

**Chief Assistant
Criminal Division**
PAULETTE LILLY

Assistant Prosecutors

BETTY J. BURLEY
ANN ECKSTEIN
DOMINIC GENTILE
JOSEPH H. GERBER
CHERYL GOODRUM
JESSICA PAULE
KRISTEN R. PALMER
VICKI R. PALMER
MARTHA SCHULTES
SAMUEL A.J. SIDOTI

Investigator
KEVIN DURBIN



KEVIN J. BAXTER
PROSECUTING ATTORNEY OF ERIE COUNTY

247 COLUMBUS AVENUE, SUITE 319
SANDUSKY, OHIO 44870-2636
PHONE (419) 627-7697
FAX (419) 627-7567
prosecutor@eriecounty.oh.gov

**Chief Assistant
Civil Division**
GERHARD R. GROSS

Assistant Prosecutors
SUSAN RYAN BROWN
GARY A. LICKFELT

Victim Assistance Director
SARAH B. REYNOLDS

Victim Advocates
BELINDA BUCHANAN
KAITLYNN DONNELLY
CRISTIONA RIEGER
MARIE WOODRUFF

Office Manager
BRENDA L. OEDER

January 12, 2021

Mr. David Yost **VIA EMAIL ONLY** OpinionsRequest@OhioAttorneyGeneral.gov
Ohio Attorney General
Opinions Section
30 E. Broad St., 14th Floor
Columbus, OH 43215

RE: Request for Attorney General Opinion

Dear Attorney General:

The Erie County Engineer has asked that we request an opinion with regard to the power of the Board of County Commissioners to control road repair and maintenance projects in the county that are proposed and designed by the County Engineer, through the Commissioners' power over appropriations.

Specifically, the current procedure is that the County Engineer submits road projects to the Commissioners; in some cases the Commissioners will not agree with certain specific procedures, methods, or materials proposed by the Engineer for maintaining the County's roadways, or even entire projects, pursuant to their authority to enter into contracts on behalf of the County under R.C. §305.25. The Engineer is concerned that these are factors within the expertise of the Engineer, and that determining which specific road projects to approve, and how the projects are accomplished (specific procedures, methods, or materials) are "engineering" decisions that should be made by him. In that regard, please see the attached letter from our County Engineer, in which he provides his perspective of the issue from the view of an engineer, and not a lawyer.

The questions posed are:

1. What is the extent or limitation of a board of county commissioners' authority to determine what road projects (maintenance and repair) to undertake, including details such as materials and methods to be used, or whether to undertake a project at all, even if such decisions disregard the county engineer's recommendations?

2. Is a board of county commissioners' authority limited to appropriating the funding necessary for the county engineer's operation to properly maintain the county system of highways as determined by the county engineer, so long as it is done within the budgeted appropriation to that office, and in a fiscally responsible manner?

In regard to these questions, we have reviewed Attorney General Opinions No's. 72-080, and 1931-3820, which seem instructive, but thought an updated opinion would be appropriate.

Thank you in advance for your attention to this matter. Should you have any questions or need any additional information, please contact Assistant Prosecutor Gerhard Gross at 419-627-7537 (direct) or ggross@eriecounty.oh.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin J. Baxter".

Kevin J. Baxter
Erie County Prosecuting Attorney

KJB/gg