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# COUNTY ADVISORY BULLETIN

**CAB**

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## **COUNTIES ARE URGED TO TAKE PRECAUTIONS WHEN LEASING OR LOANING MOTOR VEHICLES, PARTICULARLY TO OTHER POLITICAL SUBDIVISIONS**

### **Background**

Since the enactment of House Bill 19 by the 123<sup>rd</sup> General Assembly in 1999, boards of county commissioners have been authorized to donate personal county property to the federal government, the state of Ohio, or any political subdivision of the state. Before the enactment of this bill, which became effective on October 26<sup>th</sup>, 1999, boards of county commissioners were authorized only to sell -- not donate -- county personal property to other governmental entities.

House Bill 19 also specifically listed motor vehicles as among the items that could be donated or sold by a county.

Furthermore, House Bill 19 removed the specification in ORC section 307.12 that required any personal property sold or donated by a board of county commissioners to another governmental entity to be property that "is not needed for public use, or that is obsolete or unfit for its intended use." Counties therefore now have authority to sell or donate so-called "good" property, including good motor vehicles, to other governmental entities. A typical situation that might arise is one in which a city or township requests the use of county vehicle on a temporary basis because one of the vehicles in its own fleet is damaged or destroyed.

These changes in Ohio law have created situations in recent years where many Ohio counties are donating or loaning county motor vehicles to other governmental entities, most commonly townships, cities, and villages. The purpose of this county advisory bulletin is to make county commissioners, administrators, and loss control staff aware of the particular liability risks that ensue when a vehicle is 1) temporarily or permanently loaned or donated to an outside entity, or 2) purchased by the county on behalf of another governmental entity and then turned over to that entity for use.

## **What Counties Need to Know**

Commissioners, administrators and loss control coordinators or staff that are involved in any type of “loaned vehicle” situation need to be aware that the operation of that vehicle by another entity could bring serious and unexpected liability to their county. The entity to which the vehicle is loaned may be completely responsible for staffing the vehicle, maintaining it, and supervising its operation. However, if the title to the vehicle remains with the board of county commissioners, then the county remains financially responsible for damages or injuries caused by the vehicle.

**If at all possible, the best course of action in the case of a loan or donation is to transfer title of the vehicle to the other governmental entity.** This transfer is authorized by ORC section 307.12. This transfer severs the link with the county and clearly places liability for the operation of the vehicle where it belongs – with the entity that is actually in charge of operating it.

Transferring title to a vehicle is not always a practical course of action, particularly in a temporary loan situation. Another option for a county in lieu of a title transfer is to lease a vehicle to the other entity. Any lease for a vehicle should be in writing and should include indemnification and hold harmless language by which the receiving entity agrees to protect the county from any liability that may result from the operation of the vehicle.

**Included with this CAB is a sample motor vehicle lease agreement provided by CORSA that can be used by counties that are involved in loans or donations of motor vehicles to other governmental entities. The lease contains indemnity/hold harmless language in section 5.**

Any lease also should absolutely contain a provision that requires the other entity to carry its own motor vehicle insurance coverage on the vehicle. In that coverage the county should be named as an additional insured by endorsement. Counties should require that the entity’s motor vehicle insurance policy contain the same coverages – including collision, liability, comprehensive and uninsured /underinsured motorist – and the same monetary limits as the county’s coverage. The lease also should require that the county be provided with proof of the other entity’s insurance coverage on an annual basis.

If cost becomes an issue, the county can consider reimbursing all or a portion of the premium, as long as the policy remains in the name of the receiving entity.

In all situations involving motor vehicles purchased for, loaned to, or donated to other governmental entities, boards of commissioners should proceed carefully and take the steps outlined here to protect the county from unexpected liability.