

August 26, 2015

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

SYLLABUS:

2015-027

1. The authority of a board of county commissioners to provide and maintain a courthouse and to keep a courthouse safe pursuant to R.C. 305.16, R.C. 307.01(A), R.C. 307.02, and R.C. 311.07(A) by necessary implication includes the authority to determine whether portions of a courthouse should be closed when conditions affecting the courthouse pose a threat to the health and safety of the people inside the courthouse.
2. A board of county commissioners may decide to close portions of a courthouse that are occupied by county offices when conditions affecting the courthouse pose a threat to the health and safety of the people inside the courthouse. A board of county commissioners has no authority to close portions of a courthouse that are occupied by or are necessary to the efficient operation of the courts.
3. The authority of the Hardin County Board of Commissioners to close portions of a courthouse when the health and safety of the people in the courthouse is threatened shall be exercised reasonably and in a manner that is consistent with the terms of the countywide emergency management agency's emergency management program and all-hazards emergency operations plan, including standard operating procedures maintained in accordance with that emergency operations plan.



August 26, 2015

OPINION NO. 2015-027

The Honorable Bradford W. Bailey
Hardin County Prosecuting Attorney
One Courthouse Square, Suite 50
Kenton, Ohio 43326-1575

Dear Prosecutor Bailey:

You have requested an opinion whether a board of county commissioners has the authority to decide to close a courthouse in an emergency. You have inquired about the following emergencies: dangerous weather conditions, a loss of electricity, or a bomb threat. We infer that a board of county commissioners wishes to close a courthouse in those situations because a danger is posed to the health or safety of the people in the courthouse as a result of a dangerous weather condition, a loss of electricity, or a bomb threat. In this opinion, we use the term “emergency” to refer to those situations.¹

Board of County Commissioners’ Authority to Close a Courthouse

You have asked whether a board of county commissioners may decide to close a courthouse in an emergency. We understand the phrase “decide to close” to mean deciding whether the public and county officers and personnel may continue to access the courthouse building, whether personnel may be released from their job duties, and whether the courts and county offices that are located in the courthouse will continue to operate and perform official duties.² See generally *Merriam-Webster’s Collegiate Dictionary* 233 (11th ed. 2005) (defining “close” as “to block against entry or passage ... to suspend or stop the operations of”); *id.* at 322 (defining “decide” as “to make a final choice or

¹ In light of the nature of the emergencies highlighted in your letter, this opinion does not address emergencies involving hazardous chemicals or hazardous substances under R.C. Chapter 3750.

² In addition to providing space for the operation of the courts, a county courthouse may also be utilized to house county offices. See *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 46 N.E.2d 865 (1943) (syllabus, paragraph 1) (“[t]he primary and paramount purpose of a courthouse ... is to furnish the rooms and facilities” for the court); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65, 119 N.E. 136 (1917) (offices for county officers may be provided in a county courthouse).

judgment about”). Therefore, closing a courthouse also has the effect of closing the courts and individual county offices that are located within the courthouse.

“It is well established that a board of county commissioners is a creature of statute that may 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.” 2009 Op. Att’y Gen. No. 2009-040, at 2-296. Powers granted to a board of county commissioners in a statute “must be strictly construed.” *State ex rel. Vogel v. Comm’rs*, 7 Ohio Dec. 34, 47 (C.P. Ottawa County 1897).

A board of county commissioners holds title to all property owned by the county. *Burkholder v. Lauber*, 6 Ohio Misc. 152, 154, 216 N.E.2d 909 (C.P. Fulton County 1965); *see also* 2006 Op. Att’y Gen. No. 2006-001, at 2-4 (“regardless of which county office or entity customarily uses or occupies particular county property, ownership of county property is vested in the county’s board of commissioners[.]” unless the board of county commissioners has transferred title of the property to another governmental entity under R.C. 307.10(B) (footnote omitted)). Management and control of county property are duties of the board of county commissioners. *See Fromm v. State*, 36 Ohio App. 346, 349, 173 N.E. 201 (Cuyahoga County 1930) (“[t]he statutes of Ohio make it the duty of the county commissioners to have charge and supervision of all the public buildings belonging to the county, in such county, and to erect, furnish, and maintain those buildings”); *Dall v. Cuyahoga Cnty. Building Comm’n*, 24 Ohio Dec. 9, 11 (C. P. Cuyahoga County 1913) (“[t]he board [of county commissioners] is the representative and guardian of the county, having the management and control of its property”); *accord* 2007 Op. Att’y Gen. No. 2007-045, at 2-447 to 2-448. “In the exercise of its duty to manage and control county property ..., the board of county commissioners has broad discretion as to the manner in which it carries out such responsibilities.” 1997 Op. Att’y Gen. No. 97-001, at 2-6 n.10.

By express statutory provision, a board of county commissioners has additional powers with respect to a county courthouse. The board has the authority to provide a courthouse when the board determines that a courthouse is needed. R.C. 307.01(A). The board also has the authority to “construct, enlarge, improve, rebuild, equip, and furnish a courthouse[.]” R.C. 307.02. “The board of county commissioners may employ a superintendent, and such watchmen, janitors, and other employees as are necessary for the care and custody of the [courthouse.]” R.C. 305.16. While a county sheriff has “charge of the court house[.]” he exercises that authority “[u]nder the direction and control of the board of county commissioners[.]” R.C. 311.07(A).

A board of county commissioners’ duty to manage and control county property coupled with the board’s express authority to provide, maintain, and care for a courthouse pursuant to R.C. 307.01(A), R.C. 307.02, R.C. 305.16, and R.C. 311.07(A) leads to the conclusion that a board of county commissioners also has a duty to keep the courthouse safe. *See Britt v. Franklin Cnty. Comm’rs*, 148 Ohio App. 3d 395, 2002-Ohio-3679, 773 N.E.2d 612, at ¶ 23 (Franklin County); 2015 Op. Att’y Gen. No. 2015-015, slip op. at 3; 2001 Op. Att’y Gen. No. 2001-006, at 2-40 (“[b]ecause a board of county commissioners is required by R.C. 307.01(A) to manage and control the courthouse, the board is required to keep the courthouse safe and in good repair” (explained by 2015 Op. Att’y Gen. No. 2015-015)); 1989 Op. Att’y Gen. No. 89-029, at 2-122 (“[c]ustody and control of county

property carries the duty of care and maintenance”); 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“[i]mplicit in the power to preserve and protect county buildings is the power to institute policies and procedures that reduce fire risks and insure the safe operation of facilities within the buildings”); *see generally Merriam-Webster’s Collegiate Dictionary* 1095 (11th ed. 2005) (defining “safe” as “**1** : free from harm or risk ... **2 a** : secure from threat of danger, harm, or loss ... **3** : affording safety or security from danger, risk, or difficulty”).

A necessary part of keeping a courthouse safe is determining when conditions within the courthouse are such that the health and safety of the people within the courthouse are at risk. The authority to make such a determination carries with it the authority to decide whether portions of the courthouse should be closed in order to protect human health and safety. Thus, insofar as a board of county commissioners has the duty to keep a courthouse safe, the board also has the authority to determine whether the courthouse should be closed when it is unsafe. *See State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, 112 N.E. 138 (1915) (“[i]t would be the merest folly to command [a public officer] to do a particular thing and then withhold from him the power to do it”); 1990 Op. Att’y Gen. No. 90-029 (syllabus, paragraph 1) (“[a] board of township trustees, pursuant to the duty of R.C. 5571.02 to control township roads and keep them in good repair, has the authority to temporarily close a township road when the road is impassable or dangerous to the travelling public or when continued use of the road would cause excessive damage to the road resulting in the road being closed to the public for extensive repair”); 1989 Op. Att’y Gen. No. 89-018, at 2-85 (“[s]ince a board of education is vested, pursuant to R.C. 3313.47, with the duty to manage and control the schools of the district and is authorized, pursuant to R.C. 3313.20, to adopt rules and regulations necessary for the governance of the district’s employees and pupils, it is the responsibility of the board of education to determine whether to close a school on a particular day”). *But see* 1986 Op. Att’y Gen. No. 86-023, at 2-121 and 2-123 (even though “a county engineer has general charge of and supervises the construction, maintenance and repair of county roads and supervises the construction, maintenance and repair of township roads[,]” the engineer does not have express or necessarily implied authority “to close county and township roads during a snow emergency[;]” that authority rests with the county sheriff as part of his duty to preserve the public peace).

The exercise of a board of county commissioners’ authority to close a courthouse is tempered by the inherent powers of the courts. *See* 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“[t]he powers of the county commissioners to protect and preserve county buildings must, however, be evaluated in relation to the interests of the judiciary in having facilities that permit the proper and efficient operation of the courts”). While a board of county commissioners has the responsibility to manage and control a courthouse, “full control is vested in the commissioners only as to facilities *not* occupied by the court.” 1989 Op. Att’y Gen. No. 89-029, at 2-122. “[A] court of general jurisdiction located in a courthouse has a paramount right to the space therein which is essential to the proper and efficient operation of such court[.]” *State ex rel. Hottle v. Bd. of Cnty. Comm’rs of Highland Cnty.*, 52 Ohio St. 2d 117, 120, 370 N.E.2d 462 (1977). Even if the courts do not occupy the entire courthouse, the space the courts do occupy “is as much within the control and jurisdiction of the courts as if the whole building were devoted exclusively to judicial purposes.” *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 65-66, 119 N.E. 136 (1917).

Recognition of a court's authority in a courthouse is based upon the judiciary's status as a separate branch of government. See *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981) (syllabus, paragraph 1) (“[t]he administration of justice by the judicial branch of the government cannot be impeded by the other branches of the government in the exercise of their respective powers”); *State ex rel. Foster v. Wittenberg*, 16 Ohio St. 2d 89, 92, 242 N.E.2d 884 (1968) (“[t]he proper administration of justice requires that the judiciary be free from interference in its operations by such other branches”); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. at 66 (“[t]he judicial power is a separate and independent department of government”). The separation of powers doctrine is implicit in the Ohio Constitution's creation of three distinct branches of government: the legislative, Ohio Const. art. II, § 1; the executive, Ohio Const. art. III, § 1; and the judicial, Ohio Const. art. IV, § 1. See *State ex rel. Montgomery v. Rogers*, 71 Ohio St. 203, 216-17, 73 N.E. 461 (1905); *City of Columbus v. Anderson*, 27 Ohio App. 3d 307, 308, 500 N.E.2d 1384 (Franklin County 1985); 2004 Op. Att’y Gen. No. 2004-003, at 2-18. Under the separation of powers doctrine, the powers of one branch of government may not be conferred upon another branch of government. See *State ex rel. Montgomery v. Rogers*, 71 Ohio St. at 217 (“the distribution so made to the several departments, by clear implication operates as a limitation upon and a prohibition of the right to confer or impose upon either powers that belong distinctively to one of the other co-ordinate branches”). Furthermore, one branch of government may not exercise its powers over another branch so as to interfere with that branch's independence. See *State ex rel. Dann v. Taft*, 109 Ohio St. 3d 364, 2006-Ohio-1825, 848 N.E.2d 472, at ¶56 (“[t]he separation-of-powers doctrine requires that each branch of government be permitted to exercise its constitutional duties without interference from the other two branches of government” (footnote omitted)); *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955) (syllabus, paragraph 1) (“[t]he legislative, executive and judicial branches of government are separate and distinct and neither may impinge upon the authority or rights of the others; such branches are of equal importance”); *State ex rel. Bryant v. Akron Metro. Park Dist. for Summit Cnty.*, 120 Ohio St. 464, 473, 166 N.E. 407 (1929) (“[t]he essential principle underlying the policy of the division of powers of government ... is that powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments, and further that none of them ought to possess directly or indirectly an overruling influence over the others”).

Consequently, “[c]ourts of general jurisdiction ... possess all powers necessary to secure and safeguard the free and untrammelled exercise of their judicial functions and cannot be directed, controlled or impeded therein by other branches of the government.” *Zangerle v. Court of Common Pleas of Cuyahoga Cnty.*, 141 Ohio St. 70, 40 N.E.2d 865 (1943) (syllabus, paragraph 2); accord *State ex rel. Johnston v. Taulbee* (syllabus, paragraph 2); *State ex rel. Foster v. Wittenberg* (syllabus, paragraph 2); 1987 Op. Att’y Gen. No. 87-039, at 2-262 (“a court is entitled to the provision of such facilities, and the control over such facilities, as may be necessary for the proper and efficient operation of the court” (emphasis added)). But see *Comm. for Marion Cnty. Bar Ass’n v. Cnty. of Marion*, 162 Ohio St. 345, 123 N.E.2d 521 (1954) (syllabus) (“the Common Pleas Court has no power to order the county commissioners to provide an elevator and a shaft therefor in its courthouse even where it has determined that such elevator is essential to the efficient performance of the functions of that court”).

Accordingly, a board of county commissioners may develop policies or make decisions regarding the care and safe operation of a courthouse so long as the proper and efficient operation of the courts is not restricted by those policies or decisions. *See* 1987 Op. Att’y Gen. No. 87-039, at 2-263. The authority to decide whether to open or close a court is integral to a court’s proper and efficient operation. A court’s inherent authority to ensure its proper and efficient operation necessarily includes the authority to determine whether to close or remain open, even in an emergency. Thus, a board of county commissioners’ authority to decide to close a courthouse is limited to those areas of the courthouse that are neither occupied by a court nor necessary to a court’s efficient operation.³

In sum, the authority of a board of county commissioners to provide and maintain a courthouse and to keep a courthouse safe pursuant to R.C. 305.16, R.C. 307.01(A), R.C. 307.02, and R.C. 311.07(A) by necessary implication includes the authority to determine whether portions of a courthouse should be closed when conditions affecting the courthouse pose a threat to the health and safety of the people inside the courthouse.⁴ When conditions affecting a courthouse pose a threat to

³ Although a board of county commissioners may not close portions of a courthouse that are occupied by a court, it may be prudent for a court to agree to close under the same conditions that lead to a decision to close other county offices within the courthouse. Cooperation among the branches of government is a critical aspect of the separation of powers. *State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 420, 423 N.E.2d 80 (1981) (“[t]he decisions reflect that a reasonably exercised spirit of mutual cooperation among the various branches of government is essential”); *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 155, 126 N.E.2d 57 (1955) (“each in exercising its prerogatives and authority must have regard for the prerogatives and authority of the others”). It is presumed that the courts and other county officials will exercise their discretion reasonably in order to achieve a consistent and efficient result when a threat to the health and safety of the people inside the courthouse exists. *See State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878).

⁴ Several Attorney General opinions have concluded that the authority to determine when county offices may open or close under ordinary circumstances is within the discretion of the county officers rather than within the discretion of the board of county commissioners. 1965 Op. Att’y Gen. No. 65-217, at 2-473 (“the General Assembly has left to the discretion of each county officer the determination whether his office will be closed on [a legal holiday]”); 1965 Op. Att’y Gen. No. 65-106, at 2-220 (“[t]he number of hours a public office should remain open is a matter to be determined by the individual county officer”); 1954 Op. Att’y Gen. No. 3480, p. 32, 34 (“the General Assembly has left to the sound discretion of each individually elected county officer the determination of the hours during which his office should be kept open”); 1943 Op. Att’y Gen. No. 6048, p. 236 (syllabus) (“[c]ounty commissioners of a county have no authority to fix a uniform time for the opening and closing of the various county offices”). The conclusion that a board of county commissioners does not have authority to decide when a county office should open or close is based upon the principle that the powers of county officers, including county commissioners, are limited to those granted by statute. 1943 Op. Att’y Gen. No. 6048, p. 236, 236. The conclusion is further rooted in the principle that

human health and safety, a board of county commissioners may decide to close portions of a courthouse that are occupied by county offices. In making a decision to close portions of a courthouse, a board shall exercise its discretion reasonably. *See State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918). Due consideration shall be given to the scope and degree of the threat, as well as the necessity of interrupting the operations of the various offices affected by a courthouse closure. The decision should not be made lightly or frivolously, and only in those circumstances when closure is absolutely necessary. A board of county commissioners shall maintain communication and foster cooperation with other county officers, the courts, and law enforcement agencies charged with the responsibility of preserving the public peace. *See* 1997 Op. Att’y Gen. No. 97-015, at 2-88 n.2. A board of county commissioners has no authority to close portions of a courthouse that are occupied by or are necessary to the efficient operation of the courts.

Emergency Management under R.C. 5502.21-.51

In exercising its authority to decide to close portions of a courthouse, a board of county commissioners shall also consider the provisions of R.C. 5502.21-.51, which address emergency management in the state and the state’s political subdivisions. The board of county commissioners of each county in the state is required to engage in emergency management by: (1) entering into a written agreement with all, or a majority of the political subdivisions within the county, to establish a countywide emergency management agency (CEMA), R.C. 5502.26(A); (2) entering into a written agreement with one or more other boards of county commissioners to establish a regional authority for emergency management (RAEM), R.C. 5502.27(A); or (3) establishing the county’s own emergency management program, R.C. 5502.271. Hardin County has established a CEMA, and so we address the statutes applicable to a CEMA.

Once a CEMA is established in a county, the countywide advisory group, which is composed of representatives from each political subdivision participating in the CEMA, appoints an executive committee. R.C. 5502.26(A). Members of a CEMA’s executive committee include “at least ... one county commissioner representing the board of county commissioners entering into the agreement;

because all elected county officers are chosen by the electorate, no county officer may exercise control over any other officer unless such authority is provided by statute. *Id.*

The advice provided in this opinion is compatible with the advice provided in those earlier opinions. The statutes that impose a duty upon the board of county commissioners to manage, control, and keep a courthouse safe impliedly authorize the board to decide whether it is necessary to close portions of the courthouse in order to protect the health and safety of the people inside the courthouse. Thus, in keeping with those prior opinions, a board of county commissioners’ authority to determine whether portions of a courthouse may close when conditions pose a danger to the health and safety of those inside the building is necessarily implied by R.C. 305.16, R.C. 307.01(A), R.C. 307.02, R.C. 311.07(A).

five chief executives representing the municipal corporations and townships entering into the agreement; and one nonelected representative.” R.C. 5502.26(A).⁵ The executive committee of the agency develops an emergency management program and appoints a director/coordinator of emergency management. R.C. 5502.26(A). Under the direction and control of the executive committee, the director/coordinator administers and operates the agency’s emergency management program. R.C. 5502.26(A).

A component of the emergency management program established by a CEMA is an all-hazards emergency operations plan. R.C. 5502.26(A)(2). The Ohio Emergency Management Agency provides a manual and checklist to assist in the preparation of a local agency’s all-hazards emergency operations plan. *See Ohio Emergency Mgmt. Agency, Plan Development and Review Guidance for Local Emergency Operations Plans* (January 2015), available at ema.ohio.gov/Documents/PDRG%20Full%20Document%20w%20Checklist%2020150127.pdf. In developing an all-hazards emergency operations plan, the agency shall conduct an assessment of the hazards likely to affect the jurisdiction of the agency. *Id.* at pages 1-2 to 1-3. Standard operating procedures maintained by the various support agencies involved in responding to a hazard provide additional detail concerning response and mitigation procedures. *See id.* at pages 1-5 to 1-6. The Ohio Emergency Management Agency recommends that an executive committee take an inclusive approach when developing an all-hazards emergency operations plan that incorporates local government and private sector agencies. *Id.* at page 1-4 to 1-5.

A CEMA’s emergency management program shall be “applicable to all political subdivisions entering into the countywide agreement.” R.C. 5502.26(A)(4). “All agencies, boards, and divisions having emergency management functions within each political subdivision within the county shall cooperate in the development of the all-hazards emergency operations plan[.]” R.C. 5502.26(A). The all-hazards emergency operations plan shall be “coordinated with all agencies, boards, and divisions having emergency management functions within the county[.]” R.C. 5502.26(A)(2). 10B Ohio Admin. Code 4501:3-2-01(D) states that “[t]he officers and personnel of all departments, offices, and agencies of political subdivisions shall cooperate in emergency management and emergency preparedness with their respective emergency management officials and agencies[.]” We may infer from R.C. 5502.26 and rule 4501:3-2-01(D) that all employees and officials of the political subdivisions that are part of the CEMA are required to follow the procedures and protocols of the emergency management program and the all-hazards emergency operations plan. The purpose of having a single comprehensive plan for all of the political subdivisions within the jurisdiction of the CEMA would be defeated if universal compliance was not required.

⁵ The basic plan of the Hardin County Emergency Operations Plan states that the executive committee consists of the Hardin County Board of Commissioners.

In R.C. 5502.21-.51, “[e]mergency management’ includes all emergency preparedness⁶ 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.” R.C. 5502.21(G) (footnote added). “Hazard” is defined for purposes of R.C. 5502.21-.51 as “*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.*” R.C. 5502.21(I) (emphasis added).⁷ When a dangerous weather condition, a loss of electricity, or a bomb threat poses an actual or imminent threat to the health or safety of people in a courthouse, such situations may constitute “hazards” as that term is defined in R.C. 5502.21(I). Accordingly, responsive measures to protect the public, county officers and employees, and a courthouse in those emergencies come within “emergency management” and “emergency preparedness” as those terms are used in R.C. 5502.21-.51. Procedures and standards to follow in many different circumstances may be included in a CEMA’s emergency management program and all-hazards emergency operations plan. Insofar as the statutes directing the establishment of an emergency management program and the development of an all-hazards emergency operations plan do not specify which procedures or protocols shall be included in the program or plan, a CEMA’s executive committee may exercise reasonable discretion to determine the processes and directives to include in the program and plan in the event of a particular hazard. *See State ex rel. Kahle v. Rupert*, 99 Ohio St. 17, 19, 122 N.E. 39 (1918) (“[e]very officer of this state or any subdivision thereof not only has the authority but is required to exercise an intelligent discretion in the performance of his official duty”); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph 4) (“[w]here an officer is directed by ... a statute ... to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”); *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) (“[w]here authority is given to do a

⁶ “Emergency preparedness” for purposes of R.C. 5502.21-.51 “includes those activities and measures designed or undertaken in preparation for any hazard, including, but not limited to, natural disasters and hazards involving hazardous materials or radiological materials, and that will enhance the probability for preservation of life, property, and the environment.” R.C. 5502.21(H). “The development of necessary plans and standard operating procedures for mitigation, preparation, response, and recovery purposes” is part of “emergency preparedness.” R.C. 5502.21(H)(2).

⁷ “‘Hazard’ includes, without limitation, an attack, disaster, and emergency.” R.C. 5502.21(I); *see generally* R.C. 5502.21(B) (defining “attack”); R.C. 5502.21(E) (defining “disaster”); R.C. 5502.21(F) (“[e]xcept as provided in [R.C. 5502.41], ‘emergency’ means any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists”); *see* R.C. 5502.21(C) (defining “chief executive”).

specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner”).⁸

Thus, an emergency management program, all-hazards emergency operations plan, or the standard operating procedures maintained by support agencies to carry out their responsibilities under the plan may provide that certain offices of government are required to close under certain circumstances or that the decision to close county offices may be made by certain county officials. For reasons of efficiency and clarity, a CEMA’s all-hazard’s emergency operations plan and the related standard operating procedures may address the procedure for determining how and when county offices located in a courthouse may be closed. If a CEMA’s all-hazards emergency operations plan or the standard operating procedures maintained in accordance with the plan provide a protocol for closing county offices located in a courthouse when a threat to the health and safety of the people inside the courthouse exists, a board of county commissioners shall comply with those procedures.

Conclusions

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

1. The authority of a board of county commissioners to provide and maintain a courthouse and to keep a courthouse safe pursuant to R.C. 305.16, R.C. 307.01(A), R.C. 307.02, and R.C. 311.07(A) by necessary implication includes the authority to determine whether portions of a courthouse should be closed when conditions affecting the courthouse pose a threat to the health and safety of the people inside the courthouse.
2. A board of county commissioners may decide to close portions of a courthouse that are occupied by county offices when conditions affecting the courthouse pose a threat to the health and safety of the people inside the courthouse. A board of county commissioners has no authority to close

⁸ A CEMA’s emergency management program shall comply with “[R.C. 5502.21-.51], rules adopted under those sections, local ordinances pertaining to emergency management, the ‘Robert T. Stafford Disaster Relief and Emergency Assistance Act,’ 88 Stat. 143, 42 U.S.C. 5121, et. seq., as amended, and all applicable rules and regulations adopted under that act[.]” R.C. 5502.26(A)(1). In addition, “[e]very agency for emergency management established pursuant to [R.C. 5502.21-.51] and every political subdivision that has established a program for emergency management under [R.C. 5502.271], and the officers thereof, shall execute and enforce any emergency management orders and rules issued or adopted by the director of public safety.” R.C. 5502.28(B); *see also* 10B Ohio Admin. Code 4501:3-2-01(C) (“[e]ach emergency management agency, established in accordance with [R.C. 5502.26, R.C. 5502.27, or R.C. 5502.271] and these rules, shall carry out the directions, orders, regulations, rules, and procedures promulgated by the executive director for emergency management”).

portions of a courthouse that are occupied by or are necessary to the efficient operation of the courts.

3. The authority of the Hardin County Board of Commissioners to close portions of a courthouse when the health and safety of the people in the courthouse is threatened shall be exercised reasonably and in a manner that is consistent with the terms of the countywide emergency management agency's emergency management program and all-hazards emergency operations plan, including standard operating procedures maintained in accordance with the emergency operations plan.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General