

OPINION NO. 79-034**Syllabus:**

1. The competitive bidding requirements of R.C. 307.86 are not applicable to the purchase of real estate, or interests therein, by the Board of County Commissioners. Rather, acquisition of real estate by the Board of County Commissioners is governed by R.C. 307.08.
2. If other than a lease-purchase plan is employed by a board of county commissioners for the construction or lease of buildings, structures, or other improvements, the requirements of R.C. 307.02 regarding filing of information, publication of notice, submission of bids, and certification do not apply, since the portion of R.C. 307.02 including such requirements applies only to a lease-purchase plan; however, the competitive bidding requirements of R.C. 307.86 do apply. (1966 Op. Att'y Gen. No. 66-117, paragraph 2 of the syllabus, modified.)

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, July 2, 1979

I have before me your request for my opinion which raises the following question:

Is competitive bidding required under Ohio Revised Code Section 307.86 when purchasing land (assuming the [exceptions] of paragraphs A through F, inclusive, do not apply) for the Summit County Board of Mental Retardation by the County Commissioners or does section 307.02 control so as to exclude the need for competitive bidding?

The first section of the Revised Code to which your question refers, R.C. 307.86, provides, in part, as follows:

Anything to be purchased, leased, leased with an option or agreement to purchase, or constructed, including, but not limited to, any product, structure, construction, reconstruction, improvement, maintenance, repair, or service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of two thousand dollars, except as otherwise provided in section 307.02, 3501.301, 3505.13, 5543.19, 5713.01, 6137.05, or sections 4115.31 to 4115.35 of the Revised Code, shall be obtained through competitive bidding. (Emphasis added.)

R.C. 307.02 provides, in part, as follows:

The board of county commissioners of any county, in addition to its other powers, may purchase, for cash

or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a . . . community mental health facility or community mental retardation facility

The board of county commissioners of any county may lease for a period not to exceed forty years, pursuant to a contract providing for the construction thereof under a lease-purchase plan, those buildings, structures, and other improvements enumerated in the first paragraph of this section

Whenever any building, structure or other improvement is to be so leased by a county, the board of county commissioners shall file with the county engineer such basic plans, specifications, bills of materials, and estimates of cost with sufficient detail to afford bidders all needed information, or alternatively, shall file the following plans, details, bills of materials, and specifications:

- (A) Full and accurate plans, suitable for the use of mechanics and other builders in such construction, improvement, addition, alteration, or installation;
- (B) Details to scale and full sized, so drawn and represented as to be easily understood;
- (C) Accurate bills showing the exact quantity of different kinds of materials necessary to the construction;
- (D) Definite and complete specifications of the work to be performed, together with such directions as will enable a competent mechanic or other builder to carry them out and afford bidders all needed information;
- (E) A full and accurate estimate of each item of expense and of the aggregate cost thereof.

The board of county commissioners shall give public notice, in such newspaper and in such form and with such phraseology as the board of county commissioners orders, published once each week for four consecutive weeks, of the time and place, when and where bids will be received for entering into an agreement to lease to the county a building, structure, or other improvement

The section then goes on to establish elaborate bidding procedures.

In a recent case, *Yoder v. County of Williams*, 48 Ohio App. 2d 36 (1976), both R.C. 307.02 and R.C. 307.86 were in issue. The county commissioners had entered into a lease of office space on behalf of the welfare department, pursuant to R.C. 307.02, without taking any bids. Taxpayer Yoder argued that this action was violative of R.C. 307.86. The county argued that R.C. 307.86 did not apply to a lease of office space under R.C. 307.02. The county relied upon 1966 Op. Atty Gen. No. 66-117, which reached the following conclusions:

1. Section 307.02, Revised Code, authorizes a board of county commissioners to enter into a contract providing for the construction and lease of a building and related parking facilities for the county welfare department by other than a lease-purchase agreement. This section specifically authorizes the board to "lease" or "lease with option to purchase" such a building.

2. If other than a lease-purchase plan is employed, the requirements of Section 307.02, Revised Code, regarding filing of information, publication of notice, submission of bids, and certification do not apply as the portion of the section including such requirements applies only to a lease-purchase plan.

The Court found the county's argument to be ill-founded. The Court noted that R.C. 307.86 was enacted subsequent to the 1966 opinion, and found that the opinion was not persuasive. The Court concluded:

We hold with the trial court that R.C. 307.86 is all embracing and inclusive and required that competitive bids should have been taken for the lease in question.

Paragraph 2 of the syllabus of 1966 Op. Att'y Gen. No. 66-117 is correct as far as it goes; the bidding requirements of R.C. 307.02 apply only to lease-purchase plans. Nevertheless, that paragraph should be modified, in light of the enactment of R.C. 307.86 and the Yoder case, to reflect that the competitive bidding requirements of R.C. 307.86 do apply to the construction or lease of buildings, structures, or other improvements by means other than lease-purchase agreements.

While it appears clear that, under R.C. 307.02, R.C. 307.86, and Yoder, competitive bids are required prior to a lease of property, I am compelled to reach a different result with respect to the purchase of real estate. First of all, because real estate is unique, the purchase thereof is not really susceptible to a competitive bidding process. More persuasive, however, is R.C. 307.08, which states:

When, in the opinion of the board of county commissioners, it is necessary to procure real estate, a right-of-way, or an easement for a courthouse, jail, or public offices, or for a bridge and the approaches thereto, or other structure, or public market place or market house, proceedings shall be had in accordance with Sections 163.01 to 163.22, inclusive, of the Revised Code. (Emphasis added.)

This section thus specifically governs the acquisition of real estate and, under the rule of construction set forth in R.C. 1.51, must prevail over the general provision of R.C. 307.86 to the extent there is any conflict between the two. Under the terms of R.C. 163.04, which is specifically made applicable by R.C. 307.08, a public agency has a duty to attempt to agree with the owner of real property for the purchase of realty prior to invoking the appropriation process. I am of the opinion that this provision must be construed as authorizing the purchase of a particular parcel of real property without competitive bidding, since the power of appropriation vested in the commissioners under R.C. 307.08 and R.C. Chapter 163 would be meaningless if that body were not free to determine what particular parcels of land best suit the public purpose and to attempt to purchase such parcels without the invocation of the power of eminent domain.

Accordingly, it is my opinion, and you are advised, that:

1. The competitive bidding requirements of R.C. 307.86 are not applicable to the purchase of real estate, or interests therein, by the Board of County Commissioners. Rather, acquisition of real estate by the Board of County Commissioners is governed by R.C. 307.08.
2. If other than a lease-purchase plan is employed by a board of county commissioners for the construction or lease of buildings, structures, or other improvements, the requirements of R.C. 307.02 regarding filing of information, publication

of notice, submission of bids, and certification do not apply, since the portion of R.C. 307.02 including such requirements applies only to a lease-purchase plan; however, the competitive bidding requirements of R.C. 307.86 do apply. (1966 Op. Att'y Gen. No. 66-117, paragraph 2 of the syllabus, modified.)