

OPINION NO. 94-095**Syllabus:**

1. Pursuant to R.C. 301.24 and R.C. 302.13(A), a county may by charter amendment place the general health district in the county under the legislative control of either the county executive or the legislative authority of the county, provided that the county charter provides for the performance of all powers and duties required to be performed by the general health district.
2. Ohio Const. art. X, § 3 does not authorize a county to adopt a charter amendment that would place a county board of mental retardation and developmental disabilities, a county children services board, a veterans service commission, or a county alcohol, drug addiction, and mental health services board under the legislative control of either the county executive or the legislative authority of a charter county.

To: Lynn C. Slaby, Summit County Prosecuting Attorney, Akron, Ohio
By: Lee Fisher, Attorney General, December 30, 1994

You have asked for an opinion regarding how much control, if any, a county council in a charter county may be given over separate boards and agencies within the county. In particular, your request notes that the County of Summit is the only chartered county in the State of Ohio. The county's charter provides for an elected county executive and an eleven (11) member council. Your letter sets forth your concerns as follows:

Since the County of Summit has a charter form of government, could a charter amendment be approved by the voters to place legislative control in our Council over the following agencies:

Mental Retardation and Developmental Disabilities
Children Services Board
Alcohol, Drug Addiction and Mental Health Board
Veterans' Service Commission
Summit County General Health District

Control over these agencies relates to budgetary, personnel, programming, etc. In other words, these agencies and boards shall become county agencies subject to total County Council or Executive control, ceasing to be independent bodies.

Constitutional Power of a Charter County

In general, the Ohio Revised Code provides that counties are creatures of statute and, accordingly, may exercise only those powers affirmatively granted by the General Assembly. *See Geauga County Bd. of Comm'rs v. Munn Rd. Sand & Gravel*, 67 Ohio St. 3d 579, 582-83, 621 N.E.2d 696, 699 (1993). However, in the case of a charter county such as the County of Summit, the Ohio Constitution provides for the exercise of what is commonly known as home rule authority. Ohio Const. art. X, § 3, states, in pertinent part, as follows:

The people of any county may frame and adopt or amend a charter as provided in this article.... Every such charter *shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election*. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.... *Any charter or amendment which alters the form and offices of county government ... shall become effective if approved by a majority of the electors.* (Emphasis added.)

The language of art. X, § 3 emphasized above authorizes a county, through properly adopted charter provisions, to restructure its government with respect to both the form of county government and its offices. Regardless of how a charter county chooses to restructure its government, however, the charter must provide for the exercise of all powers and the performance of all duties imposed by statute on counties and county officers. 1985 Op. Att'y Gen. No. 85-039; *accord* 1989 Op. Att'y Gen. No. 89-106. *See also* Stephen Cianca, *Home Rule in Ohio Counties: Legal and Constitutional Perspectives*, 19 U. Dayton L. Rev. 533, 538-39 (1994).

Limitations on Home Rule Authority

The authority of a charter county to determine its form of government under Ohio Const. art. X, § 3 is analogous to the authority of a municipality, pursuant to Ohio Const. art. XVIII, § 7, to "adopt or amend a charter for its government and ... subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government." *See* Op. No. 85-039 (concluding, based on case law interpreting art. XVIII, § 7, that the charter authority of a county pursuant to art. X, § 3, includes the power to alter the manner in which county officers are selected and the power to transfer duties imposed on a particular county officer by law to a different county officer, regardless of how that officer is selected). It follows that the authority of a charter county to determine its form of government is limited by the same restrictions placed upon the exercise of "powers of local self-government" by municipalities. *See generally Village of Beachwood v. Board of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958) (syllabus, paragraph one) ("[t]he power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality"); *State ex rel. Adkins v. Sobb*, 26 Ohio St. 3d 46, 48, 496 N.E.2d 994, 996 (1986) ("[s]tate law must govern ... when a statute addresses a matter of general and statewide concern in an area otherwise subject to municipal regulation"). Thus, a

county's authority to alter, by charter provision, the form of county government and the duties and powers of county officers is limited to matters that relate "solely to the government and administration of the internal affairs" of the county. Matters that are of "general and statewide concern," however, are not encompassed within the field of local self-government.

There is no single factor that the courts have relied on for purposes of determining whether a particular statutory scheme is of general and statewide concern and cannot be altered through the exercise of municipal powers of local self-government. Rather, this determination is made by reviewing the provisions within the relevant statutory scheme for evidence of the legislative intent. For example, in *State ex rel. Evans v. Moore*, 69 Ohio St. 2d 88, 431 N.E.2d 311 (1982), the court held that a city could not exempt itself, pursuant to its powers of local self-government, from compliance with the prevailing wage law. The court noted that the prevailing wage law had significant extraterritorial effects and that its provisions evidenced a "legislative intent to provide a comprehensive, uniform framework" governing the rights of workers in the construction trades. *Id.* at 91, 431 N.E.2d at 313. Similarly, in *State ex rel. Villari v. City of Bedford Heights*, 11 Ohio St. 3d 222, 465 N.E.2d 64 (1984), the court held that though generally the compensation of city employees is a matter of local concern, a city is nonetheless bound by the provisions of R.C. 9.44, which governs computation of vacation credits. The court found that the statute manifested a statewide concern for the security and protection of public employees. *Id.* at 225, 465 N.E.2d at 67.

Thus, the general question raised by your request is whether the operation of the agencies enumerated in your request relates solely to the government and administration of the internal affairs of the county, or whether the operation of these agencies extends to matters of general and statewide concern not traditionally within the field of local self-government. See generally Earl L. Shoup, *Constitutional Problems of County Home Rule in Ohio*, 1 W. Res. L. Rev. 111 (1949). Stated alternatively, the issue is whether the enumerated agencies are established by statute as "county offices" or whether, for the purpose of creating a uniform statewide scheme, the relevant statutory provisions establish these agencies as governmental bodies that are wholly or partly independent from the governments of the counties in which they are located.

The agencies listed in your request have been established pursuant to a variety of statutory provisions, and the legal issues that must be examined in answering your question will, therefore, vary among such entities. Accordingly, set forth below is a separate analysis relating to each of the entities listed in your request.

Mental Retardation and Developmental Disabilities Board

The creation of county mental retardation and developmental disabilities boards is governed by R.C. Chapter 5126. R.C. 5126.02 provides in relevant part:

There is hereby created in each county a county board of mental retardation and developmental disabilities consisting of seven members, five of whom shall be appointed by the board of county commissioners of the county, and two of whom shall be appointed by the probate judge of the county....

....
(C) A county board of mental retardation and developmental disabilities shall be operated as a separate administrative and service entity. The board's functions shall not be combined with the functions of any other entity of county government. (Emphasis added.)

Thus, while a county board of mental retardation and developmental disabilities is, for many purposes, a "county board," *see, e.g., Ebert v. Stark County Bd. of Mental Retardation*, 63 Ohio St. 2d 31, 406 N.E.2d 1098 (1980) (treating the board's employees as county employees for purposes of R.C. 124.38); *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (finding the board to be a county board entitled to representation by the county prosecuting attorney under R.C. 309.09), the General Assembly has clearly indicated through the enactment of R.C. 5126.02(C) that each such board be a "separate administrative and service entity," apart from all other functions of county government. Thus, Ohio Const. art. X, § 3 does not permit the amendment of a county charter to place administrative control of a county board of mental retardation and developmental disabilities in either the county council or the county executive.

Children Services Board

R.C. Chapter 5153 governs the establishment and operation of county children services boards. Each county is given a number of options for how to provide children services within the county. For example, R.C. 5153.02-.04 provide for the provision of such services by the county department of human services, by a separately constituted county children services board, or by the trustees of the county children's home, to be known as the county children services board. R.C. 5153.06 permits the transfer of the powers and duties from the county children services board or the board of trustees of the county children's home to the county department of human services. *See also* R.C. 5153.08 (creation of county department of human services or county children services board).

In those instances where a county children services board is created, the juvenile judge shall appoint one member of the board to serve at his pleasure, or may serve as such member in lieu of making an appointment. R.C. 5153.08. The board of county commissioners shall appoint and may remove the other four members of the board. *Id.*

Pursuant to R.C. 2151.353, however, a court that has adjudicated a child to be an abused, neglected, or dependent child is given certain dispositional alternatives, among which is the authority to commit the child to the custody of a "public children services agency." *See also* R.C. 2151.354 (disposition of unruly child); R.C. 2151.355 (disposition of delinquent child). As used in the Revised Code, a "public children services agency" is defined as "a children services board or a county department of human services that has assumed the administration of the children services function prescribed by [R.C. Chapter 5153]." R.C. 2151.011(A) (25). Because the General Assembly has empowered the juvenile courts to commit a child to the custody of a "public children services agency," it appears that the existence of such an agency is not purely a matter of the county's local self-government. *See Cupps v. City of Toledo*, 170 Ohio St. 144, 163 N.E.2d 384 (1959) (syllabus, paragraph one) (municipal powers of local self-government do not extend to regulation of the jurisdiction of courts established by the Ohio Constitution or by the General Assembly); 1980 Op. Att'y Gen. No. 80-014. Therefore, Ohio Const. art. X, § 3 does not empower a county to alter the statutory scheme governing the establishment and operation of a county children services board.

Alcohol, Drug Addiction and Mental Health Services Board

Pursuant to R.C. 340.01, an alcohol, drug addiction, and mental health *service district* shall be established in any county or counties having a population of at least fifty thousand to provide alcohol and drug addiction services and mental health services. R.C. 340.02 provides that for each such district there shall be appointed a board of alcohol, drug addiction, and mental

health services composed of eighteen members. R.C. 340.021, however, provides that a county with a population of 250,000 or more on its effective date (October 10, 1989) is required to establish an alcohol and drug addiction services board as the entity responsible for providing the alcohol and drug addiction services in the county, unless, prior to that date, the board adopted a resolution providing that the entity responsible for providing the services is a board of alcohol, drug addiction, and mental health services.

As noted in R.C. 340.011, one of the primary purposes of the provisions of R.C. Chapter 340 is the establishment of a unified system of treatment for mentally ill persons. To this end the General Assembly expressly provided for the establishment of alcohol, drug addiction, and mental health service districts that may or may not coincide with the geographical boundaries of the counties in which they are located and that have powers and duties separate and apart from those exercised by the counties. Accordingly, the establishment of such entities is not within the power granted to counties by Ohio Const. art. X, § 3.

Summit County General Health District

The establishment of city and general health districts is provided for generally in R.C. Chapter 3709. However, R.C. 301.24 provides in relevant part as follows:

The electors of any county may establish, by charter provision, a county department or agency for the administration of public health services. The authorities provided in accordance with the county charter shall exercise all the powers and perform all the duties which are vested in or imposed upon the authorities of city or general health districts. All health districts shall thereupon be abolished within the county, and the county shall succeed to the property, rights and obligations of such districts. The department of health shall have the same powers with respect to a county health department or agency as it possesses with reference to a general health district.

The language of R.C. 301.24 thus clearly provides for the establishment by county charter of a county department or agency to exercise all the powers and perform all the duties of a general health district. It further provides that in such event all health districts in the county shall be abolished and the county shall succeed to the property, rights, and obligations of such districts. *See also* R.C. 302.13(A) (providing, *inter alia*, that for alternative forms of county government a board of county commissioners may establish a department of health to perform the duties of a general health district). Accordingly, the county could by charter amendment provide for a county agency to be created under the legislative control of the county council to perform the functions of the Summit County General Health District.

Veterans Service Commission

R.C. Chapter 5901 provides for the establishment of a "veterans service commission" (formally known as a "soldiers' relief commission") in each county, the five members of which are appointed by a judge of the court of common pleas. R.C. 5901.02. To the extent persons are available to be appointed, the judge must make these appointments from recommendations made by the five organizations specified in that section, appointing one person to represent each such organization. *Id.* The fact that the General Assembly has placed the power of appointment of veterans service commission members in a judge of the court of common pleas demonstrates a legislative intent that such commissions be separate and apart from county government.

Thus, although a veterans service commission is considered a county entity for certain purposes, *see, e.g.*, 1980 Op. Att'y Gen. No. 80-102, such a commission is a distinct statutory entity with statutory powers independent of those exercised by the county. In particular, the veterans service commissions are authorized to administer in each county a statewide program of providing financial relief to needy veterans or various of their survivors as specified in R.C. 5901.02-.15. Since it is clear that a veterans service commission exists as an entity separate and apart from the county, there is no basis in the home rule powers of the county to reconstitute such a commission as a county agency subject to control of the county council or county executive. Rather, it must remain a separate and distinct entity operating in accordance with R.C. Chapter 5901.

Conclusion

It is, therefore, my opinion and you are hereby advised that:

1. Pursuant to R.C. 301.24 and R.C. 302.13(A), a county may by charter amendment place the general health district in the county under the legislative control of either the county executive or the legislative authority of the county, provided that the county charter provides for the performance of all powers and duties required to be performed by the general health district.
2. Ohio Const. art. X, § 3 does not authorize a county to adopt a charter amendment that would place a county board of mental retardation and developmental disabilities, a county children services board, a veterans service commission, or a county alcohol, drug addiction, and mental health services board under the legislative control of either the county executive or the legislative authority of a charter county.