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September 8, 2020

The Honorable Dave Yost
Ohio Attorney General
c/o Opinions Section
30 East Broad Street, 26th Floor
Columbus, OH 43215

Re: Request for a Formal Opinion
Non-Emergency Transports by County Emergency Medical Services

Dear Attorney General Yost:

On behalf of the Delaware County Board of Commissioners, I am respectfully requesting a formal opinion on the following questions:

1. May a county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, provide scheduled transport services of critical care patients?
2. May a county emergency medical service organization, operated by a board of county commissioners pursuant to R.C. 307.05, provide non-emergency patient transport services?

A board of county commissioners may operate an ambulance service organization or emergency medical service organization, or, in counties with a population of forty thousand or less, may operate a nonemergency patient transport service organization. R.C. 307.05. Delaware County has, for more than forty years, operated a countywide emergency medical service organization, known as Delaware County Emergency Medical Services ("DCEMS"). Due to the population of Delaware County being well in excess of forty thousand, it is not eligible to operate a nonemergency patient transport service organization, but DCEMS has identified a community need for reliable "non-emergency" transports of patients requiring critical care, such as ventilation, oxygenation, cardiac monitoring, the administration of medications, and other stabilization measures necessary for safe transport of critical care patients. While many emergency situations require the need to transport a critical care patient, there are other situations that are not "emergencies" in a general sense that require scheduled transports of critical care

patients. Without question, DCEMS may provide transports in the first type of situation, but questions and concerns have been raised as to whether DCEMS is permitted to provide transports in the second type of situation.

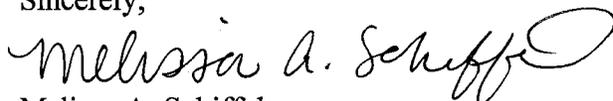
Two Ohio appellate court cases arising out of Sandusky County have contributed to the questions and concerns regarding scheduled transport services of critical care patients: *Romeo, et al., v. Bd. of County Comm'rs* (6th Dist., 1978), 64 Ohio App.2d 269; and *Goebel's Emergency Medical Service, Inc., v. Bd. of Comm'rs of Sandusky County* (6th Dist., 1989), 58 Ohio App.3d 25. In both cases, the Sixth District Court of Appeals held that a board of county commissioners may only provide ambulance services to emergency patients. In 1992, perhaps as a result of these opinions, R.C. 307.05 was amended to authorize operation of a nonemergency patient transport service organization in counties with a population of forty thousand or less. This authority remains in the statute to this day, on its face appearing to limit the authority of boards of county commissioners in counties with higher populations, but another important development in the law since the Sixth District Court of Appeals' opinions has been the change in the definitions related to emergency medical service organizations on which the Court based its holdings. Specifically, the definitions of "ambulance" and "emergency medical service" in R.C. 4765.01 have been broadened to encompass the evolving scope of practice for emergency medical service organizations. In fact, this change in definitions was a key component to a previous opinion from your office in regard to the ability of emergency medical technicians to perform services in non-emergency situations. 2016 Op. Att'y Gen. No. 2016-023.

Despite the apparent limitation of authority contained within R.C. 307.05, it would appear that the changes in definitions in R.C. 4765.01 permit DCEMS to provide scheduled, "non-emergency" transports of critical care patients. Nevertheless, because the establishment of a critical care transport team would involve the expenditure of DCEMS financial and personnel resources, the Delaware County Board of Commissioners has requested a formal opinion before proceeding with the proposal.

The second question posed in this request takes the issue one step further by eliminating the critical care component and asking whether a county emergency medical service organization may provide non-emergency patient transport services, regardless of the condition of the patient. While DCEMS is currently only contemplating a critical care transport service and has no plans to expand that service to a general non-emergency patient transport service, it would be beneficial to have guidance that would assist our clients in considering service options in the future.

We hope this request includes sufficient information in regard to the questions submitted, but if you should have any questions or require additional information, please do not hesitate to contact this office.

Sincerely,



Melissa A. Schiffel

Delaware County Prosecuting Attorney