

Note from the Attorney General's Office:

1955 Op. Att'y Gen. No. 55-4806 was overruled by 2003
Op. Att'y Gen. No. 2003-008.

4806

MOTOR VEHICLES—BOARD OF COUNTY COMMISSIONERS—
NO AUTHORITY TO LEASE MOTOR VEHICLES FOR USE OF
SHERIFF AND HIS DEPUTIES.

SYLLABUS:

A board of county commissioners is without authority to lease motor vehicles for the use of the sheriff and his deputies.

Columbus, Ohio, February 3, 1955

Hon. Robert E. Cook, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

I have before me your request for my opinion on the following question:

Has a board of county commissioners the power under the laws of Ohio to lease motor vehicles for the use of the sheriff and his deputies?

Before entering upon any discussion concerning the scope of authority of a board of county commissioners, the general rule by which the scope of such authority is limited should be first stated. This governing principle was expressed in the case of *State ex rel. Locher v. Menning*, 95 Ohio St., 97, at page 99, as follows:

“The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

The theory upon which this rule is predicated is that the board of county commissioners, being a creature of the legislature is limited in its authority to those powers expressly granted by statute, or those to be necessarily implied therefrom. 11 Ohio Jurisprudence, p. 331, Section

86. Since no express authority to lease motor vehicles for the use of the sheriff and his deputies may be found, the answer to your question will necessarily depend upon whether the authority to lease vehicles for such purpose may be implied.

Section 307.41, Revised Code, provides:

“Whenever the board of county commissioners deems it necessary to purchase motor vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employees, 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.

“If the board deems it necessary to purchase motor vehicles for its use or for the use of any department under its direct control, application shall be made by the board to a judge of the court of common pleas of such county. Upon hearing the application, if such judge finds it necessary and expedient to purchase such vehicles, he shall so order, and fix the number and kind of such vehicles, and the amount to be expended for each.”

It will be seen from a reading of this section that a board of county commissioners may, upon the adoption of its own resolution, purchase motor vehicles for the use of the sheriff or sanitary engineer, their deputies or necessary employees.

Each of the immediately succeeding sections, Sections 307.42 and 307.43, Revised Code, makes reference to the hiring of vehicles by a board of county commissioners. Section 307.42 provides in substance for the manner in which vehicles purchased pursuant to Section 307.41 are to be regulated, while Section 307.43 prohibits the use of vehicles “owned, hired, or leased by the board of county commissioners” for purposes other than the transaction of official business.

It might be urged at first blush that the references made to the hiring of vehicles by the board in these sections would give rise to the necessary implication that the board of county commissioners does have the implied authority to lease an automobile for the use of the sheriff within its power to purchase vehicles for such purpose under Section 307.41, Revised Code.

However, a reference to Section 5549.01, Revised Code, discloses that a board of county commissioners has express authority to lease motor vehicles for the use of the county engineer. The first paragraph of this section reads as follows:

“The board of county commissioners may purchase such machinery, tools, or other equipment, including special wearing apparel, for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary. The board may also purchase, hire, or lease automobiles, motorcycles, or other conveyance and maintain them for the use of the county engineer and his assistants when on official business. All such machinery, tools, and equipment, including special wearing apparel, and conveyances belonging to the county shall be under the care and custody of the engineer, and shall be plainly and conspicuously marked as the property of the county.”

It cannot be reasoned therefore, that the references made to the hiring of vehicles in Sections 307.42 and 307.43 necessarily imply an authority to lease for the purposes described in the first paragraph of Section 307.41, Revised Code. To the contrary, the fact that the legislature has expressly provided that the county commissioners may lease vehicles for a particular purpose is indicative of a legislative intent to withhold the exercise of such authority in other instances.

In Opinion No. 876, Opinions of the Attorney General for 1917, at page 2397, the specific question presented to the then Attorney General was whether a board of county commissioners had the authority to lease the private automobile of the sheriff for his own use in his official capacity. My predecessor held in that opinion that the county commissioners were without such authority, and that in fact the board of county commissioners was without authority to lease a vehicle from anyone in the absence of a statute expressly granting this power.

I am in agreement with the conclusion reached in this opinion. You are therefore advised that a board of county commissioners is without authority to lease motor vehicles for the use of the sheriff and his deputies.

Respectfully,

C. WILLIAM O'NEILL

Attorney General