

Note from the Attorney General's Office:

1970 Op. Att'y Gen. No. 70-121 was overruled by
1978 Op. Att'y Gen. No. 78-027.

OPINION NO. 70-121

Syllabus:

1. A county board of mental retardation does not possess the power to advertise for bids for the purchase of school buses.
2. A county board of mental retardation does not possess the power to acquire school buses for the transportation of mentally retarded pupils.
3. The administrator or executive secretary of a county board of mental retardation is the proper authority to employ all personnel deemed necessary by such board, pursuant to Section 5126.04, Revised Code, in providing services authorized and established under Section 5127.01, Revised Code.

To: Richard J. Wessel, Butler County Pros. Atty., Hamilton, Ohio
By: Paul W. Brown, Attorney General, September 8, 1970

Your request for my opinion consists of three questions, paraphrased as follows:

1. Does a county board of mental retardation possess the authority to advertise for bids to acquire school buses to transport mentally retarded pupils?
2. Does such board have the authority to acquire the school buses?
3. Does such board have the authority to hire employees directly or are the county commissioners the employers of the personnel of the board of retardation?

The board of county commissioners is authorized to acquire motor vehicles in two different ways. One procedure is for the acquisition of motor vehicles "for its use or for the use of any department under its direct control." The other method is stated in Section 307.41, Revised Code, as follows:

"Whenever the board of county commissioners deems it necessary to purchase motor vehicles except for its use or for the use of any department under its direct con-

trol it shall adopt a resolution setting forth the necessity for such purchase, together with a statement of the kind and number of vehicles required and the estimated cost of each. Upon adoption of the resolution the board may purchase such vehicles." (Emphasis added.)

From the above language, it is my opinion that the general assembly intended that the board of county commissioners employ their own personnel to acquire motor vehicles for all departments of county government, unless specific exceptions are made by statute. Supporting this contention is a pertinent part of Section 307.12, Revised Code, authorizing the board to sell motor vehicles as follows:

"When the board of county commissioners finds, by resolution, that the county has personal property, including motor vehicles acquired for the use of county officers and departments, and road machinery, equipment, and tools, which is not needed for public use, or is obsolete or unfit for the use for which it was acquired, the board may sell such property at public auction, for cash, to the highest bidder, after giving at least ten days' notice of the time and place of sale by posting a typewritten or printed notice in the offices of the county auditor and board.

* * * * *

"Where the board advertises for bids for the sale of new vehicles, equipment or machinery to the county, it may include in the same advertisement a notice of the willingness of such board to accept bids for the purchase of county-owned vehicles, equipment, or machinery which is obsolete or not needed for public use, and to have the amount of such bids subtracted from the selling price of the other vehicles, equipment, or machinery as a means of determining the lowest responsible bidder." (Emphasis added.)

These powers are not specifically granted to the county board of mental retardation. Its power, with respect to your question, is expressed in Section 5126.03 (C) and (D), Revised Code, as follows:

"The county board of mental retardation, subject to the rules, regulations, and standards of the commissioner of mental retardation shall:

"(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

"(D) Provide such funds as are necessary for the operation of facilities, programs, and services established under section 5127.01 of the Revised Code."

(Emphasis added.)

There is little, if any, doubt about the authority of the county board of mental retardation to employ their own personnel, for the board of county commissioners or any other authority does not possess the statutory power to hire them, and the word "employ" in Section 5126.03 (C), supra, and Section 5127.01, Revised Code, is specific.

The same may not be said of the word "provide" in the statute. It is used in both parts, (C) and (D) of the statute, referring to transportation and funds, respectively. To secure money by taxation for the mental retardation program, such board must, before the first day of June in each year, provide an "estimate of contemplated revenue and expenditures for the ensuing fiscal year," for filing with the taxing authority which, in this case, is the board of county commissioners. (Section 5705.28, Revised Code.)

Pertinent parts of Section 5705.19, Revised Code, read as follows:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

* * * * *

"(L) For the maintenance and operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons. Money received from levies enacted or renewed prior to October 25, 1967, shall be appropriated to the use of the county board of mental retardation established under section 5126.01 of the Revised Code. Revenue from a tax levy passed or renewed after October 25, 1965, shall not be expended until the budget for the operation of schools, training

centers, workshops, clinics, and residential facilities for mentally retarded persons for that calendar year has been submitted to and approved by the board of county commissioners. Thereafter, surplus funds from the tax levy not used for operating purposes may be dispensed by the county board of mental retardation after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving schools, training centers, workshops, clinics, and residential facilities for the mentally retarded;

* * * * * * * * *
(Emphasis added.)

This demonstrates clearly that the word "provide," as used in Section 5126.03 (C) and (D), supra, does not grant the power to obtain or directly acquire the funds, for that is the prerogative of the taxing authority. To give the word "provide," as it is used in (C) and (D) last mentioned, the same connotation, it complies with the first definition of the word in Webster's 3rd New International Dictionary, which includes the following: "to foresee, to take precautionary measures, to make ready, and make preparation."

It is my opinion that the general assembly did not intend to grant the authority to purchase motor vehicles for the use of agencies of the county to anyone but the board of county commissioners, unless specifically so stated in the statute.

From the foregoing, it is my opinion and you are advised that:

1. A county board of mental retardation does not possess the power to advertise for bids for the purchase of school buses.
2. A county board of mental retardation does not possess the power to acquire school buses for the transportation of mentally retarded pupils.
3. The administrator or executive secretary of a county board of mental retardation is the proper authority to employ all personnel deemed necessary by such board, pursuant to Section 5126.04, Revised Code, in providing services authorized and established under Section 5127.01, Revised Code.