

May 23, 2017

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W., 4th Floor
Warren, Ohio 44481-1092

SYLLABUS:

2017-015

1. R.C. 6103.02(A) does not authorize a board of county commissioners to operate a waterworks on behalf of a village that is located outside any sewer district established by the board of county commissioners pursuant to the provisions in R.C. Chapter 6117.
2. Neither R.C. 5502.29 nor R.C. 5502.41 authorizes a board of county commissioners to operate a waterworks on behalf of a village when the village's board of trustees of public affairs has not hired employees to operate the village's water treatment facility.
3. R.C. 307.15 does not authorize a board of county commissioners to enter into an agreement with the legislative authority of a village whereby the board of county commissioners is authorized by the village legislative authority to manage and operate the village's waterworks.



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OPINION NO. 2017-015

The Honorable Dennis Watkins
Trumbull County Prosecuting Attorney
160 High Street N.W., 4th Floor
Warren, Ohio 44481-1092

Dear Prosecutor Watkins:

We have received your request regarding the authority of a board of county commissioners to operate a village waterworks. The Trumbull County Board of Commissioners desires to operate a waterworks that is owned by a village and operated by village officials. The village is not located in any county sewer district, nor does the village waterworks provide water to any county sewer district. You ask several questions regarding the authority of the Trumbull County Board of Commissioners to operate the village's waterworks.¹ First, you ask whether R.C. 6103.02, R.C. 5502.29, R.C. 5502.41, R.C. 307.15, or any other statute authorizes the Trumbull County Board of Commissioners to operate the village waterworks.² For ease of discussion, we have divided this inquiry into three separate questions:

1. Does R.C. 6103.02 authorize a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district?
2. Does R.C. 5502.29 or R.C. 5502.41 authorize a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district?

¹ Your letter requesting an opinion of the Attorney General asks several questions relating to the authority of the Trumbull County Board of Commissioners to employ a person to work at a water treatment facility owned by the Village of West Farmington and operated by village officials. In a second letter, you explain that the Trumbull County Board of Commissioners now desires to take over operation of the village's waterworks, including the water treatment facility at issue in your first letter. We have rephrased your questions to reflect these new facts.

² Trumbull County has not adopted a charter pursuant to Ohio Const. art. X, § 3. Therefore, in answering your questions, this opinion considers the authority of a statutory county to operate a village waterworks.

3. Does R.C. 307.15 or any other statute authorize a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district?

If one of the foregoing statutes authorizes the Trumbull County Board of Commissioners to operate the village waterworks, you ask the following additional questions:

4. May the board of county commissioners hire employees to work at the waterworks?
5. May the board of county commissioners expend moneys from the county water and sewer fund to meet the expenses associated with operating the waterworks?
6. May the board of county commissioners accept reimbursement from the village for all or a portion of the costs associated with operating the waterworks?

We shall address each of your questions, in turn, below.

R.C. 6103.02(A) Authorizes a Board of County Commissioners to Operate a Public Water Supply Facility for One or More Sewer Districts

The first question asks whether, pursuant to R.C. 6103.02, a board of county commissioners may operate a village waterworks that provides water to a village located outside any county sewer district. R.C. 6103.02(A) states, in pertinent part, that “[f]or the purpose of preserving and promoting the public health and welfare, a board of county commissioners may acquire ... and operate any public water supply facilities within its county for one or more sewer districts.” As used in R.C. Chapter 6103, the term “public water supply facilities” means any body of water, piece of equipment, facility, or real estate “necessary or useful in the proper development of a water supply for domestic or other purposes and its proper distribution.” R.C. 6103.01(A). R.C. Chapter 6117 authorizes the establishment of county sewer districts.³ R.C. 6117.01(B)(1) authorizes a board of county commissioners to “lay out, establish, ... and maintain, one or more sewer districts” in the unincorporated areas of the county. R.C. 6117.03

³ A village legislative authority may establish districts in the village “for the purpose of providing efficient sanitary sewerage, storm sewerage, or water supply.” R.C. 727.44. The term, “sewer districts,” as used in R.C. 6103.02(A), does not include any districts established by a village pursuant to R.C. 727.44. Rather, the term “sewer districts,” as used in R.C. 6103.02(A), means county sewer districts established by a board of county commissioners pursuant to the provisions in R.C. Chapter 6117. *See generally* 2016 Op. Att’y Gen. No. 2016-009, at 2-92 (recognizing that R.C. 6103.02(A) authorizes a board of county commissioners to operate water supply facilities for one or more sewer districts established in the county pursuant to R.C. 6117.01(B)(1)).

authorizes a board of county commissioners to include the territory of a municipal corporation in a sewer district “[w]henever authorized by the legislative authority of [the] municipal corporation.” In this instance, the territory of the village that owns the waterworks is not included in any sewer district established by the Trumbull County Board of Commissioners.

A board of county commissioners is a creature of statute, and may therefore exercise “only those powers conferred upon it expressly by statute or as may be implied by necessity in order to facilitate the exercise of another express power.” 2015 Op. Att’y Gen. No. 2015-007, at 2-73 (quoting 2009 Op. Att’y Gen. No. 2009-040, at 2-296). A board of county commissioners “may expend public funds only pursuant to clear statutory authority. Any doubt as to the authority to make an expenditure must be resolved against the expenditure.” 1983 Op. Att’y Gen. No. 83-042, at 2-162.

A prior opinion of the Attorney General concluded that a board of county commissioners may not acquire or operate a public water supply facility pursuant to G.C. 6602-17, predecessor to R.C. 6103.02, if the public water supply facility services a territory that is not included in any sewer district. *See* 1933 Op. Att’y Gen. No. 1792, vol. III, p. 1662 (syllabus, paragraph one) (“[b]efore the county commissioners may acquire or construct a public water supply or water works system within their county, a sewer district for such territory must first be [es]tablished”). Similar to the present language in R.C. 6103.02(A), G.C. 6602-17 stated that “[f]or the purpose of preserving and promoting the public health and welfare, ... the boards of county commissioners ... may ... acquire, construct, maintain and operate any public water supply or water works system within their respective counties, for any established sewer district.” 1933 Op. Att’y Gen. No. 1792, vol. III, p. 1662, at 1663 (quoting G.C. 6602-17). The Attorney General reasoned that the language in G.C. 6602-17 “shows clearly that the county commissioners can acquire or construct a public water supply or water works system only in an established sewer district.” *Id.* The Attorney General concluded: “It is apparent therefore that before the county commissioners of a county may acquire or construct a public water supply or water works system within the county, they must first establish a sewer district for the territory to be covered by such system.” *Id.* at 1664.

The Attorney General’s reading of G.C. 6602-17 in 1933 Op. Att’y Gen. No. 1792, vol. III, p. 1662 remains accurate and persuasive. The language in R.C. 6103.02(A), like its predecessor statute, unambiguously authorizes a board of county commissioners to acquire and operate a public water supply facility exclusively “for one or more sewer districts.” R.C. 6103.02(A) does not confer authority upon a board of county commissioners to acquire and operate a public water supply facility for a territory that is not included in any sewer district.

Accordingly, we conclude that R.C. 6103.02(A) does not authorize a board of county commissioners to operate a waterworks on behalf of a village that is located outside any sewer district established by the board of county commissioners pursuant to the provisions in R.C. Chapter 6117.

R.C. 5502.29 and R.C. 5502.41 Encourage Cooperation among Political Subdivisions in the Provision of Emergency Management Assistance or Aid

The second question asks whether R.C. 5502.29 or R.C. 5502.41 authorizes a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district. R.C. 5502.29 and R.C. 5502.41 are part of a group of statutes that govern emergency management within the state of Ohio. *See* R.C. 5502.21-.51. R.C. 5502.21(G) defines “emergency management” as “all emergency preparedness and civil defense activities and measures ... that are designed or undertaken to minimize the effects upon the civilian population caused or that could be caused by any hazard and that are necessary to address mitigation, emergency preparedness, response, and recovery.” *See* R.C. 5502.21(H) (defining “emergency preparedness”); R.C. 5502.21(L) (defining “mitigation”); R.C. 5502.21(N) (defining “recovery”); R.C. 5502.21(O) (defining “response”). R.C. 5502.21(H) defines “emergency preparedness” as “those activities and measures designed or undertaken in preparation for any hazard ... and that will enhance the probability for preservation of life, property, and the environment.”

“Civil defense” ... includes all those activities and measures designed or undertaken to minimize the effects upon the civilian population caused or that would be caused by any hazard and to effect emergency repairs to, or the emergency restoration of, vital equipment, resources, supplies, utilities, and facilities necessary for survival and for the public health, safety, and welfare that would be damaged or destroyed by any hazard.

R.C. 5502.21(D). “‘Hazard’ means any actual or imminent threat to the survival or overall health, safety, or welfare of the civilian population that is caused by any natural, human-made, or technological event ... includ[ing], without limitation, an attack, disaster, and emergency.” R.C. 5502.21(I); *see also* R.C. 5502.21(B) (defining “attack”); R.C. 5502.21(E) (defining “disaster”); R.C. 5501.21(F) (defining “emergency”).

R.C. 5502.29(B) authorizes political subdivisions, including a village and a county,⁴ to enter into mutual aid agreements with each other “for reciprocal emergency management assistance or aid for purposes of preparing for, responding to, and recovering from an incident, disaster, exercise, training activity, planned event, or emergency, any of which requires additional resources.” R.C. 5502.41(B) creates an intrastate mutual aid program “known as ‘the intrastate mutual aid compact’” (“IMAC”). The IMAC is designed “to complement existing mutual aid agreements” by requiring a “participating political subdivision,” including a

⁴ “As used in [R.C. 5502.29], ‘political subdivision’ has the same meaning as in [R.C. 5502.41].” R.C. 5502.29(A). The term, “political subdivision,” as defined in R.C. 5502.41(A)(6), “has the same meaning as in [R.C. 2744.01] and also includes a health district established under [R.C. Chapter 3709].” R.C. 2744.01(F) defines “political subdivision” to mean, among other things, a municipal corporation and a county.

participating county or village, to provide assistance or aid to a “participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency, any of which requires additional resources.” R.C. 5502.41(E)(1), (F); *see also* R.C. 2744.01(F) (defining “political subdivision” to include a county and a municipal corporation, among other entities); R.C. 5502.41(A)(6) (“[p]olitical subdivision’ ... has the same meaning as in [R.C. 2744.01] and also includes a health district established under [R.C. Chapter 3709]”). “Participating political subdivision’ means each political subdivision in” Ohio except any political subdivision that opts out of participation in the IMAC pursuant to a properly enacted or adopted ordinance, resolution, rule, bylaw, or regulation. R.C. 5502.41(A)(4). A participating political subdivision that needs assistance or aid from another participating political subdivision may request the assistance or aid by following one of the two procedures outlined in R.C. 5502.41(E)(1)(a) and R.C. 5502.41(E)(1)(b).⁵ R.C. 5502.41(E)(1). The IMAC requires a participating political subdivision to provide assistance or aid to the requesting participating political subdivision, subject to certain conditions. *See* R.C. 5502.41(F)(1)-(3).

You ask whether R.C. 5502.29 or R.C. 5502.41 confers upon a board of county commissioners authority to operate a village waterworks when, as in this instance, the village’s board of trustees of public affairs⁶ has not hired the employees necessary to operate the village’s water treatment facility. R.C. 5502.29 and R.C. 5502.41 authorize or require a political subdivision, under the circumstances set forth therein, to provide assistance or aid to another

⁵ R.C. 5502.41(E)(1) states:

A participating political subdivision that is impacted by an incident, disaster, exercise, training activity, planned event, or emergency, any of which requires additional resources, may request mutual assistance or aid by doing either of the following:

- (a) Declaring a state of emergency and issuing a request for assistance or aid from any other participating political subdivision;
- (b) Issuing to another participating political subdivision a verbal or written request for assistance or aid. If the request is made verbally, a written confirmation of the request shall be made not later than seventy-two hours after the verbal request is made.

⁶ A village waterworks is managed and controlled by a board of trustees of public affairs or a village administrator. *See* R.C. 735.28 (providing for the establishment of a board of trustees of public affairs); R.C. 735.271 (providing for the establishment of the position of village administrator). We understand that in this instance, the Village of West Farmington has established a board of trustees of public affairs. *See* The Village of West Farmington Website, available at <http://farmingtoncommunity.org/villagecouncil/index.shtml> (last visited May 17, 2017). Pursuant to R.C. 735.29, the board of trustees of public affairs is responsible for managing and controlling the waterworks and for appointing “necessary officers, employees, and agents.”

political subdivision when the latter of the two political subdivisions requires additional resources to prepare for, respond to, or recover from an “incident, disaster, exercise, training activity, planned event, or emergency.” The answer to your question therefore depends upon whether the failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is an “incident, disaster, exercise, training activity, planned event, or emergency,” as those terms are used in R.C. 5502.29 and R.C. 5502.41.

The terms, “disaster,” “planned event,” and “emergency” are defined by statute. R.C. 5502.21(E) defines “disaster” to mean “any imminent threat or actual occurrence of widespread or severe damage to or loss of property, personal hardship or injury, or loss of life that results from any natural phenomenon or act of a human.” A “disaster,” as defined in R.C. 5502.21(E), is included in the definition of “hazard,” as set forth in R.C. 5502.21(I). Therefore, if the failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is not a “hazard,” as defined in R.C. 5502.21(I), it cannot be a “disaster,” as defined in R.C. 5502.21(E).

The Ohio Emergency Management Agency (“OEMA”) publishes a Standard Hazard Mitigation Plan that identifies hazards that may threaten the survival or overall health, safety, or welfare of the civilian population in the state of Ohio. *See* State of Ohio Enhanced Hazard Mitigation Plan, *Section 2: Hazard Identification & Risk Assessment*, available at https://ohiosharpp.ema.state.oh.us/OhioSHARPP/Documents/OhioMitigationPlan/2014/Section_21_Overview.pdf (last visited May 17, 2017). The hazards identified in the OEMA’s Standard Hazard Mitigation Plan include natural disasters such as tornadoes, wildfires, and floods, as well as manmade hazards such as terrorism and nuclear accidents. *Id.* The hazards identified in the OEMA’s Standard Hazard Mitigation Plan demonstrate that the term “hazard” contemplates catastrophic events that, upon their occurrence, cause actual or imminent, substantial or severe damage to life, property, or the environment. A natural or manmade event that causes pollution in a public water supply facility or otherwise renders a local government unable to provide adequate and safe water to its residents may constitute a “hazard,” as defined in R.C. 5502.21(I). However, in this instance, the mere failure of a village board of trustees of public affairs to employ persons to work in a village water treatment facility is not the type of catastrophic, uncontrollable event that constitutes a “hazard” for purposes of the statutes that govern emergency management. Accordingly, the failure of a board of trustees of public affairs to employ persons to work in a village water treatment facility is not a “disaster,” as defined in R.C. 5502.21(E).

R.C. 5502.41(A)(5) defines “planned event” to mean “a scheduled nonemergency activity ... includ[ing], but ... not limited to, a sporting event, concert, or parade.”⁷ In common usage,

⁷ R.C. 5502.41(A)(5) defines “planned event” as the term is used in R.C. 5502.41. The term “planned event” is not expressly defined for the purpose of R.C. 5502.29. Nevertheless, given the similarities between R.C. 5502.29 and R.C. 5502.41 in both language and purpose, the definition of “planned event” in R.C. 5502.41(A)(5) is indicative of what the General Assembly

the word “scheduled” means “plan[ned] for a certain time.” *Webster’s New World College Dictionary* 1299 (5th ed. 2014); *see also* R.C. 1.42 (“[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage”). The failure of public officials to hire employees for a particular function is not an activity planned for a certain time. Therefore, the failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is not a “planned event,” as defined in R.C. 5502.41(A)(5).

R.C. 5502.21(F) defines “emergency” to mean “any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists.” R.C. 5502.21(C) defines “chief executive” to mean “the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state.” R.C. 5502.21(F) does not define “emergency” for the purpose of R.C. 5502.41. Nevertheless, the definition of “emergency” in R.C. 5502.41(A)(3) is nearly identical to the definition of “emergency” in R.C. 5502.21(F). R.C. 5502.41(A)(3) defines “emergency,” as used in R.C. 5502.41, to mean “any period during which the congress of the United States, a chief executive as defined in [R.C. 5502.21], or a chief executive of a participating political subdivision has declared or proclaimed that an emergency exists.” R.C. 5502.41(A)(1) defines “chief executive of a participating political subdivision” to mean “the elected chief executive of a participating political subdivision or, if the political subdivision does not have an elected chief executive, a member of the political subdivision’s governing body or an employee of the political subdivision appointed” as a representative for purposes of the political subdivision’s participation in the IMAC. We have no information to suggest that any of the public officials listed in R.C. 5502.21(F) or R.C. 5502.41(A)(3) have declared or proclaimed that an emergency exists in this instance. Therefore, under these circumstances, the failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is not an “emergency,” as that term is used in R.C. 5502.29 and R.C. 5502.41.

The terms “incident,” “exercise,” and “training activity” are not defined for the purpose of R.C. 5502.29 or R.C. 5502.41. In the absence of a statutory definition, R.C. 1.42 instructs that “[w]ords ... shall be read in context and construed according to the rules of grammar and common usage. Words ... that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.” Pursuant to R.C. 5502.28(C), the General Assembly adopted “[t]he national incident management system (NIMS) ... as the standard procedure for incident management in [Ohio].” NIMS is “a body of rules, standards and best practices” developed by the Federal Emergency Management Agency

likely intended in using the term “planned event” in R.C. 5502.29. *See* 2017 Op. Att’y Gen. No. 2017-012, slip op. at 4 (“[t]he Ohio Supreme Court has recognized that in the absence of a statutory definition, it is reasonable to derive the meaning of a term from a statute defining that term for purposes of another division or chapter of the Revised Code”). Therefore, we use the definition set forth in R.C. 5502.41(A)(5) to define “planned event,” as that term is used in R.C. 5502.29.

(“FEMA”) “to guide local governments in their disaster response preparation efforts.” *Smith v. Napolitano*, 626 F.Supp. 2d 81, 85 (D.D.C. 2009); *see also* FEMA Website, *National Incident Management System*, available at <https://www.fema.gov/national-incident-management-system> (choose “The National Incident Management System (NIMS)” dropdown link in the center of the webpage) (last visited May 17, 2017) (“[t]he National Incident Management System (NIMS) is a systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly and manage incidents involving all threats and hazards—regardless of cause, size, location, or complexity—in order to reduce loss of life, property and harm to the environment”). On its website, FEMA defines “incident” to mean “[a]n occurrence, natural or manmade, that requires a response to protect life or property.” FEMA Website, *Glossary*, available at <https://emilms.fema.gov/IS700aNEW/glossary.htm#I> (last visited, May 17, 2017). The types of occurrences that constitute an “incident” under FEMA’s definition “include major disasters, emergencies, terrorist attacks, terrorist threats, civil unrest, ... floods, hazardous materials spills, nuclear accidents, aircraft accidents, earthquakes, hurricanes, tornadoes, ... public health and medical emergencies, and other occurrences requiring an emergency response.” *Id.* Given that the General Assembly has adopted FEMA’s rules, standards, and best practices for the development of disaster response preparation in Ohio, we adopt FEMA’s definition of the term “incident” for purposes of R.C. 5502.29 and R.C. 5502.41.

FEMA’s definition of “incident” is similar to the definition of “hazard” in R.C. 5502.21(I). Like the term “hazard,” the term “incident,” as defined by FEMA, includes catastrophic events that have a potential to cause actual or imminent, substantial or severe damage to life, property, or the environment. As set forth above, the mere failure of a board of trustees of public affairs to employ persons to work in a village water treatment facility is not the type of catastrophic, disastrous event that constitutes a “hazard” for purposes of the statutes that govern emergency management. Accordingly, the failure of a board of trustees of public affairs to employ persons to work in a village water treatment facility also is not an “incident,” as that term is used in R.C. 5502.29 or R.C. 5502.41.

The terms “exercise” and “training activity” are not defined by statute or by FEMA. Therefore, we shall accord these terms their common meanings. *See* R.C. 1.42. *Webster’s New World College Dictionary* 508 defines an “exercise” to mean, among other things, a “performance (of duties, functions, etc.)” The failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility does not constitute a performance of duties or functions, but rather the failure to perform duties or functions. *Webster’s New World College Dictionary* 1536 defines “training,” in adjectival form, to mean “of or for use or preparation at an early stage of learning or development.” *Webster’s New World College Dictionary* 14 defines “activity” to mean “any specific action or pursuit.” Therefore, a “training activity” is a specific action or pursuit used or prepared at an early stage of learning or development. The failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is not an action or pursuit used or prepared at an early stage of learning or development. Therefore, the failure of a board of trustees of public affairs to hire

employees to operate a village water treatment facility is neither an “exercise” nor a “training activity,” as those terms are used in R.C. 5502.29 and R.C. 5502.41.

R.C. 5502.29 and R.C. 5502.41 authorize or require a political subdivision, under certain circumstances, to provide assistance or aid to a political subdivision that requires additional resources to prepare for, respond to, or recover from an “incident, disaster, exercise, training activity, planned event, or emergency.” The failure of a board of trustees of public affairs to hire employees to operate a village water treatment facility is not an “incident, disaster, exercise, training activity, planned event, or emergency,” within the meaning of R.C. 5502.29 and R.C. 5502.41. Accordingly, we conclude that neither R.C. 5502.29 nor R.C. 5502.41 authorizes a board of county commissioners to operate a waterworks on behalf of a village when the village’s board of trustees of public affairs has not hired employees to operate the village’s water treatment facility.

R.C. 307.15 Authorizes a Board of County Commissioners to Exercise Powers, Perform Functions, and Render Services for a Village or Village Legislative Authority

The third question asks whether R.C. 307.15 or any other statute authorizes a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district. “R.C. 307.15 ... 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.” 2016 Op. Att’y Gen. No. 2016-038, at 2-467 (quoting 1986 Op. Att’y Gen. No. 86-084, at 2-478). R.C. 307.15(A)(1) states, in pertinent part:

[T]he 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.

A board of county commissioners that enters into an agreement under R.C. 307.15(A)(1) “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.”⁸ R.C. 307.15(A)(2).

A village is a municipal corporation. *See generally* Ohio Const. art. XVIII, § 1 (“[m]unicipal corporations are hereby classified into cities and villages”). Therefore, R.C. 307.15 authorizes a board of county commissioners to enter into an agreement with the legislative authority of a village whereby the board undertakes, and is authorized by the village legislative authority to exercise powers, perform functions, and render services that the village or village legislative authority may exercise, perform, or render. You ask whether a board of county commissioners may enter into an agreement with the legislative authority of a village pursuant to R.C. 307.15 whereby the board of county commissioners undertakes, and is authorized by the village legislative authority, to operate the village’s waterworks. The answer to your question depends upon whether operation of the village’s waterworks is a power, function, or service that may be exercised, performed, or rendered by the village or its legislative authority.

The authority of a municipal corporation to own and operate a waterworks is derived from the Ohio Constitution. Ohio Const. art. XVIII, § 4 authorizes “[a]ny municipality [to] acquire, construct, own, lease and operate within or without its corporate limits, any public utility the products or service of which is or is to be supplied to the municipality or its inhabitants.” *See also* R.C. 717.01(G) (“[e]ach municipal corporation may ... [c]onstruct or acquire waterworks for supplying water to the municipal corporation and its inhabitants”); R.C. 743.01 (“[t]he legislative authority of a municipal corporation may take possession of any land obtained for the construction or extension of water works”). A waterworks is a public utility within the meaning of Ohio Const. art. XVIII, § 4. 1986 Op. Att’y Gen. No. 86-056, at 2-304.

R.C. 735.28 requires the legislative authority of a village in which a waterworks is situated or is to be constructed to “establish a board of trustees of public affairs, which shall consist of three members who are residents of the village.”⁹ R.C. 735.28. The mayor appoints the members of the board of trustees of public affairs, “subject to the confirmation of the

⁸ R.C. 307.15(A)(2) further provides that a board of county commissioners shall not “acquire any power to levy taxes within, and on behalf of, [the village] unless approved by a majority of the” village’s electors.

⁹ A village legislative authority may establish the position of village administrator pursuant to R.C. 735.271 to manage and control the waterworks instead of establishing a board of trustees of public affairs. *See* R.C. 735.272 (recognizing that the village administrator shall take the place of the board of trustees of public affairs); R.C. 735.273 (“[t]he village administrator appointed under [R.C. 735.271] shall manage, conduct, and control the water works”). In this instance, the Village of West Farmington has established a board of trustees of public affairs. *See* The Village of West Farmington Website, available at <http://farmingtoncommunity.org/villagecouncil/index.shtml> (last visited May 17, 2017).

[village] legislative authority.” *Id.* The successors of the appointed members are “elected at the next regular election of municipal officers held in the village which occurs more than one hundred days after the appointment.” *Id.*

Pursuant to R.C. 735.29, “[t]he board of trustees of public affairs ... shall manage, conduct, and control the waterworks, ... furnish supplies of water, ... collect all water ... rents or charges, and appoint necessary officers, employees, and agents.” The board of trustees of public affairs is authorized to make necessary bylaws and rules “as it determines to be necessary for the safe, economical, and efficient management and protection of such works,” and may assess water rents or charges “upon all tenements and premises supplied” with water to pay the operating and other expenses of the waterworks. *Id.* R.C. 735.29 also expressly confers upon a board of trustees of public affairs “the same powers and ... duties as are provided in [R.C. 743.01, R.C. 735.05-.07, R.C. 743.10, R.C. 743.11, R.C. 743.18, R.C. 743.24, and R.C. 735.05-.09], and ... such other duties as are prescribed by law or ordinance.” *See* R.C. 743.01 (authorizing the legislative authority of a municipal corporation to “take possession of any land obtained for the construction or extension of water works”); R.C. 743.05 (governing the disposition of surplus waterworks funds); R.C. 743.06 (“[m]oney collected for water-works purposes shall be deposited weekly with the treasurer of the municipal corporation, and shall be kept as a ... separate and distinct fund. When appropriated by the legislative authority of the municipal corporation, such money shall be subject to the order of the director of public service” who “shall sign all orders drawn on the treasurer of the municipal corporation against such fund”); R.C. 743.07 (authorizing the director of public service to “make contracts for the building of ... water-works buildings ... and the enlargement and repair thereof”); R.C. 743.10 (authorizing the director of public service to make rules and regulations to protect “water works against abuse, destruction, and unnecessary use or waste of water”); R.C. 743.11 (“[b]efore entering into any contract for work to be done concerning the water works of the municipal corporation, the director of public service shall ensure that the requirements of [R.C. 153.54] are met”); R.C. 743.18 (authorizing a municipal corporation to contract with another municipal corporation to supply water to the inhabitants of the other municipal corporation); R.C. 743.24 (“[a] municipal corporation may contract with any individual or ... company for supplying water”); R.C. 735.05-.09 (governing the authority of the board of trustees of public affairs, director of public service, or legislative authority of a municipal corporation to enter into particular contracts).

Several statutes confer upon a village or its legislative authority the authority to exercise powers or perform functions related to the operation of a village waterworks. *See, e.g.,* R.C. 743.01 (authorizing “[t]he legislative authority of a municipal corporation” to “take possession of any land ... for the construction or extension of water works”); R.C. 743.24 (“[a] municipal corporation may contract with any individual or an incorporated company for supplying water for fire purposes, or for cisterns, reservoirs, streets, squares, and other public places within its limits, or for the purpose of supplying the citizens of such municipal corporation with water”); R.C. 735.30 (the legislative authority of a village that owns and operates a waterworks “may levy a tax not to exceed five mills on each dollar valuation of the taxable property” in the village to pay the expenses associated with supplying water for fire protection). However, the authority to manage and control the day-to-day operations of a village waterworks, including the authority to

hire necessary employees, is conferred upon a board of trustees of public affairs. *See* R.C. 735.29. R.C. 307.15(A)(1) authorizes a board of county commissioners to enter into an agreement with the legislative authority of a village whereby the board shall “exercise any power, perform any function, or render any service on behalf of the [village] or its legislative authority, *that such [village] or legislative authority may exercise, perform, or render.*” (Emphasis added.) A board of trustees of public affairs is not a village, nor the legislative authority of a village. *See generally* R.C. 731.09(A) (a village legislative authority is “composed of six members, who shall be elected by the electors of the village at large, for terms of four years”). Therefore, a village legislative authority may not authorize a board of county commissioners to exercise powers, perform functions, or render services that a board of trustees of public affairs may exercise, perform, or render.

Accordingly, we conclude that R.C. 307.15 does not authorize a board of county commissioners to enter into an agreement with the legislative authority of a village whereby the board of county commissioners undertakes, and is authorized by the village legislative authority, to manage and control the village’s waterworks.

You ask whether any other statute authorizes a board of county commissioners to operate a village waterworks that provides water to a village located outside any county sewer district. No statute authorizes a board of county commissioners to take over the operation of a village waterworks in the manner and under the circumstances you describe.¹⁰ Because we have concluded that the Trumbull County Board of Commissioners may not, in this instance, take over the operation of a village waterworks pursuant to R.C. 6103.02(A), R.C. 5502.29, R.C. 5502.41, R.C. 307.15, or any other statute, it is unnecessary for us to answer the remaining questions, which are based upon the assumption that one of the foregoing statutes provides authority to the Board to operate the waterworks.

¹⁰ Although no statute authorizes a board of county commissioners to assume the operations of a village waterworks, R.C. 715.02 authorizes a county to enter into an agreement with a village for the joint management of a public utility. R.C. 715.02(A) states, in part: “[O]ne or more municipal corporations and one or more other political subdivisions ... may enter into an agreement for the joint construction or management ... of any public work, utility, or improvement, benefiting each municipal corporation or other political subdivision.” An agreement entered into pursuant to R.C. 715.02(A) shall provide “[t]he method by which the ... utility ... shall be jointly ... managed” and the apportionment of any expenses incurred in the joint management of the utility. R.C. 715.02(B)(1), (3). Such an agreement may provide for the assessment of costs against property benefited by the public utility. R.C. 715.02(C)(1)-(2).

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. R.C. 6103.02(A) does not authorize a board of county commissioners to operate a waterworks on behalf of a village that is located outside any sewer district established by the board of county commissioners pursuant to the provisions in R.C. Chapter 6117.
2. Neither R.C. 5502.29 nor R.C. 5502.41 authorizes a board of county commissioners to operate a waterworks on behalf of a village when the village's board of trustees of public affairs has not hired employees to operate the village's water treatment facility.
3. R.C. 307.15 does not authorize a board of county commissioners to enter into an agreement with the legislative authority of a village whereby the board of county commissioners is authorized by the village legislative authority to manage and operate the village's waterworks.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General