

OPINION NO. 88-084**Syllabus:**

The board of county commissioners has no authority under R.C. 307.66 to appropriate funds to a chapter of a veterans' organization, if that chapter's charter papers designate a location outside the county as the chapter's principal office.

To: John A. Pfefferle, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 25, 1988

I have before me your request for my opinion regarding Memorial Day appropriations made by the board of county commissioners pursuant to R.C. 307.66. Specifically you ask whether the board of county commissioners may appropriate funds to a chapter of the Vietnam Veterans of America which, although located in an adjacent county, serves residents of your county and provides Memorial Day services in your county.

R.C. 307.66 states, in pertinent part:

The board of county commissioners, annually, shall appropriate...to each *chartered* camp, post, or garrison, or naval branch of any organization of veterans recognized and chartered by the congress,¹ upon the request of the officials thereof, *in the county*, a sum of money not to exceed two hundred dollars to aid in defraying the expenses of memorial day. (Emphasis and footnote added).

It is a well established principle that a board of county commissioners, being a creature of statute, may exercise only those powers expressly conferred on it by

¹ The congressional charter of Vietnam Veterans of America appears at 36 U.S.C. §§3801-3817.

statute or necessarily implied therefrom. See, e.g., *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Particularly in financial transactions, county commissioners may act only where their authority is clear and is distinctly granted. See, e.g., *State ex rel. A. Bentley & Sons Co. v. Pierce*, 96 Ohio St. 44, 117 N.E. 6 (1917); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916).

R.C. 307.66 authorizes the commissioners to appropriate funds to chartered local units of congressionally chartered veterans' organizations in the county. I am aware that a local unit of the Vietnam Veterans of America is called a "chapter" and that R.C. 307.66 authorizes appropriations to "each chartered camp, post, garrison, or naval branch" of a veterans' organization. Prior to 1939, G.C. 2503 (the predecessor statute to R.C. 307.66) authorized county appropriations to the local units of two groups of veterans: "to each post of the grand army of the republic and to each camp of Spanish war veterans, in the county." See 1910 Ohio Laws 106 (H.B. 129, signed April 18, 1910). In 1939, the General Assembly added an additional veterans' organization and a general clause to cover organizations not specifically listed: "...to each garrison or naval branch of the army and navy union, U.S.A., and to each *duly chartered camp, post, or garrison or naval branch of any organization of veterans of the world war*, in the county." See 1939 Ohio Laws 473 (H.B. 261, signed May 29, 1939)(Emphasis added). The clear intent of this expansive language, is to provide for "any organization of veterans," rather than to limit coverage to certain organizations.² I note that the list of types of local units (camp, post, garrison, naval branch) is a recitation of all the variations used by the specific organizations named in the statute. In accord with the broad legislative intent of the amendment, I conclude that this list was intended to emphasize that all types of local units are covered, rather than to exclude those not listed.³ I note also that the congressional charters of the American Legion and the Veterans of Foreign Wars include authority to establish "local chapter or post organizations," which further indicates the non-exclusive, interchangeable nature of these terms. See 36 U.S.C. §44 (American Legion corporate powers); 36 U.S.C. §114 (V.F.W. corporate powers). Thus the Vietnam Veterans of America chapter you describe is entitled to funds, if it is chartered and if it is "in the county."

Investigation by a member of my staff has confirmed that the chapter you describe holds a valid charter⁴ from the national organization of Vietnam Veterans of America. This charter designates a municipality outside your county as the location of the chapter. As defined in *Webster's New World Dictionary* 708 (2d college ed. 1972), "in" means "contained or enclosed by, inside; within [*in the room, in the envelope*]." Construing the word "in" in accord with its common meaning,⁵ the phrase "in the county" implies more than associational ties; it

² Subsequent amendments have not changed the expansive nature of this portion of the statute. In 1951, organizations of veterans of World War II were added, along with the requirement for a Congressional charter. 1951 Ohio Laws 35 (Am. S.B. 205, signed April 18, 1951). In 1983, the current language of the statute was enacted, removing references to either world war. 1983-1984 Ohio Laws, Part I, 152 (Am. S.B. 82, eff. Oct. 6, 1983).

³ See *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948)(syllabus, paragraph three)("[t]he rule of *expressio unius est exclusio alterius* [the specification of one thing implies the exclusion of another] is of no significance and is to be given no consideration in construction or interpretation of a statute when the application of such rule contravenes legislative intent").

⁴ *Webster's New World Dictionary*, 240 (2d college ed. 1972) defines "charter" as "a document by which a society authorizes the organization of a local chapter or lodge."

⁵ See R.C. 1.42, which states: "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." See also *Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (1946)(syllabus, paragraph three)("[i]n the absence of any

indicates a physical presence or location "inside" the county.⁶ Although I have found no case law governing the county of residence of such a chartered organization, I note that under Ohio law, domestic corporate entities establish their physical location, or residence, by designation in their articles of incorporation. *See Pelton v. Transportation Co.*, 37 Ohio St. 450, 455 (1882)("[i]n this state, where corporations are required to designate in their certificates of incorporation the place of the principal office, such office is the domicile or residence of the corporation....not to be determined by the amount of business transacted here or there, but by the place designated in the certificate"); *Sweeney v. Keystone Driller Co.*, 122 Ohio St. 16, 170 N.E. 436 (1930)(articles of incorporation determine county of residence for purpose of filing chattel mortgage); *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927)(for purposes of taxation of personal property, county of domicile is determined by corporate charter, not by location of business activities); 1960 Op. Att'y Gen. No. 1507, p. 473 (noting continued validity of *Pelton* and its progeny). It is by virtue of the charter with the national organization that local units of veterans' organizations are entitled to appropriations from the county, just as corporations are recognized as legal entities in the state by virtue of filing articles of incorporation. Thus the designation of the chapter's principal office or place of business in the charter is analogous to a corporation's choice of domicile in its articles. I conclude, therefore, that the board of county commissioners must look to the charter of the chapter of a veterans' organization to determine whether the chapter is "in the county" and may not consider the residences of members of the organization nor the organization's willingness to provide Memorial Day services.

Based upon the foregoing, it is my opinion and you are hereby advised that the board of county commissioners has no authority under R.C. 307.66 to appropriate funds to a chapter of a veterans' organization, if that chapter's charter papers designate a location outside the county as the chapter's principal office.

definition of the intended meaning of words or terms used in a legislative enactment they will, in the interpretation of the act, be given their common, ordinary and accepted meaning").

⁶ *See also State ex rel. Ciampitt v. Brown*, 165 Ohio St. 139, 133 N.E.2d 369 (1956)(per curiam)(in which the court contrasts the phrase "in the district" denoting "position with respect to a surrounding *encapsulation* or *enclosure*" with the phrase "of the district" denoting "*belonging to; relating to; connected with*").