

**OPINION NO. 86-012****Syllabus:**

1. A board of trustees of a township free public library is without authority to bid jointly with the board of county commissioners for a capital improvement to the township free public library.
2. Pursuant to R.C. 307.15, a board of trustees of a township free public library may enter into an agreement with the board of county commissioners for the purpose of allowing the commissioners to exercise the contracting powers of the trustees in bidding on a capital improvement to the library, and may, for that purpose, agree to transfer to the county such funds as are necessary to finance the improvement. To the extent that R.C. 3375.41 would require the board of library trustees, acting on its own, to comply with the competitive bidding procedures set forth therein, the board of county commissioners must follow such procedures when acting on behalf of the board of library trustees.

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**To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, February 27, 1986**

I have before me your request for my opinion as to whether a township library may bid jointly with the board of county commissioners for a capital improvement to the township library. My understanding of the facts is as follows. Brown County has received a federal grant to provide handicapped access to the Union Township library. The board of trustees of the library would like to augment the amount available from the federal grant with funds from its building fund to complete the project. Under federal restrictions attached to the grant, however, the county must act as the bidding agency for use of those funds. You also state that the amount of funds the library trustees will contribute to the project may be in excess of fifteen thousand dollars.

Pursuant to telephone conversations with members of my staff, you have indicated that the goal of this joint project is to save the cost of separately bidding on those parts of the improvement to be funded by the county and by the library. Therefore, the question to be addressed is whether there is a way, either through joint bidding by the county commissioners and the board of library trustees or otherwise, to eliminate the need for each entity to bid for part of the same improvement.

As stated in paragraph one of the syllabus of 1924 Op. Att'y Gen. No. 2003, vol. I, p. 652: "A board of trustees of a library is created by statute, and has only such powers as are provided in the statute, and such other powers as are reasonably necessary to the accomplishment of the purposes of the board." R.C. 3375.10 specifically provides for the control and management of a township free public library to be vested in its board of library trustees which shall exercise its powers in accordance with R.C. 3375.33-.41.

R.C. 3375.33 states that boards of library trustees are bodies politic and corporate, and as such are capable of

contracting. R.C. 3375.40, in part, empowers boards of library trustees to:

(B) Expend for library purposes, and in the exercise of the power enumerated in this section, all moneys, whether derived from the county library and local government support fund or otherwise, credited to the free public library under its jurisdiction and generally do all things it considers necessary for the establishment, maintenance, and improvement of the public library under its jurisdiction.

See generally 1948 Op. Att'y Gen. No. 4122, p. 586 (syllabus, paragraph one).

Division (K) of R.C. 3375.40 empowers a board of library trustees at the end of any fiscal year by a two-thirds vote of its full membership to "set aside any unencumbered surplus remaining in the general fund of the library under its jurisdiction for any purpose including creating or increasing a special building and repair fund, or for operating the library or acquiring equipment and supplies." Further, pursuant to R.C. 3375.41, when a board of library trustees of a township library determines to "construct, demolish, alter, repair, or reconstruct a library or make any improvements or repairs, the cost of which will exceed fifteen thousand dollars," the board generally must follow the procedure for competitive bidding set forth in that statute.

It is clear from the above statutes that the Board of Trustees of the Union Township Library may unilaterally bid and expend its funds for a capital improvement to the library. I am unaware, however, of any statutory authority which would permit the board of trustees and the board of county commissioners to bid jointly for such capital improvement.

Even though it is my opinion that, in light of the absence of statutory authority therefor, a board of library trustees and board of county commissioners may not jointly bid for a capital improvement to the library, I note that R.C. 307.15 sets forth the standards whereby a board of county commissioners may enter into agreements with other units of government, including the legislative authority of any library district, see R.C. 307.14(A). R.C. 307.15 provides, in part, that:

[S]uch legislative authorities may enter into agreements with the board [of county commissioners], 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....

Although the precise situation at issue here has never been addressed by the legislature or the courts of this state, I believe that, pursuant to the power conferred on the board of library trustees by R.C. 3375.40(B), quoted above, and the power to enter into agreements with the legislative authority of a library district conferred on a board of county commissioners by R.C. 307.15, quoted above, the following arrangement is permissible.

First, the parties could enter into an agreement as contemplated by R.C. 307.15 whereby the board of county commissioners would exercise the contracting powers of the board of library trustees in its behalf, thereby resulting in only the county bidding on the project.<sup>1</sup> Such an arrangement would satisfy the restriction placed on the use of the federal grant that the board of county commissioners be the bidding agency. As part of this agreement the library district could transfer to the county those funds necessary to finance the portion of the improvement not paid for with federal funds. Cf. 1985 Op. Att'y Gen. No. 85-086 at 2-350 ("[s]ince R.C. 1901.34(A) authorizes a county to provide additional compensation to a city director of law, R.C. 307.15 appears to grant the board of county commissioners authority to contract with a city whereby the county agrees to pay an amount to the city for purposes of compensating the law director or his assistants and the city agrees to disburse such money to the law director or his assistants").

The actions taken by the board of county commissioners on behalf of the board of library trustees are, however, subject to the following restriction set forth in R.C. 307.15, as follows:

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 subdivisions directly.... (Emphasis added.)

R.C. 3375.41 sets forth the procedure that a board of library trustees must follow for the bidding and letting of contracts over fifteen thousand dollars. In light of R.C. 3375.41, if the cost of the improvement will exceed fifteen thousand dollars, the library trustees must comply with the mandates of this section. Therefore, pursuant to R.C. 307.15, the board of county commissioners, acting on behalf of the board of library trustees, must also comply with the requirements of R.C. 3375.41. See generally 1963 Op. Att'y Gen. No. 270, p. 344 (pursuant to R.C. 307.15 and .16, a board

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<sup>1</sup> R.C. 307.15 states, in part: "[s]ections 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." Although a contracting subdivision thus maintains the powers exercised on its behalf by the board of county commissioners pursuant to a contract entered into under R.C. 307.15, I do not believe that the above-quoted language permits a subdivision to authorize the county commissioners to act on behalf of the subdivision as to a particular matter, and yet maintain the power simultaneously to act on its own behalf as to the same matter. Rather, where the General Assembly intends that political subdivisions may undertake joint projects, other than by contract, it has specifically provided such authority. See, e.g., R.C. 307.442 (providing, in part, for the establishment of joint county self-insurance programs).

of county commissioners may contract with private fire companies to the same extent as the contracting subdivisions may so contract).

It is, therefore, my opinion, and you are hereby advised, that:

1. A board of trustees of a township free public library is without authority to bid jointly with the board of county commissioners for a capital improvement to the township free public library.
2. Pursuant to R.C. 307.15, a board of trustees of a township free public library may enter into an agreement with the board of county commissioners for the purpose of allowing the commissioners to exercise the contracting powers of the trustees in bidding on a capital improvement to the library, and may, for that purpose, agree to transfer to the county such funds as are necessary to finance the improvement. To the extent that R.C. 3375.41 would require the board of library trustees, acting on its own, to comply with the competitive bidding procedures set forth therein, the board of county commissioners must follow such procedures when acting on behalf of the board of library trustees.