

OPINION NO. 79-027**Syllabus:**

A board of county commissioners may expend funds, pursuant to R.C. 325.07, to pay for the repair of private vehicles damaged as a result of their use in an emergency rescue operation conducted by the county sheriff.

To: Thomas E. Ray, Morrow County Pros. Atty., Mt. Gilead, Ohio
By: William J. Brown, Attorney General, May 24, 1979

I have before me your request which concerns the authority of a board of county commissioners to pay for the cost of repairing certain vehicles which were damaged in the course of rescue operations during a winter blizzard. Your letter indicates that several private citizens supplied their vehicles for emergency rescues at the request of the county sheriff. During the rescue mission, several of the vehicles were damaged and were sent to a local repairman for needed work. The repairman would not release the vehicles to the owners until the bill was paid. To facilitate return of the vehicles, two county commissioners informally obligated themselves to pay the repair bill. In several other instances immediate repairs were unnecessary, but the vehicles were damaged. You have indicated that the board of county commissioners has since determined that the damage was in fact caused by the emergency operations and that funds do exist for payment of the claims. You ask whether the board may properly pay for the repairs.

It is a well settled principle that counties are creatures of the legislature and that county commissioners and other county officers have only those powers which the legislature has granted by statute and those which are necessarily implied by such statutes. For this reason, the authority of the county commissioners to act in financial transactions must be clear and distinctly granted; any doubt must be resolved against the power to make the expenditure. State ex rel. Locher v. Menning, 95 Ohio St. 97, 99 (1916). The county's authority to make the expenditures about which you inquire must, therefore, be found in a specific statutory provision or necessarily implied thereby.

The general rule regulating the allowance and payment of claims against a county is set forth in R.C. 307.55, which provides in pertinent part as follows:

No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

This statute does not, however, confer upon the board of county commissioners unlimited or discretionary power to authorize the payment of claims against the county. Rather, it only empowers the board to allow the payment of claims which are otherwise authorized by law. Jones v. Commissioners, 57 Ohio St. 189, 214-216 (1897). Further analysis of your question is, therefore, required.

In R.C. Chapter 5915, the General Assembly has made provision for the establishment of county-wide civil defense organizations which are empowered to

act in time of disaster. The director of such an organization is given broad powers to act to alleviate the effects of disasters, and it appears from the relevant statutes and the Governor's regulations promulgated pursuant to those statutes that a county director may have had the authority to make the payments necessitated by the situation you describe. There was, however, no such organization in existence in your county at the time of the blizzard. Since it was the county sheriff who requested and directed the use of the vehicles in this particular instance, it is appropriate to consider the various statutes permitting the expenditure of county funds for claims arising from the performance of the sheriff's duties.

One such statute is R.C. 307.47, set forth in pertinent part below, which provides relief for persons injured in automobiles commandeered by a police officer.

The board of county commissioners shall provide for the relief, out of the general funds of the county, of any person temporarily or permanently disabled by reason of his automobile being commandeered by any police officer of the county or other political subdivision in the discharge of his duty.

The statute is limited, however, to providing relief for personal injury. It does not, therefore, apply to a situation involving only property damage.

A more general statute is R.C. 325.07, which provides for the payment of certain necessary expenses incurred by the county sheriff in the performance of his official duties. That statute provides in pertinent part as follows:

In addition to the compensation and salary provided by section 325.06 of the Revised Code, the board of county commissioners shall make allowances monthly to each sheriff for his actual and necessary expenses incurred and expended in pursuing within or without the state or transporting persons accused or convicted of crimes and offenses, . . . and for all expenses of maintaining transportation facilities necessary to the proper administration of the duties of his office. (Emphasis added.)

In order to conclude that this statute provides authorization for the county to pay for the repair of private vehicles damaged while in use by or under the direction of the county sheriff, it is necessary to find that the sheriff's use of the vehicles was related to the performance of his official duties. I have no hesitation, however, in concluding that the sheriff's duty to preserve the public peace permits him to participate in emergency rescue operations and to incur necessary transportation expenses related thereto. It is, therefore, my opinion that a board of county commissioners may expend funds, pursuant to R.C. 325.07, to pay for the repair of private vehicles damaged as a result of their use in an emergency rescue operation conducted by the county sheriff. See 1958 Op. Att'y Gen. No. 3039, p. 676 (the removal of damaged motor vehicles and injured persons blocking the public highways is a duty of the sheriff in preserving the public peace; board of county commissioners may reimburse the sheriff for funds expended for ambulance and fire equipment service); 1915 Op. Att'y Gen. No. 154, Vol. 1, p. 295 (county commissioners may make allowance to county sheriff for actual and necessary expenses incurred by him in paying for repairs for his automobile when it is used by him in the performance of his official duties).

Your inquiry seeks only to clarify the authority of a board of county commissioners to expend funds for the repair of private vehicles used in an emergency rescue operation conducted by the county sheriff. The foregoing analysis is dispositive of this limited issue. It should be noted, however, that since

the expense was incurred by a county sheriff, funds may also be expended pursuant to R.C. 325.071 for this purpose. As discussed in 1967 Op. Att'y Gen. No. 67-120, funds provided to a county sheriff under R.C. 325.071 may be used for any purpose which is in furtherance of his responsibility to preserve justice.

In specific response to your question, it is, therefore, my opinion, and you are advised, that a board of county commissioners may expend funds, pursuant to R.C. 325.07, to pay for the repair of private vehicles damaged as a result of their use in an emergency rescue operation conducted by the county sheriff.