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July 21, 2009

Dale J. Schwieterman, P.E.
Butler County Engineer
1921 Fairgrove Ave.
Hamilton, OH 45011

Re: *Authority of County to Acquire Easements for Utility Relocation*

Dear Dale:

You have requested our advice concerning the authority of the Board of County Commissioners to acquire easements adjacent to an existing county road right-of-way for the purpose of relocating utilities lines currently located within the road right-of-way. You have indicated that the utility lines need to be relocated because of a pending road widening project. Your desire to acquire these easements is to expedite the road widening project.

A board of county commissioners is a creature of statute with only those powers and duties conferred upon it by statute. *See, e.g.*, OAG No. 2009-001. The Board of County Commissioners is authorized to acquire property for public road purposes pursuant to the procedures described in R.C. Chapter 163. *See*, R.C. §§307.08 and 5555.09. Although the Board is authorized by R.C. §307.09(B) to grant public utility companies the right to use County property in connection with the rendition of their public services so long as such right "is not deemed by the board to be inconsistent with the need of such land for public use by the county," we have found no statute which authorizes the Board to acquire an easement specifically for the use of a utility company. Furthermore, R.C. §5547.03 expressly requires a utility company to remove, *at its own expense*, any of its facilities which are located within a county road right of way when the Board determines such facilities "interfere . . . with the proposed improvement" of any county or township road.

Based upon the foregoing, our opinion is that the Board of County Commissioners has no power to purchase easements for the permanent relocation of utility facilities which must be removed from a public road right of way because such facilities interfere with a proposed road improvement project.

On the other hand, Greg Wilkens recently indicated that you may, from time to time, need to only temporarily relocate certain utility facilities during the course of a road improvement project. In our opinion, a temporary easement for the temporary relocation of utility facilities may be acquired by the County as a part of the temporary workspace needed for the project. The Board possesses the discretion to order all, or a part of, the costs of any improvement to be paid from County funds. *See*, R.C. §5555.022.

If you have additional questions on this subject, please feel free to contact our office at your convenience.

