

OPINION NO. 77-098

Syllabus:

R.C. 9.36 authorizes a board of county commissioners to employ an insurance consultant to assist it in the procurement of insurance for the county. (1973 Op. Att'y Gen. No. 73-090, reversed; 1974 Op. Att'y Gen. No. 74-065, modified)

To: John F. Norton, Geauga County Pros. Atty., Chardon, Ohio
By: William J. Brown, Attorney General, December 19, 1977

I have before me your request for an opinion concerning the power of a board of county commissioners to employ an insurance consultant to assist it in the exercise of its duties. You indicate that under the provisions of R.C. 9.36, the board of county commissioners is specifically authorized to hire "fiscal and management consultants." Specifically you have raised the following question:

May an insurance consultant be considered as a fiscal and management consultant within the purview of Ohio Revised Code 9.36?

It is well settled in Ohio that boards of county commissioners possess only that authority which is expressly conferred upon them by statute or necessarily implied therefrom. See, e.g., State, ex rel., Locher v. Menning, 95 Ohio St. 97 (1916). It has, therefore, been held that the county commissioners do not have the implied power to hire experts to assist them in the performance of their duties merely because such experts will allow a more economical and efficient exercise of those duties. Gorman v. Heuek, 41 Ohio App. 453 (1931).

In 1974 Op. Att'y Gen. No. 74-065, I discussed the power of a board of county commissioners to obtain consulting services. The syllabus of that opinion provides in part as follows:

A board of county commissioners has no general statutory authority to contract for the services of a management consultant in every area in which the board is directed by statute to act.

More specifically, 1973 Op. Att'y Gen. No. 73-090 involved the power of a board of township trustees to hire an insurance consultant. Based upon an absence of express or implied statutory authority to do so, I concluded that a board of township trustees could not expend public funds to engage the services of an independent insurance consultant.

Since the county commissioners, like township trustees, enjoy only those powers expressly or implicitly conferred upon them by statute, and neither has been authorized to hire an insurance consultant, the rationale set forth in Op. No. 73-090, supra, would clearly apply to the question you raise were it not for R.C. 9.36.

R.C. 9.36, which was enacted in 1975, provides as follows:

The board of county commissioners of any county or the township trustees of any township may contract for the services of fiscal and management consultants to aid it in the execution of its powers and duties. Contracts for the services of fiscal and management consultants shall be exempt from any competitive bidding requirements of the Revised Code.

The use of the term "fiscal and management consultants" appears to be a legislative response to the conclusion set forth in Op. No. 74-065, supra.

The only question that must be decided, therefore, is whether an insurance consultant can be considered a "fiscal and management consultant" as that term is used in R.C. 9.36.

It is, in my opinion, reasonable to conclude that an insurance consultant falls squarely within the category of fiscal and management consultants. The procurement of insurance has an obvious impact upon the fiscal affairs of the county. This impact involves not only the money spent for the purchase of insurance, but the money saved in protecting the county against various types of liability.

In reaching this conclusion, I am aware that the authority of county commissioners to act in financial transactions is to be narrowly construed. e.g., State, ex rel. Locher v. Menning, supra. It is my opinion however, that in this case there can be no doubt concerning the power of county commissioners to act.

Accordingly, it is my opinion, and you are so advised that:

R.C. 9.36 authorizes a board of county commissioners to employ an insurance consultant to assist it in the procurement of insurance for the county. (1973 Op. Att'y Gen. No. 73-090, reversed; 1974 Op. Att'y Gen. No. 74-065, modified)