

**Note from the Attorney General's Office:**

1956 Op. Att'y Gen. No. 56-6136 was overruled by 1984  
Op. Att'y Gen. No. 1984-038.

6136

SOIL CONSERVATION DISTRICT — PROJECTS — COUNTY COMMISSIONERS—BOARD HAS POWER TO ENTER INTO SERVICE AGREEMENTS—UPON EXECUTION OF AGREEMENT POWERS AND FUNCTIONS OF DISTRICT MAY BE EXERCISED INCLUDING COOPERATIVE AGREEMENT WITH FEDERAL GOVERNMENT OR ANY AGENCY THEREOF AS “LOCAL ORGANIZATION” — FEDERAL WATERSHED PROTECTION AND FLOOD PREVENTION ACT—PUBLIC LAW 566, 83RD CONGRESS, 68 STAT., 666.

## SYLLABUS:

A board of county commissioners has the power, under the provisions of Section 307.15, Revised Code, to enter into service agreements with a soil conservation district in furtherance of soil conservation projects, and upon the execution of such agreement, but not otherwise, it may exercise all the powers and functions possessed by such district, including the power to enter into cooperative agreement with the federal government or an agency thereof as a “local organization” under the provisions of the Federal Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress; 68 Stat., 666).

Columbus, Ohio, January 6, 1956

Hon. A. W. Marion, Director, Ohio Department of Natural Resources  
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion in which the following question is raised:

“Under State law do county commissioners have authority to enter into agreements with the Secretary of Agriculture of the United States relative to agricultural conservation, development, utilization, and disposal of water?”

In a subsequent communication you advised that the activities you have principally in mind are soil conservation projects of the sort described in Chapter 1515., Revised Code, and normally carried on by soil conservation districts as provided in that chapter.

It is well established that counties are creatures of statute and that county officers possess only such powers as are conferred by statute, either expressly or by necessary implication. Moreover, any such powers as involve the expenditure of public funds are strictly construed in favor of the public and against the grant of power. See *State ex rel. Bentley Co. v. Pierce*, 96 Ohio St., 44.

In the instant case I find no suggestion in the pertinent statutes of a power to engage in soil conservation projects being conferred directly on the board here involved and so conclude that they possess no independent authority in this regard.

It is to be observed, however, that a board of county commissioners is given quite wide powers in the matter of functions and services possessed by other political agencies in those instances where the board enters into contracts with such agencies for the exercise of such powers. In this connection Section 307.15, R.C., provides:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, school district, library district, health district, park district, *soil conservation district*, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render.

*“Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivision directly.* In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board shall be exercised or performed, the board shall determine and assign such powers and duties. Sections 307.14 to 307.19, inclusive, of the Revised Code, or any agreement authorized by such sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board in pursuance of such agreement. Nor shall the board, by virtue of any agreement

entered into under this section, acquire any power to levy taxes within and in behalf of a contracting subdivision unless otherwise provided for by law." (Emphasis added.)

Among the powers of a soil conservation district are those described in the following language in Section 1515.08, Revised Code:

"\* \* \* (C) To carry out preventive and control measures within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such land;

"(D) To co-operate or enter into agreements with any occupier of lands within the district in the carrying on of soil conservation operations within the district, subject to such conditions as the supervisors deem necessary;

"(E) To accept donations, gifts, and contributions in money, service, materials, or otherwise, and to use or expend any of such contributions in carrying on its operations;" \* \* \*.

In my opinion No. 5020, dated March 29, 1955, I had for consideration the authority of these agencies to contract with federal agencies in soil conservation projects. My conclusions therein reached are stated in the syllabus of that opinion as follows:

"A soil conservation district organized under the provisions of Chapter 1515., Revised Code, has authority under the provisions of such chapter to conduct surveys, investigations and research relating to soil erosion and preventive and control measures in connection therewith, to develop plans for the conservation of soil resources and the prevention of soil erosion, and to carry out preventive and control measures in connection with soil conservation and soil erosion; and with respect to a particular project in this field which is such as to constitute a "flood prevention measure" or an undertaking in connection with the agricultural phase of the conservation, development, utilization and disposal of water, such soil conservation district is authorized, under Ohio law, to act as a "local organization" under the provisions of the Federal Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress; 68 Stat., 666). Funds raised by taxation under the provisions of Section 1515.10, Revised Code, may lawfully be expended by such soil conservation district in the furtherance of any such project."

It follows, therefore, that to the extent thus described a board of county commissioners may, where authorized by contract with a soil

conservation district under the provisions of Section 307.15, Revised Code, contract with interested federal agencies with respect to soil conservation projects.

Accordingly in specific answer to your inquiry, it is my opinion that:

A board of county commissioners has the power, under the provisions of Section 307.15, Revised Code, to enter into service agreements with a soil conservation district in furtherance of soil conservation projects, and upon the execution of such agreement, but not otherwise, it may exercise all the powers and functions possessed by such district, including the power to enter into cooperative agreement with the federal government or an agency thereof as a "local organization" under the provisions of the Federal Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress; 68 Stat., 666).

Respectfully,

C. WILLIAM O'NEILL

Attorney General