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June 17, 2016

Attorney General Mike DeWine
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OHIO ATTORNEY
GENERAL'S OFFICE
JUN 20 2016
OPINIONS

RE: Request for Opinion

Dear Attorney General DeWine:

I am respectfully requesting your opinion on the following matters. As you are aware, in 2011, the Ohio General Assembly enacted R.C. 9.482 to allow certain government entities to enter into agreements for shared services. Recently, multiple political subdivisions in Trumbull County have been looking to this statute and others to coordinate services for cost savings and efficiency. Recently, this office has been presented with certain questions that have caused us to question the intended scope of this and other similar statutes. While we recognize the positive aspects of shared services, we also want to be sure that the scope of these statutes is not improperly exceeded into areas that could lead to legal and audit risks. Therefore, we present the following questions for your review.

Local government entities have been looking for ways to combat blight caused by vacant and abandoned structures, as well as general refuse on properties within their borders. Townships and some other local government entities have been granted statutory authority to conduct processes by which these nuisances can be abated. Your office has been very helpful in administering programs, such as Moving Ohio Forward, that have helped the Trumbull County Land Reutilization Corporation in this endeavor. However, other nuisance properties remain in Trumbull County, and various local officials have begun discussing another potential strategy for combating this problem. Specifically, it is my understanding that the program would primarily involve the coordination of numerous political subdivisions including the county, townships, and municipalities creating a sort of joint enterprise for the demolition of vacant and abandoned houses. These entities have proposed using authority contained in R.C. 9.482 to share powers in order to create this joint program.

In anticipation of this program, the Trumbull County Board of Commissioners presented a request for legal opinion to this office citing twelve (12) individual questions about the creation of such a program. This office provided a response to those questions, and raised some other points of consideration. With the permission of our clients, we have attached a copy of our opinion letter to this request so that you can review the legal research that has been devoted to

this proposed program already, and so that you can learn more about the specific proposal. Because that letter contains a great deal of detail, this letter will be kept brief, and will stick to outlining specific questions. As always, we are available to answer any additional questions you may have.

1. *Does R.C. 9.482, R.C. 307.15, or another statute permit a county, townships, and municipalities to contract to create a joint program in which the entities can all work together jointly to demolish structures and otherwise abate nuisances that exist throughout the county?*

   We recognize that the answer to this question will stem from the application of various township statutes, including R.C. 505.86 and 505.87, and any similar legal authority possessed by municipal corporations. In essence, the question is whether, through R.C. 9.482, R.C. 307.15, or another statute, an agreement may be made by a county and these other political subdivision that would allow a joint nuisance abatement program whereby the county and all participating subdivisions would jointly conduct demolition and cleanup activities. This question is analyzed in part in the attached letter at page 2, titled "General Authority to Contract with Other Subdivisions."

2. *Assuming the first question is answered in the affirmative, what other statutory authority is required to enter into such a program, and what action must be taken by these political subdivisions in order to lawfully create such a program?*

   As discussed in the attached letter in question number 1 on page 4, R.C. 9.482(B)(1) opens with the phrase "when legally authorized to do so." We are unsure whether this phrase means that another authorizing statute, such as R.C. 307.15, is required, or whether this simply means that the political subdivision must have authority to contract generally. Moreover, because the statutory language is slightly different in R.C. 9.482 and R.C. 307.15, we request guidance on whether these statutes can both be used jointly to create the program described above.

3. *Can the political subdivisions exercise concurrent work on nuisance abatement if the parties so agree? For example: Can the township zoning inspector and county board of health each continue respective inspection and enforcement duties if the agreement reached between the parties allows for concurrent duties? As another example, can multiple townships and a county jointly work through the required legal procedure and all participate in the demolition of a structure?*

   Pursuant to R.C. 307.15(A)(2), "[s]ections 307.14 to 307.19 of the Revised Code, or any agreement authorized by those sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board, or the possession by a county of any power or function exercised or performed by the contracting municipal corporation, in pursuance of the agreement." However, a prior Ohio Attorney General has previously opined that this language does not necessarily permit joint exercise of power unless another statute specifically permits. See 1986 Ohio Atty.Gen.Ops. No. 86-012 at footnote 1.

Looking to R.C. 9.482(C), that statute similarly provides that "[a]n agreement shall not suspend the possession by a contracting recipient political subdivision or state agency of any power or function that is exercised or performed on its behalf by the other contracting political subdivision or the contracting state agency under the agreement." Because of the similarity to the language of R.C. 307.15(A)(2), we believe that it is likely that the same reasoning would apply to this statute as well. However, we recognize that this interpretation was taken from a footnote that is approximately 30 years old. Therefore, we request clarification as to this question. This question is described in more detail on page 4 of the attached letter in question number 2.

4. *Can each political subdivision, which is authorized by its own legislative authority to enter into such program, make monetary contributions to a central fund or another subdivision to support a centralized staff, office, or coordinating administrator? If a coordinating administrator is authorized by the agreement of the parties can that person be employed by one of the parties? For example: If the county participates in the performance of demolitions, can a coordinator be an employee of the board of commissioners or the county engineer?*

   If this type of program is lawful, it appears that the parties involved are considering the hiring of "centralized" staff that will be paid for jointly by all member subdivisions. Our reading of the statute suggests that any such employees *must* be employed one of the participating subdivisions. There has been some talk of appointing a person employed by the board of commissioners or the county engineer. This question is described in more detail on page 5 of the attached letter in questions number 3 and 4.

5. *If the coordinator is a county employee, and the parties agree, may the township employees be utilized for demolition work?*

   Assuming that a coordinator can be hired to administer this program, could such a coordinator employed by a county direct and control township or municipal employees to perform demolition work? This question is described in more detail on page 6 of the attached letter in question number 5.

6. *If the parties agree, can the parties use prisoners, job and family service program attendees, or other interest based organizations to perform tasks in furtherance of nuisance abatement? Would the statutory provisions governing immunity apply to the use of these volunteers or prisoners?*

   It appears, as part of this program, that the political subdivisions involved would like to use volunteers, people looking for work through the Trumbull County Department of Job and Family Services, and prison labor to work in this proposed program. We recognize that Chapter 2744 of the Revised Code grants certain immunities for government entities, and that R.C. 9.482(F) appears to extend that immunity to contracts between subdivisions for services. However, we are unsure how this immunity would apply to volunteers that would be used to actually conduct the demolition and abatement.

Moreover, we recognize that R.C. 341.27 governs the use of county jail inmates in work programs, and that certain limitations from liability are granted as long as the terms of the statute are followed. However, we are unsure how this limitation of liability would extend through the type of program described herein. For example, if Trumbull County contracted with other townships, and joint demolition was conducted with the assistance of jail inmates, would that liability protection still be available to Trumbull County and extend to the other participating subdivisions? We recognize that this question is broad, and touches on certain liability questions that your office may not be able to address in detail. However, due to the serious nature of liability that could be involved in such a program, we respectfully request that you address the matters in this question as much as you are able. This question is described in more detail on page 6 of the attached letter in question number 6.

7. *May a county contract with the Ohio Department of Rehabilitation and Correction to provide state prison inmates to work in this proposed multi-jurisdictional program? Similarly, may a county enter into a contract with the Ohio Department of Rehabilitation and Correction and multiple other political subdivisions for the use of state prison inmates to perform roadside litter cleanup, where the various subdivisions will provide tools, materials, and portable restroom facilities for the prison inmates?*

   While this question is similar to the one immediately above, we believe that the use of state prison inmates complicates the analysis. We note that there is certain legal authority that appears to grant the state authority to enter into agreements for state prison inmate labor. (See, for example, R.C. 5120.04). We are unsure, however, if this authority applies to agreements with a county. Moreover, unlike R.C. 341.27, we are unable to locate any authority that limits liability for the county in the use of state prison inmates. It is our understanding that the supervision of the employees will still be conducted by State of Ohio employees, but the county, a municipality, the joint county solid waste district, and possibly certain townships would direct the work and provide the materials discussed above. Thus, we request an opinion on the ability to enter into such an arrangement, whether any limitation of the county's liability applies, and whether any limitation of liability would also apply to the other participating subdivisions.

8. *Apart from the county zoning regulations permitted by Chapter 303 of the Revised Code, is a county able to enact regulations concerning property maintenance, demolition, and bonding related to these matters? In the alternative, can the contracting political subdivisions agree to retain, enforce, and perform in any given jurisdiction only the standards and regulations of that particular jurisdiction? Also, can any potential agreement change or alter any given standard or requirement in a jurisdiction without other specific legislative action by the political subdivision? Is the legislative adoption of the potential agreement an adoption of new standards if new standards are enumerated in the agreement?*

   This question is described in more detail on page 7 of the attached letter in question number 7. However, the essence of the question is whether a county has authority to enact countywide regulations for the maintenance of properties and structures, and make requirements for bonds in certain situations. If the answer to this is question is in the negative, could the overarching mutual agreement contemplated in this proposal indicate that the collective group would enforce the specific regulations of the subdivision in which the

property is located? If the proposed agreement under R.C. 9.482 and related statutes is approved by the parties, can it include standards and requirements that must be followed by property owners, and if such terms conflict with previously adopted zoning or property maintenance codes, which control?

9. *If volunteers are permitted, is an assessment against a property owner for mowing, maintenance or demolition permitted? In a situation where costs are lawfully collected, can they be shared and split with the other participating subdivisions according to the portion of work performed by that subdivision, or can the costs be placed in a type of joint fund to perform additional demolitions?*

   As you are aware, some statutes that authorize mowing, maintenance, or demolition include a procedure by which the tax record may be assessed for the cost of these acts. By way of example taken from two township statutes, pursuant to R.C. 505.86 and 505.87, townships may use a statutory procedure to collect "costs" and "expenses." Based on the plain meaning of those words, if the volunteers would be used without cost, we do not believe that the township would be entitled to assess the property. If the township were allowed to do so, it would be making a profit on these operations, which is not the traditional function of the township. However, due to the novel nature of this proposed program, we are asking whether you believe that our interpretation is correct. In addition, we are also unsure as to how the costs collected could be split or used by the participating subdivisions. This question is described in more detail on page 8 of the attached letter in question number 8.

10. *If necessary, can the parties agree that the performing party would advise and negotiate any issues arising with a union work force in any particular jurisdiction?*

    This question is described in more detail on page 8 of the attached letter in question number 9. However, it appears that if the county were designated by the proposed agreement to handle the demolition matters, the other local subdivisions would cede the authority to negotiate the union matters, and the townships would receive labor and personnel advice from the county's employees. We believe this could get into troubling areas of improper delegation of discretionary authority, but we are seeking clarification to assist our clients in understanding all aspects of their proposed program.

11. *Can materials and equipment be shared and utilized outside of an agreeing party's jurisdiction?*

    Pursuant to R.C. 307.15, a political subdivision may perform the powers under the agreement "and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly." There is a legal argument that the power to share equipment and materials would be "incidental" to the power granted under the agreement. However, a prior opinion of another Ohio Attorney General, cited above, that suggests that powers cannot be exercised concurrently under R.C. 307.15. Moreover, as noted above, R.C. 9.482 does not contain the same language as R.C. 307.15.

12. *Would R.C. 9.482(F) and Chapter 2744 of the Revised Code afford statutory immunity to the subdivisions involved in this proposed program, even when sharing employees, prisoners, and volunteers to perform the work described?*

    Chapter 2744 of the Revised Code generally provides certain immunities when a government body engages in governmental and proprietary functions. R.C. 9.482(F) incorporates this immunity into agreements made under that statute, "insofar as it applies to the operation of a political subdivision." However, with the scope of the program being proposed, and the use of so many types of employees, prisoners, and volunteers, we have serious questions about how far the immunity statutes can be stretched to cover all of these workers.

13. *If a county engineer, township fire department, or other public official or body desires to participate in such a program, but the department is funded by a tax levy, may it still participate in the program? If so, are there any financial procedures that must be used to protect funds from being spent in contravention of law?*

    Pursuant to Ohio Constitution Article XII Section 5, money collected through a tax levy may only be used on the specific object of that particular levy. A prior Ohio Attorney General has opined that subsequent money derived from levy monies, including interest, must be used in accordance with the object of the levy. 1980 Ohio Op. Atty. Gen. No. 80-003. Moreover, Ohio Constitution, Article XII, Section 5a similarly restricts the use of the County Engineer's highway fund to certain enumerated road and bridge related expenditures. We are concerned that there may be a problem with these types of entities using their labor and materials in aid of such a program if the law restricts the use of their funding. We recognize that R.C. 315.14 delineates a list of duties of a county engineer, and states that he or she "shall perform other duties as the board [of commissioners] requires * * *." However, we are unsure as to whether this excuses an engineer from the compliance with Ohio Constitution, Article XII, Section 5a, whether it requires the general fund to reimburse the cost, or otherwise.

Another proposed use of the authority contained in R.C. 307.15 and R.C. 9.482 relates to work performed by a county engineer. As noted above, R.C. 315.14 delineates a list of duties of a county engineer, and states that he or she "shall perform other duties as the board [of commissioners] requires * * *." A township in Trumbull County owns property on which a non-profit organization operates a recycling center. The property and structures have reached a point where they require repair and improvements, and the township and the Board of Commissioners have requested the assistance of the Trumbull County Engineer to perform the required maintenance and improvements, including resurfacing the driveway and parking area. The Engineer has indicated his willingness to assist, but is mindful that his office is created by statute, and has only those powers granted by or necessarily implied from the relevant statutes. From time to time, the Board of Commissioners will make such requests for assistance, and thus, we ask the following questions to clarify the authority of a county engineer to provide such assistance.

14. *In addition to a county engineer's regular statutory duties, what is the scope of other duties that may be requested by a board of commissioners pursuant to R.C. 315.14?*

    A prior Ohio Attorney General recognized that "the county engineer may be called upon by the county commissioners to perform duties in addition to those specified in R.C. 315.14." 1994 Ohio Atty.Gen.Ops. No. 94-025, citing *State ex rel. Mikus v. Roberts*, 15 Ohio St.2d 253, 239 N.E.2d 660 (1968). We understand that a board of commissioners may sometimes make requests of a county engineer such as to repair a county-owned parking lot or to plow or repair roads within a county-owned fairgrounds. We ask for your opinion as to the scope of duties that can be performed pursuant to this authority.

15. *If a county engineer can lawfully perform other duties requested by a board of commissioners, and the engineer's employees and equipment are funded by the road and bridge fund, must the board of commissioners reimburse the cost of the services, equipment, and materials to comply with Ohio Constitution, Article XII, Section 5a?*

16. *May a board of county commissioners, a township, and a county engineer rely on the authority contained in R.C. 307.15, 9.482, or another similar statute to have the county engineer repair and maintain parking areas, driveways, and structures owned by a township, and used by a non-profit recycling center?*

    For purposes of this question, we assume that the township and the county desire to enter into an agreement to do so, and that the county engineer has consented pursuant to 9.482(D). As we analyzed this question, we believe that it would be necessary for the township to have legal authority to maintain this property, and then necessary for the township to have the legal authority to contract with the board of commissioners to take over this duty, pursuant to R.C. 307.15, 9.482, or another similar statute. Then, the board of commissioners would need to have the legal authority to delegate that duty to the county engineer under R.C. 315.14 or another statute. We are unsure as to whether these statutes contemplate, or allow for, this broad chain of interpretation.

If you should have any questions regarding this matter, please do not hesitate to contact me or Chief Counsel of the Civil Division, William Danso. As always, thank you for your cooperation in this matter.

Very Truly Yours,

Dennis Watkins
Trumbull County Prosecuting Attorney

CC: Trumbull County Board of Commissioners
Randy Smith, P.E., P.S., Trumbull County Engineer

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April 11, 2016

Trumbull County Board of Commissioners
160 High Street NW
Warren, Ohio 44481

RE: Proposed Pilot Program for Trumbull County Political Subdivisions
Nuisance Abatement & House Demolition

Dear Board of Commissioners:

I am in receipt of the Board's letter, dated November 24, 2015, relative to a proposed county-wide nuisance abatement program. The Board's request does not contain a thorough description of what the program would entail, but through discussion with various county officials, it is my understanding that the program would primarily involve the coordination of numerous political subdivisions including the county, townships, and municipalities for the demolition of vacant and abandoned houses. As the Board notes, a number of meetings with various local government officials have already been held relative to this proposal. Those meetings were held before any legal guidance had been requested. The Board has now presented a lengthy request for a legal opinion that raises twelve (12) specific questions related to this proposed program.

After a review of the Board's detailed request for opinion, and after researching the law relative to the questions raised in the Board's letter, this office believes that a request for opinion to the Ohio Attorney General is the best and safest course of action. As this office has previously stated relative to this project, we believe that all of the subdivisions involved are making a good faith effort to solve a problem in Trumbull County, and that fostering a spirit of cooperation is a worthwhile goal. Indeed, this office has shown support for other cooperative efforts, including the pothole repair program that the Trumbull County Engineer implemented last year. However, from a legal perspective, this office must advise the Board of the legal and liability related risks involved in such a large and complex proposal. An opinion from the Ohio Attorney General that would outline the scope of the Board's authority, along with related legal procedural matters, would help the Board comply with applicable law and aid in minimizing liability as much as possible. However, we will proceed to give an overview of the law on the

questions posed by the Board, and point out where we believe guidance from the Ohio Attorney General may be helpful. Such an opinion should be seriously reviewed and considered because we are not aware of any expertise or experience from other counties or areas of the state where the program and approach the Board has suggested has been done. It is also our understanding that none of the other interested political subdivisions that have been involved in your initial discussions have obtained any legal advice as to the legality and feasibility of such a program.

GENERAL AUTHORITY TO CONTRACT WITH OTHER SUBDIVISIONS

Before proceeding to review the twelve individual questions contained in the Board's request for an opinion, I will outline the Board's general authority to enter into agreements with other political subdivisions for the mutual exercise of powers. The Board's letter cites some language of R.C. 9.482(B)(1), which provides that:

> "When legally authorized to do so, a political subdivision may enter into an agreement with another political subdivision or a state agency whereby the contracting political subdivision or state agency agrees to exercise any power, perform any function, or render any service for the contracting recipient political subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render."

It is worth noting that R.C. 9.482 is a relatively new statute, having taken effect in September of 2011. Therefore, there is not a large amount of case law or opinions of the Ohio Attorney General interpreting this particular statute. However, the Board is also legally authorized to enter into certain mutual aid agreements by power conferred directly to boards of commissioners under R.C. 307.15, which provides that:

> A "board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water 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 of county commissioners, whereby the board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision or its legislative authority, that such subdivision or legislative authority may exercise, perform, or render; or whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform, or render." R.C. 307.15(A)(1).

Thus, the Board does have some general statutory power to enter into agreements with other political subdivisions to exercise powers and perform functions that those subdivisions otherwise are able to legally perform.[1] It is important to keep in mind, however, that the powers to be

[1] The Board has proposed to structure this program under the authority granted by R.C. 9.482. The Board has not indicated that it is interested in pursuing such a program by creating a separate council of governments as provided

exercised may be limited by the agreement itself, and are subject to the statutory procedures and limits contained in the Revised Code.

However, it is also important to remember that "[i]t is a well-established principle that a board of county commissioners, being a creature of statute, may exercise only those powers as are expressly conferred upon it by statute, or that may be necessarily implied therefrom. *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277 (1947); 1985 Op.Att'y Gen. No. 85-058. With that principle in mind, the Ohio Attorney General has at least once opined that "R.C. 307.15 ... does not enlarge the authority otherwise conferred upon cities and counties * * *." 1986 Ohio Atty.Gen.Ops. No. 86-084. That particular opinion of the Ohio Attorney General addressed a question, among others, of "whether a regional correctional facility may be constructed and operated by a city and several counties pursuant to R.C. 153.61, R.C. 307.021, and R.C. 307.15." Id. The Attorney General explained:

> "R.C. 307.15 thus addresses those situations in which one political subdivision assumes, pursuant to contract, responsibility for undertaking and performing a particular function of government that is the duty of, and would otherwise have been undertaken by, the other contracting subdivision. The contemplated arrangement you describe in your correspondence, however, does not appear to be of a type within the purview of R.C. 307.15 since none of the prospective contracting parties will be assuming responsibility for performing, on behalf of the other contracting subdivisions, functions which the contracting subdivisions are otherwise empowered to perform." Id.

Because the program that the Board describes appears to also go beyond *one* political subdivision performing a function that another is authorized to perform, and because the Revised Code does not appear to have a specific statute for a multi-jurisdictional nuisance abatement procedure,[2] we have some concern that the Board's proposal could be viewed as likewise "not appear to be of a type within the purview of R.C. 307.15." Due to the nature and scope of the Boards proposal, we believe clarification from the Ohio Attorney General would be the best course of action to protect the Board from potential liability. Therefore, if the Board intends to move forward with this program, we will be making that request as soon as possible and would advise that this proposal not move forward until the Attorney General provides guidance. Moreover, if the Attorney General would opine that the Board lacks the authority to conduct such a program, the Board could choose to seek legislative change that would permit such a program.

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by Chapter 167 of the Revised Code. Therefore, such a structure will not be addressed in this letter. In fact, there is some authority to suggest that this office would not be in a position to provide legal advice relative to a council of governments. See 1986 Ohio Atty.Gen.Ops. No. 86-084.

[2] Of course, this statement does not include the statutory authority of a land reutilization corporation, which presently exists in Trumbull County. Specifically, the Trumbull County Land Reutilization Corporation has completed many demolition projects, and has received grants to assist in the endeavor.

INDIVIDUAL QUESTIONS

1. *Is there any action necessary by the county or townships to create that "legal authority" other than to adopt an appropriate resolution to enter into a specific contract as may be contemplated by and between the parties? Specifically, would a "home rule" township have any additional requirement to contract on this matter other than a resolution?*

As an initial matter, the Board should note that R.C. 9.482 opens with the phrase "when legally authorized to do so." The use of this language raises a question as to whether this particular statute requires another statute that actually authorizes two parties to enter into an agreement under R.C. 9.482. For example, R.C. 307.15 could be interpreted as such an authorizing statute that would work in conjunction with R.C. 9.482. The meaning of this phrase will be one of the questions we pose to the Ohio Attorney General.

Moreover, R.C. 307.15 describes an agreement, and it appears that the statute contemplates a written agreement, as R.C. 307.15(A)(2) describes the agreement being executed. Obviously, in order to enter into any valid agreement, the Board must pass a resolution to do so at a proper public meeting. As the Board can see, R.C. 307.15(A)(1) permits other certain legislative authorities to enter into this type of agreement with the Board. However, questions about whether townships may enter into the same type of agreement with other townships and/or municipalities pursuant to R.C. 9.482 is a legal question to be addressed by legal counsel for those political subdivisions. Moreover, because Trumbull County is not a "home rule" township, any such townships or municipal corporations should request legal advice from their legal counsel.

It is worth noting that the language of R.C. 307.15(A)(1) and R.C. 9.482(B)(1) is similar, but not identical. Therefore, there is some chance that the scope of power and authority able to be exercised under these statutes are not identical. As noted above, there is also some chance that the statutes are meant to be complementary. In order to ensure that these statutes can be used together this joint proposal, one part of the opinion request that will be sent to the Attorney General will inquire as to the interplay of these statutes.

2. *Can the political subdivisions exercise concurrent work on nuisance abatement if the parties so agree? For example: Can the township zoning inspector and county board of health each continue respective inspection and enforcement duties if the agreement reached between the parties allows for concurrent dates [sic]?*

Pursuant to R.C. 307.15(A)(2), "[s]ections 307.14 to 307.19 of the Revised Code, or any agreement authorized by those sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board, or the possession by a county of any power or function exercised or performed by the contracting municipal corporation, in pursuance of the agreement." However, the Ohio Attorney General has previously opined that:

> "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)." 1986 Ohio Atty.Gen.Ops. No. 86-012 at footnote 1.

Therefore, the Attorney General appeared to believe that the concurrent exercise of authority would not be permissible. Looking to R.C. 9.482(C), that statute similarly provides that "[a]n agreement shall not suspend the possession by a contracting recipient political subdivision or state agency of any power or function that is exercised or performed on its behalf by the other contracting political subdivision or the contracting state agency under the agreement." Because of the similarity to the language of R.C. 307.15(A)(2), it is likely that the reasoning of the Attorney General would apply to this statute as well. However, due to that opinion being approximately 30 years old, and because that statement is taken from a footnote, we will ask for clarification of this matter in our new request to the Ohio Attorney General.

3. *Can each political subdivision, which is authorized by its own legislative authority to enter into such a contract, make monetary contributions to support a centralized staff, office or coordinating administrator?*

In performing powers under an agreement pursuant to R.C. 307.15, a political subdivision may perform the powers under the agreement "and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly." There is a legal argument that, so long as the subdivision granting the authority to perform the power or function may employ a person to perform that function, that power is "incidental" to the power granted under the agreement. However, with regard to payments under such an agreement, the agreement "shall provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made by the contracting subdivision into the county treasury, or by the county to the municipal corporation, in consideration of the performance of the agreement." R.C. 307.16. These statutory provisions do not discuss a "centralized" staff, office or coordinating administrator, so even if the hiring of employees under such an agreement is permitted, it is unclear whether it is legally permissible to structure such employees and their office as a "centralized" staff. It should also be noted that R.C. 9.482 does not appear to contain similar language relative to "all powers necessary or incidental thereto," so there exists a question as to whether agreements entered into under that statutory provision are entitled to the same broad authority. Because of these remaining questions, this will be a portion of our request to the Attorney General.

4. *Similarly, if a coordinating administrator is authorized by the agreement of the parties can that person be employed by one of the parties? For example: If the county undertakes the performance of demolitions, can a coordinator be a county employee?*

It appears that this question is closely related to the previous question, in that they both relate to the hiring of staff to administer an initiative involving multiple political subdivisions. Because neither R.C. 307.15 or R.C. 9.482 appear to address a centralized staff, it is likely that

any staff permitted to be hired under these provisions would need to be employed by one of the participating subdivisions. After all, the Board should keep in mind that "[t]he function or service in question must be one that the board of county commissioners or the contracting subdivision, as the case may be, 'may exercise, perform, or render.' R.C. 307.15. In that regard, R.C. 307.15 neither confers upon the governmental bodies therein specified any authority or power that has not already been granted or conferred elsewhere in the Revised Code, nor expands or enlarges upon such authority as has been granted by other provisions in the Revised Code." 1989 Ohio Atty.Gen.Ops. No. 89-082 at footnote 2. This inquiry will be combined with the previous one in our request to the Ohio Attorney General.

5. *If the coordinator is a county employee, and the parties agree, may the township employees be utilized for demolition work?*

As noted above in response to question 2, a prior opinion of the Ohio Attorney General appeared to believe that the concurrent exercise of authority would not be permissible. However, because we already plan to ask that question as part of our request to the Attorney General, we will combine this question with it in our final request for opinion.

6. *If the parties agree, can the parties use prisoners, job and family service program attendee, or other interest based organizations to perform tasks in furtherance of nuisance abatement? Are there any specific liability issues with regard to the use of such workers and/or volunteers that should be addressed or avoided?*

This is a very broad question in that there are separate statutes and regulations that would govern the use of each type of worker described above. For example, R.C. 341.27 governs the use of certain county jail inmates in work programs, but the requirements of the statute must be carefully followed to ensure that the statutory liability limitations are maintained. I also recognize that the Board has had some discussion relative to the use of Ohio Department of Rehabilitation and Correction inmates in cooperation with the State of Ohio. There is little, if any, statutory authority to specifically authorize that arrangement, and there does not appear to be any limitation of liability or other liability protection as exists for county inmates. Even if the R.C. 9.482(F)'s statement of immunity would apply to an agreement with the State of Ohio, there is a serious question as to whether any immunity enjoyed by a township in conducting demolition proceedings would pass through to the county under one agreement, and then apply to ODRC inmates through another agreement. This tenuous chain of immunity could lead to serious legal risks for Trumbull County, and will be part of the opinion request to the Ohio Attorney General.

With regard to "job and family service program attendees," I am unsure of exactly what type of worker you would like to use. Therefore, I would recommend that the Board speak with John Gargano to determine what types of workers would be available so that we can better determine which statutes govern their employment, and whether there are any Job and Family Services rules or regulations that may affect their ability to perform this type of work. Moreover, we would need to determine whether the Board would be protected from liability of any injury that might occur. Moreover, in using the term "interest based organizations," I presume that you are asking about the use of volunteers from community organizations. Again, there is a serious question about whether immunity and/or insurance would cover this type of worker. Therefore,

if we are provided with information clarifying these two proposed types of worker, we would include this matter in our questions to the Ohio Attorney General.

In addition to the considerations discussed above, and if the Attorney General believes that engaging these types of workers is within the Board's authority, we also strongly recommend that the Board's representatives work closely with CORSA to ensure that any activities are covered by our risk pool coverage. The Board should also work with the Human Resources office to ensure that all required worker's compensation compliance is maintained. It is our hope that we will be better able to address these matters once the Attorney General provides an opinion on the other matters described herein.

7. *Can the county commissioners pass countywide regulations for residential versus commercial/industrial concerning property maintenance, bonding, and demolition? In the alternative, can the contracting political subdivisions agree to retain, enforce, and perform in any given jurisdiction only the standards and regulations of that particular jurisdiction? Also, can any potential agreement change or alter any given standard or requirement in a jurisdiction without specific legislative action by the political subdivision? Is the legislative adoption of the potential agreement an adoption of new standards is new standards are enumerated in the agreement?*

This is also a very broad question that is almost unanswerable without additional direction and guidance from the Board. In short, there is a procedure by which a county may enact county zoning in the unincorporated areas of the county, which may enable some regulation in those geographical areas. However, the procedure to enact county zoning can be complicated and lengthy. For the Board's review, I have attached a copy of the County Commissioners Association of Ohio Handbook section on county zoning. I have also attached a brief section of that handbook that addresses housing codes. Please keep in mind that these zoning procedures may address some of the matters you describe, but may not address all. I have been unable to locate specific legal authority that discusses countywide demolition and bonding rules. If the Board is able to provide me with any additional information on that point, I would be glad to review it. Otherwise, it is likely that the Board would lack authority to do so, as it is a creature of statute.

Absent any county zoning enacted pursuant to law, or any other regulations specifically permitted by law, it would be logical to presume that the Board's alternative proposition would apply. Specifically, the standards and regulations of the subdivision exercising or granting its original statutory powers would apply. In other words, a demolition in Warren Township would need to follow Warren Township's statutory authority and any other lawfully enacted standards and regulations. It is my understanding that some townships have zoning and/or property maintenance codes, but others do not. Therefore, assuming that the Attorney General believes this program to be a valid exercise of power, each township and municipality would likely need to determine the legal requirements on each of the topics enumerated by the Board, and require any other contracting subdivision to follow those requirements within that subdivision.

The final section of this particular question asks whether an agreement entered into among the subdivisions can alter the standards and requirements within a political subdivision, or whether any subdivision wishing to change its regulations would be required to do so be separate

action. At this point, based on the facts presented, this question is too broad to be effectively answered. The Board would need to advise this office of what particular regulations it would want to change, and we would then be able to research the statutory procedure to amend that particular regulation. As the Board is aware, there can be different procedures for amending building codes, zoning, housing codes, etc. In general, however, it is doubtful that the Board would have the ability to bypass local control through proper legal procedure by simply subverting existing regulation by contract.

Moreover, because this section of the Board's request includes the county, townships, home rule townships, and municipalities, each of these types of subdivisions would need to consult with their own legal counsel to determine what, if any, action would need to be taken to amend whatever particular regulation they would believe to be necessary. This office cannot provide an opinion to the Board that would be subsequently used to advise non-clients as to any legal matter. Therefore, those subdivisions would need to obtain their own legal advice. As noted above, if the Board was able to provide more detail as to the specific regulations it is referencing in this section, we may be able to provide a more detailed response. In fact, we will likely need more detail on this point before we proceed to request an opinion of the Ohio Attorney General so that we can be sure that office can effectively answer this question.

8. *If volunteers are permitted, is an assessment against a property owner for mowing, maintenance or demolition permitted?*

The answer to this question may depend on the legal authority for conducting the demolition. Because this proposal includes the county, townships, home rule townships, and municipalities, each of these types of subdivisions may have different statutes that authorize mowing, maintenance, or demolition and each may have different requirements for assessing the tax record. However, by way of example taken from two township statutes, it is doubtful that assessments against a property would be allowed when there is no actual cost to the township or county. Pursuant to R.C. 505.86 and 505.87, townships may use a statutory procedure to collect "costs" and "expenses." Based on the plain meaning of those words, if the volunteers would be used at without cost, the township would not be entitled to assess the property. If the township were allowed to do so, it would be making a profit on these operations, which is not the traditional function of the township. However, some costs actually incurred in conducting statutorily permitted nuisance abatement may be lawfully collected, assuming that the proper legal procedure has been followed. Each township or municipality should speak with its own legal counsel to determine which statutory authority would apply relative to a particular project. We will also include a question relative to cost recovery in our request to the Ohio Attorney General.

9. *If necessary, can the parties agree that the performing party would advise and negotiate any issues arising with a union work force in any particular jurisdiction?*

It appears that this question essentially asks whether the authority to engage in certain collective bargaining activities can be delegated through an agreement entered into pursuant to R.C. 9.482, R.C. 307.15, or another statute. I have been unable to locate any legal authority that specifically discusses such an ability. "The presumption is that the board or officer whose judgment and discretion is required, was chosen because they were deemed fit and competent to

exercise that judgment and discretion and unless power to substitute another in their place has been given, such board or officer cannot delegate these duties to another." *CB Transp., Inc. v. Butler Cty. Bd. of Mental Retardation*, 60 Ohio Misc. 71, 82, (C.P.1979), citing *Kelley v. Cincinnati* (1900), 7 Ohio N.P. 360; *Rieke v. Hogan* (1940), 34 Ohio Law Abs. 311; 44 O.Jur.2d, Public Officers, Section 65, at page 552. *Burkholder v. Lauber* (1965), 6 Ohio Misc. 152. Therefore, the question about whether these statutes permit for such delegation of authority will be part of our request to the Ohio Attorney General. It is also important to note that it is likely that any collective bargaining advice that would be considered the practice of law would need to be provided by that particular subdivision's legal counsel.

10. Is there any difference in a chartered city's ability to enter into an agreement under ORC 9.482 as opposed to a statutory city?

Neither the Board nor Trumbull County as a whole is a statutory city or chartered city. This office is not statutory legal counsel for municipal corporations, so any such municipality should speak with its own legal counsel to determine what steps would be necessary to enter into an agreement under R.C. 9.482 or any other statute.

11. Can materials and equipment be shared and utilized outside of an agreeing party's jurisdiction?

As noted above, and pursuant to R.C. 307.15, a political subdivision may perform the powers under the agreement "and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly." There is a legal argument that the power to share equipment and materials would be "incidental" to the power granted under the agreement. However, this argument could ultimately fail because of the prior opinion of the Ohio Attorney General, cited above, that suggests that powers cannot be exercised concurrently under R.C. 307.15. Moreover, as noted above, R.C. 9.482 does not contain the same language as R.C. 307.15. The Board should also be aware that R.C. 307.12(F) grants permission for the Board to lease certain personal property to other political subdivisions in some cases. This question, or some form of it, will be included in our request to the Attorney General.

12. How should the issue of bond be addressed in foreclosure actions? Would the political subdivision in which the foreclosed property is situated post the bond or make contribution to the collaborative offices for that cost? Similarly, are the bonding issues for demolition handled and paid by the political subdivision or the collaborative?

The first part of this question is unclear, in that it appears to suggest that there is a bond requirement for foreclosure actions. I am not aware of such a requirement in Trumbull County, and I have not been able to locate any legal authority that would specifically authorize a county to enact such a requirement. I am aware that the City of Youngstown has adopted a bond requirement for bank foreclosure cases, and I have attached some news articles that discuss this ordinance. I have also attached a news article from Massachusetts, whose policy Youngstown has adopted for its use, which explains that these ordinances have been subject to legal challenge. If the Board is aware of any legal authority that I have not uncovered on this topic, I would be glad to review it. Moreover, if the Board has any additional factual explanation as to this matter, I would be glad to provide further guidance if necessary.

The second part of this question appears to be asking which party will post a bond covering the actual demolition of the structure. The answer to this question may depend on the jurisdiction in which the property is located. I am not sure whether any, some, or all of the jurisdictions in Trumbull County require the posting of a bond before a structure is demolished. I believe that, as a practical matter, this may have been a requirement when the Board has hired firms for demolition to secure the performance of a contract. However, the requirements for any demolition should be carefully reviewed prior to any action to ensure that the jurisdiction's regulations, as well as state law, are followed. Again, this question appears to presume that a "collaborative" may be created. This question will be addressed to the Attorney General.

ADDITIONAL CONSIDERATIONS

In addition to the specific questions the Board has presented, there are also other items that the Board should consider. Below, I will discuss some of these other considerations. This is not an exhaustive list, however, and the Board should diligently consider what other topics may present additional questions relative to this program. Because the scope of this project is so large, and because it appears that such a program would be the first of its kind in Ohio, it is difficult to predict all of the legal, regulatory, liability, and audit risks that could flow from its implementation.

1. **Immunity** – Chapter 2744 of the Revised Code generally provides certain immunities when a government body engages in governmental and proprietary functions. R.C. 9.482(F) incorporates this immunity into agreements made under that statute, "insofar as it applies to the operation of a political subdivision." However, with the scope of the program being proposed, and the use of so many types of employees, prisoners, and volunteers, there is a serious question about how far the immunity statutes can be stretched to cover all of these workers. We will attempt to have the Attorney General provide a clear answer on this point.

2. **Insurance** – As the Board is aware, Trumbull County obtains its liability coverage through CORSA. Even assuming that the Attorney General believes there is legal authority that allows for the creation of such a joint enterprise, there may be practical insurance problems that could lead to significant liability risk for Trumbull County. Specifically, we assume that for any given project completed under this program, there could be involvement with county employees, city employees, township employees, ODRC inmates, and volunteers. Statutory immunity aside, this could mean that there could be up to four or five different insurance companies covering the entities participating in the program. If an incident were to occur, it would be very difficult to sort out which insurance coverage would be liable, and what coverage would be available. Therefore, even if the Attorney General believes there is legal authority that allows for the creation of such a joint enterprise, we strongly recommend that the Board not proceed unless and until CORSA if consulted and approves insurance language that will be used in an agreement among the parties.

3. **Workers Compensation** – Again, because of the variety of workers that are proposed to be part of this program, the Board should work with the Human Resources Department and Trumbull County's third-party administrator to have clearly defined workers compensation coverage requirements for each participating entity defined in an agreement. Doing so will help to avoid coverage disputes that might arise after implementation of such a program.

4. **Funding Sources** – From a legal, financial, and auditing perspective, the Board must also be cautious about the use of money, materials, employees, etc. that are funded through restricted funding sources. For example, pursuant to Ohio Constitution Article XII Section 5, money collected through a tax levy may only be used on the specific object of that particular levy. The Ohio Attorney General has opined that subsequent money derived from levy monies, including interest, must be used in accordance with the object of the levy. 1980 Ohio Op. Atty. Gen. No. 80-003. Therefore, the Board must ensure that no restricted levy funding is used for this program. Moreover, Ohio Constitution, Article XII, Section 5a similarly restricts the use of the County Engineer's highway fund to certain enumerated road and bridge related expenditures. Therefore, the Board should exercise great caution in using any money, materials, employees, etc. that are funded through restricted funds. We will attempt to get a clarifying answer on this point from the Attorney General, but it may be more of an audit question. In that case, improper use could lead to findings for recovery that would require repayment or other sanctions.

5. **Other Regulations** – When considering the demolition of structures and the cleanup of other refuse that may have environmental implications, it is also important that the Board have a plan for complying with all federal, state, and local rules and regulations that might be applicable. For example, the statutory procedure for proceeding must be followed in the political subdivision in which the property is located. The Board would need to ensure that all statutory and due process requirements are met before any demolition or other abatement is undertaken. Otherwise, the demolition or abatement may be improper, and the Board could be sued by someone with an interest in the property. Moreover, structures subject to demolition may contain asbestos, lead, or other substances which would require compliance with EPA regulations, and require proper remediation and disposal. Failure to do so could trigger liability for all parties engaged in the demolition. Each political subdivision may also have its own local regulations and permit requirements for demolition or abatement. Therefore, the Board should ensure that all local permits are obtained and regulations are followed.

Keep in mind that, due to the lack of specific facts provided and the scope of the proposed project, this opinion is not an exhaustive list of every potential issue that could arise under such a program. As the Board provides additional information, and as the Attorney General provides his opinion, we may be able to better address the complexities of this program. However, I hope this legal advice is helpful in the exercise of the Board's discretion. Should any additional legal questions arise, I am available to provide additional legal guidance at the Board's request. Also, should the Board be able to obtain any legal guidance that has been provided to any of the other interested political subdivisions, we would be interested to review it.

Respectfully,

William J. Danso
Assistant Prosecuting Attorney