can be accessed under this paragraph is limited only to information needed for completion of the administrative or other duties on behalf of ODJFS or CDJFS.... (Emphasis added.)

See generally Ohio Admin. Code 5101:9-9-38(B)(2) (“[a] person under contract with a county agency<sup>16</sup> may download, match, scrape or extract data from an ODJFS system if the deliverables set out in the contract are directly related to or required for administration of program(s) for which the county agency is responsible. The

<sup>16</sup> As used in Ohio Admin. Code 5101:9-9-38, “‘county agency’ means a county department of job and family services, public children services agency, child support enforcement agency, workforce development agency, or other entity designated by a board of county commissioners in accordance with [R.C. 307.981].” Rule 5101:9-9-38(A).

contract must contain appropriate confidentiality and data security language and the county agency must assume responsibility for the use and security of the data by the contractor” (footnote added).<sup>17</sup>

Rule 5101:1-1-03 thus authorizes a county department of job and family services to allow a county automatic data processing board access to recipient information and records for the disability financial assistance program established under R.C. Chapter 5115, the Ohio works first program established under R.C. Chapter 5107, and the prevention, retention, and contingency program established under R.C. Chapter 5108 that are maintained in the computer information systems of ODJFS when the board performs administrative or other duties on behalf of ODJFS or a county department of job and family services. However, access under this rule or any other federal or state statute or administrative rule may not be granted unless the conditions and requirements of the statute or rule authorizing the access are satisfied.

Accordingly, if ODJFS or a county department of job and family services grants a county automatic data processing board limited access to specific data in the computer information systems of ODJFS pursuant to rule 5101:1-1-03 or another federal or state statute or administrative rule, the board may access the data authorized by the statute or rule. A county automatic data processing board, therefore, may have limited access to specific data in the computer information systems of ODJFS when a federal or state statute or administrative rule authorizes such access and the conditions and requirements of the statute or rule authorizing the access are satisfied.<sup>18</sup>

The second situation in which a county automatic data processing board may be granted access to data in the computer information systems of ODJFS is when the conditions set forth in rule 5101:9-9-38(C) are satisfied. Under this rule, ODJFS may authorize the board to access data in the Department’s computer information systems as follows:

Except when specifically authorized by paragraph (B) of this rule, *a county agency shall obtain the written approval of ODJFS prior to performing or authorizing any person or entity to perform any download, match, scraping or extraction of data from ODJFS systems that is*

<sup>17</sup> Rule 5101:9-9-38 is an administrative rule adopted by ODJFS for its internal management, *see* R.C. 111.15; R.C. 5101.02; R.C. 5101.09; *see also* R.C. 5101.30, and thus, is not promulgated in *Baldwin’s Ohio Administrative Code*. A copy of the rule may, however, be obtained from either the Legislative Service Commission or ODJFS.

<sup>18</sup> Whenever a county department of job and family services provides a public or private entity with access to confidential data in the computer information systems of ODJFS, the county department must take appropriate steps to ensure that any data released to the entity remains confidential and is used only for the purpose authorized by the county department. *See* R.C. 5101.27(F); rule 5101:1-1-03(B); rule 5101:9-9-38(B)(2).



*migrated to a computer system, data base or application not under the control of ODJFS. To obtain approval from ODJFS, the county agency<sup>19</sup> shall follow the following procedure:*

(1) The county agency shall submit a written request to the ODJFS deputy director who is over the program that is related to the data. The county agency's request must specify the specific data, the business use of the data, why the data access through the 'Business Information Channel' software (BIC) does not address the county needs, any potential impact upon ODJFS systems, the technical details involved, the identification of each entity that exercises control over the computer system, application, or data base to which the data will be stored, and the data security controls that will be used by the county agency. The director of the county agency submitting the request shall sign the written request.

(2) If the ODJFS deputy director receiving the county agency request approves the county agency's proposed use of the data, the deputy director will promptly contact the deputy directors of MIS and office of legal services at ODJFS. The three deputy directors or designees will review the county agency request to determine appropriateness, feasibility, and legality of the request. ODJFS may opt to have a representative from the requesting county agency attend a meeting, phone conference or videoconference to explain the request and answer any questions from ODJFS, including but not limited to, questions involving technical, legal, programmatic or confidentiality issues.

(3) If the three deputy directors approve the county agency request, the request will be forwarded to the ODJFS office of contracts and acquisitions for the preparation of a written "Memorandum of Understanding" (MOU) between directors of ODJFS and the county agency. The MOU shall specify the dates during which the MOU will be in effect which shall not be longer than two years, subject to renewal. The MOU shall identify the data business use(s) of the data, technical details, and the responsibility of the county agency to ensure that all federal and state data security and confidentiality requirements are met. The MOU shall not be effective prior to the date that it is signed by both directors. (Emphasis and footnote added.)

Rule 5101:9-9-38 thus authorizes a county automatic data processing board to access data in the computer information systems of ODJFS when ODJFS approves the access.

Thus, in answer to your second question, a county automatic data processing board may not access data in the computer information systems of ODJFS unless such access is authorized under rule 5101:1-1-03, rule 5101:9-9-38, or another

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<sup>19</sup> A county department of job and family services is a "county agency" for purposes of rule 5101:9-9-38. Rule 5101:9-9-38(A).

federal or state statute or administrative rule and the conditions and requirements of the statute or rule authorizing the board to access the data are fulfilled.

#### **Conclusions**

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

1. Pursuant to R.C. 307.84 and R.C. 307.842, a county department of job and family services established under R.C. 329.01 may not enter into a contract for automatic data processing equipment or services without prior approval from the county automatic data processing board.
2. A county automatic data processing board may not access data in the computer information systems of the Ohio Department of Job and Family Services, unless the access is permitted under 12 Ohio Admin. Code 5101:1-1-03, Ohio Admin. Code 5101:9-9-38, or another federal or state statute or administrative rule and the conditions and requirements of the statute or rule authorizing the access are satisfied.