

OPINION NO. 90-034**Syllabus:**

1. Pursuant to R.C. 307.844, the county auditor, as chief administrator of the county automatic data processing board, may employ a deputy to supervise the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant whereby the independent

contractor/consultant agrees to provide to the county automatic data processing board and the board of county commissioners automatic data processing services, including programming and operating the data processing equipment of the automatic data processing center.

2. Subject to approval by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, shall employ and fix the compensation of such persons as are necessary for the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant whereby the independent contractor/consultant agrees to provide to the county automatic data processing board and the board of county commissioners automatic data processing services, including programming and operating the data processing equipment of the automatic data processing center. Subject to approval by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, shall fix the compensation of such automatic data processing center employees in whatever manner and amounts are reasonable.
3. Pursuant to a resolution of approval duly adopted by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, may enter into an automatic data processing management/operations contract with an independent contractor/consultant whereby the independent contractor/consultant agrees to provide the county such automatic data processing services as are authorized by R.C. 9.35(B) through the facilities of the automatic data processing center. Pursuant to R.C. 307.86, such a contract at a cost in excess of ten thousand dollars shall be obtained through competitive bidding.
4. Pursuant to R.C. 307.841, the county automatic data processing board may, by unanimous consent, adopt such rules and regulations for its operation as it deems necessary.
5. Pursuant to R.C. 307.844, the county auditor, as chief administrator of the county automatic data processing board, may adopt such rules and regulations for the operation of an automatic data processing center as he considers necessary.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 25, 1990

You have requested my opinion on a variety of questions that pertain to the management and operation of a county automatic data processing center. According to your letter, the board of county commissioners established a county automatic data processing board pursuant to the terms of R.C. 307.84. Subsequently, the county automatic data processing board established an automatic data processing center in accordance with the terms of R.C. 307.842. Thereafter, the county automatic data processing board authorized the board of county commissioners to enter into a management/operations contract with an independent contractor/consultant, the terms of which contract required the contractor/consultant to supply the board of county commissioners and the county automatic data processing board with automatic data processing services; the contractor/consultant operated the hardware, programmed it with software, and provided both boards with various reports upon request.

Your letter further states that "questions have arisen as to the interplay of O.R.C. Sections 307.841 and 307.844, and what public official has the ultimate authority in the operation of an automatic data processing center." R.C. 307.841 provides that a county automatic data processing board may adopt rules and regulations for its operation, and R.C. 307.844 provides that the county auditor is to be the administrator of a county automatic data processing board, and may adopt such rules and regulations as are necessary for the operation of an automatic data processing center.

Accordingly, you have asked that I address the following specific questions:

1. Does a county auditor have authority to hire a deputy to supervise an automatic data processing center when both an automatic data processing board and the board of county commissioners of the same county have entered into a contractor/consultant agreement as mentioned herein? Can a county auditor do so when there is no such contract in existence?
2. Other than the deputy mentioned in O.R.C. Section 307.844, may a county auditor employ other persons to operate an automatic data processing center when a contract as aforementioned exists? If your answer to this question is in the affirmative, then how is the compensation of such persons fixed? Would your answer to this question be the same if a contractor/consultant agreement, as herein described, is [not] in existence?
3. Does a county auditor have any authorization of securing and entering into a similar contractor/consultant contract for ADP services without approval by either the automatic data processing board and/or the board of county commissioners of such auditor's county? If your answer to this question is in the affirmative, then must such a contract be secured through the process of competitive bidding?
4. As between an automatic data processing board, and the county auditor of that same county, who has the ultimate authority in establishing rules and regulations which set the policy for the operation and control of an automatic data processing board and of an automatic data processing center, if such board should have established one? Is your answer to this question altered by the fact that there exists a contract for automatic data processing services between [the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant] as hereinbefore described?

In supplemental correspondence you have brought to my attention questions posed to you by the county auditor with respect to the foregoing matters. The county auditor's questions are addressed to an application and interpretation of the provisions of R.C. 307.842 and R.C. 307.844.

Resolution of the issues presented by your opinion request requires that I review initially the plan established by the General Assembly in R.C. 307.84-.846 for meeting the automatic data processing needs of county offices. I commence with R.C. 307.84, which grants to the board of county commissioners of any county the discretionary power to establish a county automatic data processing board. R.C. 307.84 reads as follows:

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 his representative, the county recorder or his representative, the clerk of the court of common pleas or his 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 next preceding 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 his 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 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.

As used in section 307.84 to 307.846 of the Revised Code, "county office" means any officer, department, board, commission, agency, court, or other office of the county.

R.C. 307.84 thus provides that a board of county commissioners may, at its discretion, establish a county automatic data processing board, which is to be comprised of the county officials therein enumerated. *Campanella v. Cuyahoga County*, 57 Ohio Misc. 20, 22, 387 N.E.2d 254, 256 (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"); 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").¹ R.C. 307.84 further states that after 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 approval of the board." Finally, R.C. 307.84 defines "county office," as used in R.C. 307.84-.846, as any "officer, department, board, commission, agency, court, or other office of the county." *Cf.*, e.g., 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 Section 307.84").

¹ *Campanella v. Cuyahoga County*, 57 Ohio Misc. 20, 23, 387 N.E.2d 254, 256-57 (C.P. Cuyahoga County 1977) also describes the acquisition of automatic data processing services by county offices in the event that a board of county commissioners does not establish a county automatic data processing board or terminates such a board:

The question that necessarily arises in the instant case is: When a board of county commissioners terminates a data processing board may a county office then establish its own non-centralized data processing system or obtain such services elsewhere? R.C. 307.84 expressly provides:

"After 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 approval of the board."

The negative inference contained in the statute is that absent a data processing board, a county office which requires data processing services is permitte[d] to seek such services according to the provisions of law and procedures regulating acquisition of any goods and, or, services by a county office.

R.C. 307.01 places a mandatory obligation on the board of county commissioners to provide equipment and facilities as it deems necessary for the proper and convenient conduct of county offices and as will result in expeditious and economical administration of such offices.

However, R.C. 307.84 expressly provides for the specific method of provision of data processing services to county offices by the commissioners. In the event that a county is without a data processing board, those county officers who desire such services are free to secure them elsewhere.

The powers and duties of a county automatic data processing board are set forth in R.C. 307.842, which provides as follows:

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.

Pursuant to R.C. 307.842, therefore, a county automatic data processing board that has been established in accordance with R.C. 307.84 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." R.C. 307.842 further states that a 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."

Operation of an automatic data processing center that is established under R.C. 307.842 is further addressed in R.C. 307.844, which states as follows:

The county auditor shall be the chief administrator of the county automatic data processing board and may employ a deputy who shall serve under his direction. The auditor or his deputy shall supervise the operation of the automatic data processing center. Subject to approval by the board, the administrator shall employ such other persons as are necessary for the operation of the center and shall fix the compensation of the deputy and all such employees. Salaries and expenses of the center shall be paid from funds budgeted and appropriated to the board by the board of county commissioners. The administrator may adopt such rules and regulations as are necessary for the operation of the center.

R.C. 307.844 thus designates the county auditor as the chief administrator of a county automatic data processing board and grants the auditor the power to employ a deputy who is to serve at the auditor's direction. Either the county auditor or his deputy is to supervise the operation of the automatic data processing center. *Id.* R.C. 307.844 also directs the county auditor, as chief administrator of the county automatic data processing board, and subject to approval by the board as a whole, to employ and fix the compensation of such persons as are necessary for the operation of the automatic data processing center, as well as to fix the compensation of his deputy. R.C. 307.844 also authorizes the chief administrator to adopt such rules and regulations as are necessary for the operation of an automatic data processing center. See also R.C. 307.845 (providing for the preparation by the county auditor of an annual estimate of the expenditures and revenues of an automatic data processing center, and the disbursement of funds therefor from the county treasury); R.C. 307.846 (contracts for automatic data processing services between a county automatic data processing board and governmental entities other than county offices).

Several preliminary observations about the foregoing legislative enactments are appropriate at this time. The 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. *Campanella v. Cuyahoga County*, 57 Ohio Misc. at 22, 387 N.E.2d at 256; Op. No. 77-030 at 2-110. See generally *Dorrian v.*

Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) (the use of the word "may" in a statute shall be construed as discretionary and permissive unless there is indicated a clear and unequivocal legislative intent to the contrary). Accordingly, a board of county commissioners may elect not to establish a county automatic data processing board, and in such a situation it has been determined that "a county office which requires data processing services is permitte[d] to seek such services according to the provisions of law and procedures regulating acquisition of any goods and, or, services by a county office." *Campanella v. Cuyahoga County*, 57 Ohio Misc. at 23, 387 N.E.2d at 256-57. When a board of county commissioners does establish a county automatic data processing board pursuant to R.C. 307.84, automatic data processing is to be made available to county offices in accordance with the terms of R.C. 307.842. R.C. 307.842 offers several choices to a county automatic data processing board in that regard. First, the board may, in writing, authorize any county office to contract for automatic data processing services. The board also may authorize any county office to operate or acquire automatic data processing equipment. In either case the board must determine that such action on the part of the county office in question "is desirable." R.C. 307.842. Alternatively, the county automatic data processing board may establish an automatic data processing center which is to provide a centralized system for the use of automatic data processing equipment "for all county offices" (emphasis added). *Id.* Such a center is to be operated and funded in the manner described in R.C. 307.844 and R.C. 307.845 respectively.

I shall now consider the issues presented in your request letter and in the supplemental correspondence you have submitted on behalf of the county auditor. According to your letter, underlying both your inquiries and those of the county auditor is a concern for the precise nature and proper allocation, within the context of a third party automatic data processing management/operations contract, of the duties, powers, and responsibilities conferred upon a board of county commissioners, a county automatic data processing board, and a county auditor vis-a-vis an automatic data processing center.

In your first question you have asked whether a county auditor has the authority to hire a deputy to supervise an automatic data processing center when the county automatic data processing board and the board of county commissioners have entered into a contractor/consultant agreement as described in your letter, and whether the county auditor may do so when no such agreement exists. I am of the opinion that the county auditor does have such authority, and may exercise it at his discretion, regardless of whether the county automatic data processing board and the board of county commissioners have entered into a contractor/consultant agreement of the type at issue here. The plain language of R.C. 307.844 states that the county auditor is authorized to hire a deputy who shall serve under the auditor's direction. R.C. 307.844 does not condition the exercise of that authority upon the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant. Moreover, there is nothing within R.C. 307.844 from which one might reasonably infer that the exercise of that authority by the county auditor may be affected or otherwise qualified when such a contract does exist. Indeed, the express language of R.C. 307.844 suggests the contrary. R.C. 307.844 states, in pertinent part, that the auditor or his deputy "shall supervise the operation of the automatic data processing center." (Emphasis added.) The use of the word "shall" within a statutory provision is generally understood as imposing a mandatory duty with respect to the conduct or functions therein described. *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 34, 372 N.E.2d 339, 341 (1978) ("[t]he term 'shall' usually is interpreted to render mandatory the provision containing it"); *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d at 107, 271 N.E.2d at 837 ("[t]he word 'shall' is usually interpreted to make the provision in which it is contained mandatory, especially if frequently repeated") (citations omitted). The adjective "mandatory" has, in turn, been defined as "authoritatively commanded or required; obligatory." *Webster's New World Dictionary* 860 (2d college ed. 1978). See also *Black's Law Dictionary* 867 (5th ed. 1979) ("[m]andatory" means "[c]ontaining a command; preceptive; imperative; peremptory; obligatory").

Accordingly, the language of R.C. 307.844 quoted above imposes an obligation upon the county auditor to supervise the operation of an automatic data processing center. R.C. 307.844 further grants the county auditor the power to delegate the performance of that obligation, at his discretion, to the deputy of his choice. R.C. 307.844 subjects the amount of such deputy's compensation to approval by the county automatic data processing board, but does not otherwise limit or restrict the discretion granted the county auditor to employ a deputy to supervise the operation of an automatic data processing center. It follows, therefore, that a county auditor may employ a deputy to supervise the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant.

In your second set of questions you have asked whether a county auditor, in addition to the deputy mentioned in R.C. 307.844, may employ other persons to operate an automatic data processing center when there exists an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant. Assuming an affirmative answer to that question, you wish to know how the compensation of such persons is to be fixed. Finally, you also wish to know whether the answers to these questions would be the same if there existed no such contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant.

The answers to these questions follow, in part, from the discussion just concluded. To reiterate, R.C. 307.844 imposes a mandatory duty upon a county auditor to supervise the operation of an automatic data processing center. R.C. 307.844 further states that the county auditor, in his capacity as chief administrator of the county automatic data processing board, and subject to approval by such board, "shall employ such other persons as are necessary for the operation of the center and shall fix the compensation of...all such employees." (Emphasis added.) As in the case of his responsibility to supervise the operation of an automatic data processing center, the foregoing language of R.C. 307.844 imposes a concomitant duty upon the county auditor, subject to approval by the county automatic data processing board, to employ and fix the compensation of such persons as are necessary to effect the operation of such center. R.C. 307.844 does not make the county auditor's responsibility in that regard contingent upon the existence of an automatic data processing management/operations contract between a county automatic data processing board, a board of county commissioners, and an independent contractor/consultant. Additionally, there is nothing in the language of R.C. 307.844, either expressed or implied, to indicate that such responsibility on the part of the county auditor may be limited, qualified, or otherwise restricted in those instances where the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant have entered into a management/operations contract with respect to an automatic data processing center. I conclude, therefore, that, subject to approval by the county automatic data processing board, the county auditor, as chief administrator of such board, shall employ and fix the compensation of such persons as are necessary for the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant.

You have also asked about how the compensation of persons employed by the county auditor in conjunction with the operation of an automatic data processing center is to be fixed. R.C. 307.844 does not specify the precise manner in which the county auditor shall fix the compensation of the persons that are so employed, or a particular method by which the amount of compensation paid to each such employee is to be calculated. R.C. 307.844 simply provides that the county auditor, as chief administrator of the county automatic data processing board, "shall fix the compensation of...all such employees," subject to approval by the county automatic data processing board. The principle is well established that, in the absence of specific direction regarding the manner and method of the performance thereof, public officers have the implied authority to exercise reasonable discretion in carrying out their statutory duties and responsibilities. *State ex rel. Kahle v.*

Rupert, 99 Ohio St. 17, 122 N.E. 39 (1918) (all public officers are required to exercise an intelligent discretion in the performance of their official duties); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915); 1986 Op. Att'y Gen. No. 86-099; 1986 Op. Att'y Gen. No. 86-023; 1984 Op. Att'y Gen. No. 84-096. Accordingly, the county auditor may, pursuant to the implied authority granted him by R.C. 307.844, and subject to approval by the county automatic data processing board, fix the compensation of automatic data processing center employees in whatever manner and amounts are reasonable.²

In your third question you have asked whether the county auditor is authorized to secure and enter into a contractor/consultant agreement for automatic data processing services without the approval of either the county automatic data processing board or the board of county commissioners. Assuming an affirmative answer to that question, you also wish to know whether such an agreement must be secured through a competitive bidding process.

I shall first consider whether the county auditor is authorized to enter into a contractor/consultant agreement for automatic data processing services. According to your letter the proposed agreement will require the independent contractor/consultant to supply the county with automatic data processing services. In that regard, the independent contractor/consultant will be responsible for programming the data processing equipment housed within the automatic data processing center, operating such equipment, and, when requested, furnishing the county automatic data processing board and the board of county commissioners with reports that relate to the operation and functions of the automatic data processing center.

As a creature of statute the county auditor, in his capacity as chief administrator of the county automatic data processing board, may exercise only such powers as are expressly conferred upon him by statute, or necessarily implied by those powers expressly granted. *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112, 115 (1935) (the county auditor, being a creature of statute, "can exercise only such powers as are expressly delegated by statute, together with such implied powers as are necessary to carry into effect the powers expressly delegated"). See generally *State ex rel. Hoel v. Goubeaux*, 110 Ohio St. 287, 288, 144 N.E. 251, 252 (1924) ("the creation of county officers is a legislative act; conferring power upon them is also a legislative act. They have no power as officers save and except such as are clearly conferred by statute"). Thus, whether the county auditor is authorized to enter into an automatic data processing management/operations contract of the type at issue here will depend upon the extent to which such power is conferred upon him by either R.C. 307.844 or other provisions of the Revised Code addressed to the procurement of automatic data processing services.

R.C. 307.844 makes no express statement regarding the authority of the county auditor to enter into an agreement with an independent contractor/consultant whereby the latter party agrees to provide automatic data processing services to county offices through the facilities of the county's automatic data processing center. Nonetheless, the provisions of R.C. 9.35 furnish a reasonable basis for concluding that the county auditor is authorized to enter into such an agreement. In particular, R.C. 9.35(B) states the following:

² In fixing the compensation of automatic data processing center employees, the county auditor must bear in mind the amount of money actually budgeted by the board of county commissioners for that purpose. See R.C. 307.844 ("[s]alaries and expenses of the [automatic data processing] center shall be paid from funds budgeted and appropriated to the [county automatic data processing] board by the board of county commissioners"); R.C. 307.845 (the annual estimate of the revenues and expenditures of the automatic data processing center that is prepared and submitted to the board of county commissioners by the county auditor "shall be sufficient to take care of all the needs of the center, including but not limited to salaries, rental, and purchase of equipment").

Any public official may 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 recordkeeping services necessary in the performance of his duties. Such services may include, but are not limited to, the preparation of payroll and other records, the preparation, signing, and issuance of checks, the preparation of reports and accounts, and the performance of all similar duties. (Emphasis added.)

R.C. 9.35(A) defines "public official," as used in R.C. 9.35, as

an elected or appointed officer, employee, or agent of any political subdivision, board, commission, bureau, or other public body established by law who is permitted or required in the performance of his duties to issue checks, keep books and records, prepare and preserve payroll and other employee records, and make reports or perform other similar duties. (Emphasis added.)

The county auditor is an elected officer of the county, *see* R.C. 319.01, and a statutorily-designated member of the county automatic data processing board, *see* R.C. 307.84; R.C. 307.844. The county auditor is, therefore, a "public official" as defined in R.C. 9.35(A). Accordingly, the county auditor, as chief administrator of the county automatic data processing board, may, consistent with the responsibility vested in him by R.C. 307.844 to supervise the operation of the automatic data processing center, enter into an automatic data processing management/operations contract with an independent contractor/consultant whereby the independent contractor/consultant agrees to provide the county such automatic data processing services as are authorized by R.C. 9.35(B) through the facilities of the automatic data processing center.

You have also inquired about the approval of such a contract by either the county automatic data processing board or the board of county commissioners, and whether such an agreement must be competitively bid. Approval of such an agreement is addressed in R.C. 9.35(C), which sets forth several conditions and requirements that must be satisfied with respect to any contract authorized by R.C. 9.35(B). R.C. 9.35(C) reads as follows:

A contract authorized by division (B) of this section may be entered into only:

(1) If the surety bond required of such public official includes within its coverage any loss which might occur as the result of such contract;

(2) Pursuant to a resolution duly adopted by the governing board, commission, bureau, or other public body having jurisdiction over such public official authorizing a contract for the performance of such services;

(3) If the contract does not conflict with the accounting requirements prescribed by the auditor of state under section 117.43 of the Revised Code or with accounting procedures prescribed by the director of budget and management under section 126.21 of the Revised Code;

(4) If assurances satisfactory to the auditor of state are furnished by both the financial institution, or other person engaged in the business or capable of rendering electronic data processing or computer services, and the public official that the books and records of the public official in the possession of the person performing such services shall be subject to audit by the auditor of state to the same extent as if such services were being performed by the public official himself. (Emphasis added.)

In this instance I am of the opinion that, for purposes of R.C. 9.35(C)(2), the county automatic data processing board is the "governing board" having jurisdiction over the county auditor with respect to an automatic data processing management/operations contract entered into between the county auditor and an

independent contractor/consultant pursuant to R.C. 9.35(B). Thus, in accordance with R.C. 9.35(C)(2), such a contract may be entered into by the county auditor only pursuant to a resolution duly adopted by the county automatic data processing board authorizing such contract.

Finally, such a contract will, in the appropriate circumstances, be subject to competitive bidding. R.C. 307.86 addresses competitive bidding in the case of purchases and leases by counties and certain county contracting authorities. R.C. 307.86 reads, in pertinent part, as follows:

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as otherwise provided in division (D) of section 713.23 and in sections 125.04, 307.022, 307.861, 339.05, 340.03, 4115.31 to 4115.35, 5119.16, 5513.01, 5543.19, 5713.01, and 6137.05³ of the Revised Code, shall be obtained through competitive bidding. (Emphasis and footnote added.)

Divisions (A) through (F) of R.C. 307.86 further describe the various circumstances in which the foregoing competitive bidding requirement does not apply, and R.C. 307.87-.91 set forth the particular notice and bidding procedures that are to be followed whenever competitive bidding is required by the terms of R.C. 307.86.

Thus, as pertains herein, R.C. 307.86 requires the competitive bidding of any purchase of any service by or on behalf of a county, or a contracting authority as defined in R.C. 307.92, at a cost in excess of ten thousand dollars. R.C. 307.92's definition of "contracting authority" reads as follows:

As used in sections 307.86 to 307.91, inclusive, of the Revised Code, "contracting authority" means *any* board, department, commission, authority, trustee, official, *administrator*, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof. (Emphasis added.)

Clearly, the county auditor, as chief administrator of the county automatic data processing board, is a "contracting authority" as defined in R.C. 307.92. Thus, pursuant to R.C. 307.86, any contract between the county auditor and an independent contractor/consultant, at a cost in excess of ten thousand dollars, whereby the independent contractor/consultant agrees to provide automatic data processing services to the county, shall be obtained through competitive bidding.⁴

³ The exceptions provided for in the Revised Code sections thus enumerated have no application in this particular instance.

⁴ R.C. 307.86's competitive bidding exception for services of a consultant is not applicable to the present situation because the services to be provided by the independent contractor/consultant, as you have described them, are neither exclusively nor even primarily consultative in nature. See generally *Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711, 712 (1946) ("exceptions to a general law are not favored and must be strictly construed, and what is not clearly excluded from the operation of a law is clearly included therein"); 1971 Op. Att'y Gen. No. 71-075 at 2-254 (same); 1935 Op. Att'y Gen. No. 4199, vol. I, p. 489, at 493 ("[i]t is well settled that an exception to a provision in a statute must be strictly construed and should only be applied to cases that are clearly within the terms of such exception").

In your final question you have asked about the authority of a county automatic data processing board and a county auditor with respect to the promulgation of rules and regulations that establish policies for the operation and control of the county automatic data processing board and the automatic data processing center. The answer to your question is to be found in the provisions of R.C. 307.841 and R.C. 307.844 respectively. Regarding rules and regulations for the operation of a county automatic data processing board, R.C. 307.841 states the following: "The [county automatic data processing] board may, by unanimous consent, adopt such rules and regulations as it deems necessary for its operation, but no rule or regulation of the board shall derogate the authority or responsibility of any elected official." Regarding rules and regulations for the operation of an automatic data processing center, R.C. 307.844 reads as follows: "The administrator may adopt such rules and regulations as are necessary for the operation of the [automatic data processing] center." Thus, pursuant to R.C. 307.841 the authority to establish rules and regulations for the operation of the county automatic data processing board rests with that board, which, by unanimous consent, may adopt such rules and regulations as it deems necessary. Pursuant to R.C. 307.844, the authority to establish rules and regulations for the operation of the automatic data processing center rests with the county automatic data processing board's chief administrator, who is the county auditor. Moreover, such authority may be exercised by the county automatic data processing board and the chief administrator respectively notwithstanding the presence or absence of an agreement for automatic data processing services between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant.

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

1. Pursuant to R.C. 307.844, the county auditor, as chief administrator of the county automatic data processing board, may employ a deputy to supervise the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant whereby the independent contractor/consultant agrees to provide to the county automatic data processing board and the board of county commissioners automatic data processing services, including programming and operating the data processing equipment of the automatic data processing center.
2. Subject to approval by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, shall employ and fix the compensation of such persons as are necessary for the operation of an automatic data processing center, notwithstanding the existence of an automatic data processing management/operations contract between the county automatic data processing board, the board of county commissioners, and an independent contractor/consultant whereby the independent contractor/consultant agrees to provide to the county automatic data processing board and the board of county commissioners automatic data processing services, including programming and operating the data processing equipment of the automatic data processing center. Subject to approval by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, shall fix the compensation of such automatic data processing center employees in whatever manner and amounts are reasonable.
3. Pursuant to a resolution of approval duly adopted by the county automatic data processing board, the county auditor, as chief administrator of the county automatic data processing board, may enter into an automatic data processing management/operations contract with an independent

contractor/consultant whereby the independent contractor/consultant agrees to provide the county such automatic data processing services as are authorized by R.C. 9.35(B) through the facilities of the automatic data processing center. Pursuant to R.C. 307.86, such a contract at a cost in excess of ten thousand dollars shall be obtained through competitive bidding.

4. Pursuant to R.C. 307.841, the county automatic data processing board may, by unanimous consent, adopt such rules and regulations for its operation as it deems necessary.
5. Pursuant to R.C. 307.844, the county auditor, as chief administrator of the county automatic data processing board, may adopt such rules and regulations for the operation of an automatic data processing center as he considers necessary.