October 13, 1994

OPINION NO. 94-068

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
69 North South Street, Suite 200
Wilmington, Ohio 45177

Dear Prosecutor Peelle:

You have requested an opinion concerning the obligations of membership in a regional planning commission.[1] You specifically ask:

1. If, pursuant to the cooperative agreement, a majority of the member boards and planning commissions allocates the costs to be borne by a member of the Regional Planning Commission, can that member of the Commission, unilaterally, appropriate and pay an amount less than that which was allocated.

2. Is a governmental unit, which was an original member of the Regional Planning Commission, estopped from withdrawing that governmental unit from the commission?

---

[1] As concluded in the syllabus of 1961 Op. Att'y Gen. No. 2383, p. 366, "[a] regional planning commission established pursuant to [R.C. 713.21] is not a _county board_ within the meaning of [R.C. 309.09] and such commission, therefore, is not eligible to receive the services of the prosecuting attorney as his legal advisor." *Accord* 1993 Op. Att'y Gen. No. 93-001 at 2-6. Ordinarily, therefore, this office would not render an opinion to a county prosecuting attorney concerning the operation of a regional planning commission. According to your letter, however, your questions concern the county's continuing obligations as a member of such commission, and it is, therefore, appropriate to provide you with a formal opinion on that subject.

Establishment and Organization of Regional Planning Commissions

A regional planning commission may be created in accordance with R.C. 713.21, which states in part:

> The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county *may co-operate in the creation of a regional planning commission*, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission. After creation of a regional planning commission, school districts, special districts, authorities, and any other units of local government may participate in the regional planning commission, upon such terms as may be agreed upon by the planning commissions and boards.
> .... The regional planning commission may purchase, lease with option to purchase, or receive as a gift property and buildings within which it is housed and carries out its responsibilities, provided that *the rules of the commission* provide for the disposition of the property and buildings *in the event that the commission is dissolved or otherwise terminated*.
> The regional planning commission may establish such committees with such powers as it finds necessary to carry on its work, including an executive committee to make such final determinations, decisions, findings, recommendations, and orders as the *rules of the regional planning commissions* provide. All actions of such committees shall be reported in writing to the members of the commission no later than the next meeting of the regional planning commission or within thirty days from the date of the action, whichever is earlier. The commission may provide a procedure to ratify committee actions by a vote of the members. The commission may make agreements with other agencies, public or private, for the temporary transfer or joint use of staff employees, and may contract for professional or consultant services for or from other governmental and private agencies and persons. (Emphasis added.)

See also R.C. 713.23 (setting forth specific planning functions and contracting authority of regional planning commissions). R.C. 713.21, therefore, permits the planning commission of a municipality or of a group of municipalities, any board of township trustees, and the board of county commissioners of the county in which the municipality or municipalities are located or of an adjoining county to cooperate in the creation of a regional planning commission. Once the regional planning commission has been created, "school districts, special districts, authorities, and other units of local government" may participate in the commission, upon such terms as are agreed upon by the "planning commissions and boards." *Id.*

Although a regional planning commission is a creature of statute, not every aspect of its organization and operation have been addressed by statute. Concerning the creation of a regional planning commission, R.C. 713.21 simply states that the creating planning commission and boards may "co-operate." While R.C. 713.21 does specify the manner in which the commission will carry out various functions (*e.g.*, allowing participation by other units of government, creating committees to carry out the commission's work), it refers only indirectly to rules for the commission's operation. It appears, therefore, that the terms upon which a regional planning commission is established and the methods it employs in its operation are matters left largely to the discretion of the commission itself. *See* 1956 Op. Att'y Gen. No. 7114, p. 685, 689 ("as a practical matter, it would appear to be possible to limit rather effectively the operations of a regional planning commission by a limitation, set out in the agreement by which that agency is created, on its financial resources"). *See generally State ex rel. Preston v. Ferguson*, 170 Ohio St. 450, 459, 166 N.E.2d 365, 372 (1960) (where a statute authorizes the performance of an act but does not prescribe how it is to be accomplished, it may be performed in a reasonable and lawful manner).

Duty of Member to Appropriate Funds

Your first question concerns the duty of a board of county commissioners, as one of the creating members of a regional planning commission, to appropriate funds for the activities of the commission. The method of funding a regional planning commission is expressly addressed by R.C. 713.21, which states in part:

> The number of members of such regional planning commission, their method of appointment, and the *proportion of the costs* of such regional planning *to be borne* respectively by the various municipal corporations, townships, and counties in the region and by other participating units of local government *shall be such as is determined by a majority of the planning commissions and boards....* Such boards and legislative authorities of such municipal corporations, and the governing bodies of other participating units of local government, *may appropriate their respective shares of such costs*. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the population of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by [R.C. 713.21-.27]. (Emphasis added.)

In accordance with R.C. 713.21, therefore, the share of the planning commission's expenses to be borne by each participating subdivision or governmental unit "shall be such as is determined by a majority of the planning commissions and boards."

You specifically question whether, once a county's share is determined "by a majority of the planning commissions and boards," the county commissioners of that county are bound to appropriate that sum to the regional planning commission, or whether the county may appropriate less than that sum. As noted in your opinion request, R.C. 713.21 uses the word "shall be" in describing the amount of each participant's share, while the portion of the statute describing the

appropriation of such sums by each participant uses the word "may." Your letter asks, "[d]oes the use of the word _shall_ make the cost allocation determination binding, or does the use of the word _may_ give the County Commissioners discretion to appropriate less than their allocated share of costs?"

In ascertaining the meaning of R.C. 713.21, it is necessary to examine the language of the statute in its entirety to determine the legislative intent, and not to dissociate a single sentence from the remainder of the statute. *Black-Clawson Co. v. Evatt*, 139 Ohio St. 100, 38 N.E.2d 403 (1941). Part of R.C. 713.21 provides for the funding of regional planning commissions by the apportionment of the cost of regional planning among the participating units of government. Such apportionment assures that the commission will be adequately funded. If the appropriation language of R.C. 713.21 were read as permitting each participant to appropriate its designated portion or any lesser amount, the complete funding of the commission would not be assured.

Further, by stating that the "proportion of the costs of such regional planning to be borne respectively by [all participating units of government] *shall be* such as is determined *by a majority of the planning commissions and boards*"(emphasis added), the General Assembly has clearly expressed its intent that the amount contributed to the commission by each participant not be determined unilaterally by that participant. The portion of R.C. 713.21 stating that participants "may" appropriate their respective shares of such costs simply authorizes each such governmental unit to make the appropriation of its portion of the cost of operation of the commission.

In addition, pursuant to R.C. 1.47(B), it is presumed that the General Assembly, in the enactment of a statute, intended the entire statute to be effective. A reading of the sentence concerning appropriations by the participants that would permit each participant to appropriate any sum it chose, without regard to the amount determined to represent its portion, would render meaningless that portion of the statute specifying how the costs of the commission will be apportioned. In order to give effect to both provisions, therefore, it is necessary to read R.C. 713.21 as requiring that each participant's share be determined "by a majority of the planning commissions and boards," and that once such determination is made, each participant has the necessary authority to appropriate such sum as its share of the planning commission's costs.

Withdrawal from Membership in Regional Planning Commission

Your second question asks whether an original member of a regional planning commission may withdraw from membership in the commission. A similar question was addressed in 1972 Op. Att'y Gen. No. 72-097, which discussed whether a municipality could withdraw from a garbage and refuse disposal district (now county or joint solid waste management district), created in accordance with R.C. Chapter 343. The opinion noted that nothing within R.C. Chapter 343 directly addressed the authority of a municipality to withdraw. Pursuant to former R.C. 343.02, however, once a municipality became part of such district, it remained under the district's jurisdiction until the disposal facilities of the district were completed and the district's financial obligations for such facilities were paid in full. After citing examples of other statutes that expressly provided for withdrawal from membership in other types of regional or district authorities, Op. No. 72-097 stated

at 2-391:

> These analogous Sections indicate that *the General Assembly provides statutory authority for withdrawal and dissolution when it intends such authority to exist.* Since the only statutory provision authorizing withdrawal from a garbage and refuse disposal district postulates payment in full of the district's obligations, I must conclude that the [village] may not withdraw from the district ... until its bonded debt has been paid. (Emphasis added.)

Op. No. 72-097 also noted that, in planning for the landfill and the issuing of bonds for the landfill, the district had assumed that the municipality would remain part of the district, and that, therefore, "it would not be equitable to permit the village to withdraw and avoid its share of the expense [of the landfill]." *Id*. at 2-391.

Both R.C. 713.21, concerning the establishment and operation of a regional planning commission, and R.C. 713.23, setting forth the powers and duties of a regional planning commission, are silent as to the withdrawal of a member from such a commission. R.C. 713.21 does, however, refer to the possibility that "the commission [may be] dissolved or otherwise terminated." In using such language, the General Assembly has acknowledged that a regional planning commission might not continue indefinitely. It would seem equally clear, however, that a member may at some time wish to discontinue membership in the planning commission. As mentioned in Op. No. 72-097, the General Assembly has expressly provided the authority and means of accomplishing a participant's withdrawal from membership in other regional or district entities. *See, e.g.*, R.C. 167.02 (withdrawal from regional council of governments); R.C. 306.54 (dissolution or modification in membership of regional transit authority); R.C. 343.012(B) (withdrawal of county from joint solid waste management district); R.C. 505.371 (withdrawal from joint fire district); R.C. 505.71 (withdrawal from joint ambulance district and ceasing operation). Because the General Assembly has provided in many other instances for the withdrawal of a member from a regional or district entity but has not so provided with regard to a regional planning commission, it appears that the General Assembly did not intend to authorize withdrawal from a regional planning commission.[2]

---

[2] That the General Assembly did not intend to allow withdrawal from membership in a regional planning commission is evident from examination of 1969-1970 Ohio Laws, Part I, 797 (Am. S.B. 285, eff. Nov. 18, 1969), which provided for the creation of joint planning councils. Joint planning councils may be established by agreement among regional and county planning commissions for purposes similar to those of regional planning commissions. R.C. 713.231. In Am. S.B. 285, the General Assembly authorized withdrawal from a joint planning council in the following manner: "Any participating planning commission may terminate its membership after giving three months' notice to the planning council of its adoption of a resolution to do so or in the manner provided in the agreement [creating the council], but shall not be relieved of its obligations, including its share of the cost for the calendar year in which the termination occurs or for such other period as the agreement provides." R.C. 713.231. In that same bill, the General Assembly made significant changes in R.C. 713.21 and R.C. 713.23, governing regional planning commissions, and yet included no authority for members to withdraw from a regional planning commission. Had the

See Op. No. 72-097.

Although R.C. 713.21 does not authorize members to withdraw from a regional planning commission, it clearly contemplates the possible dissolution or termination of the commission. R.C. 713.21 provides for the formation of a regional planning commission by cooperation among the members. In the event that a creating member no longer wishes to participate as a member of the commission, the alternative available under R.C. 713.21 appears to be dissolution or termination of the commission as so configured, in which event, the outstanding debts and obligations already imposed upon that member remain binding and must be fulfilled. Because R.C. 713.21 provides no means of operation other than by cooperation among the members, it appears that the terms upon which the commission will wind up its business and satisfy its outstanding obligations are matters that may be determined, as any other business of the commission, by agreement among the members. Once again, in dissolving the commission, provision for satisfaction of the existing debts and obligations of all the members must be made. *See generally* Op. No. 72-097 (discussing the unfairness that would result if a member were permitted to withdraw from a district and thereby avoid its share of the district's financial obligations). Should the remaining members of the planning commission wish to continue the activities of a regional planning commission, they may, of course, form a new regional planning commission under a new cooperative agreement, as long as there are sufficient planning commissions and boards remaining to comply with the requirements of R.C. 713.21 concerning the creation of such a commission.

Conclusion

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

1. Pursuant to R.C. 713.21, each governmental unit participating in a regional planning commission shall appropriate as its portion of the cost of regional planning the amount determined "by a majority of the planning commissions and boards" of township trustees or county commissioners in the commission.

General Assembly intended to authorize a member of a regional planning commission to withdraw from membership, it could easily have so provided, as it did in R.C. 713.231 for members of joint planning councils. *See generally Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926).

2.R.C. 713.21 does not authorize a member of a regional planning commission to withdraw from the commission, but it does permit the dissolution or termination of the commission upon such terms as are agreed by the members of the commission.

Respectfully,

LEE FISHER
Attorney General

October 13, 1994

The Honorable William E. Peelle
Clinton County Prosecuting Attorney
69 North South Street, Suite 200
Wilmington, Ohio 45177

SYLLABUS: 94-068

1. Pursuant to R.C. 713.21, each governmental unit participating in a regional planning commission shall appropriate as its portion of the cost of regional planning the amount determined "by a majority of the planning commissions and boards" of township trustees or county commissioners in the commission.

2. R.C. 713.21 does not authorize a member of a regional planning commission to withdraw from the commission, but it does permit the dissolution or termination of the commission upon such terms as are agreed by the members of the commission.