

March 16, 1999

OPINION NO. 99-020

The Honorable Jim Petro  
Auditor of State  
88 East Broad Street  
P.O. Box 1140  
Columbus, Ohio 43216-1140

Dear Auditory Petro:

You have requested an opinion concerning the duties of a regional water and sewer district under R.C. Chapter 5705. You specifically ask:

1. Would a regional water and sewer district be subject to the requirements of R.C. 5705.28(A)(2), because it meets the definition of a taxing unit?
2. Would a regional water and sewer district be subject to all other requirements contained in R.C. Chapter 5705 that are applicable to taxing units as defined in R.C. 5705.01(H)?

As stated in your opinion request, your questions arise from the questioning by 1997 Op. Att’y Gen. No. 97-017 at 2-94 and 2-95 n.5 of the conclusion set forth in 1977 Op. Att’y Gen. No. 77-068 (syllabus, paragraph two), that “[a] regional water and sewer district which does not exercise its authority to levy taxes upon the real property in said district is not subject to the requirements of R.C. 5705.27 through R.C. 5705.412.” You question the conclusion of 1977 Op. Att’y Gen. No. 77-068 and the reasoning upon which it relied.

Your first question asks whether a regional water and sewer district is a “taxing unit” for purposes of R.C. 5705.28(A)(2). Let us, therefore, examine R.C. 5705.28, which states in pertinent part:

(A) Except as provided in division (B) of this section or in [R.C. 5705.281],<sup>1</sup> the *taxing authority* of each *subdivision* or other *taxing unit* shall adopt a tax budget for the next succeeding fiscal year:

(1) On or before the fifteenth day of January in the case of a school district;

(2) On or before the fifteenth day of July in the case of all other *subdivisions* and *taxing units*.

(B) Before the first day of June in each year, the board of trustees of a school library district entitled to participate in any appropriation or revenue of a school district or to have a tax proposed by the board of education of a school district shall file with the board of education of the school district a tax budget for the ensuing fiscal year. On or before the fifteenth day of July in each year, the board of education of a school district to which a school library district tax budget was submitted under this division shall adopt such tax budget on behalf of the library district, but such budget shall not be part of the school district's tax budget.

(C)(1) To assist in the preparation of the budget, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer, before the forty-fifth day prior to the date on which the budget must be adopted, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the auditor of state. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision.... (Footnote and emphasis added.)

Thus, pursuant to R.C. 5705.28(A), “the taxing authority of each subdivision or other taxing unit,” with certain exceptions, is required to adopt a “tax budget” in a timely manner for the next succeeding fiscal year.

The term “taxing unit,” as used in R.C. 5705.28, means: “any *subdivision* or other *governmental district* having authority to *levy taxes* on the property in the district or *issue bonds* that constitute a charge against the property of the district, *including* conservancy districts,

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<sup>1</sup> Pursuant to R.C. 5705.281, when the county budget commission has adopted an alternative method of distributing the county undivided local government fund or the county undivided local government revenue assistance fund, it may permit the taxing authority of a subdivision or other taxing unit that is entitled to participate in the distribution of such fund not to file a tax budget or to file a tax budget containing limited information. *See generally* 1997 Op. Att’y Gen. No. 97-017.

metropolitan park districts, sanitary districts, road districts, and *other districts*.” R.C. 5705.01(H) (emphasis added). Because a regional water and sewer district is not a “subdivision,” as defined in R.C. 5705.01(A),<sup>2</sup> only if a regional water and sewer district is a governmental district that has authority to levy taxes on the property in the district or to issue bonds that constitute a charge against property in the district is such a district a “taxing unit,” and, as such, subject to the tax budget requirement of R.C. 5705.28(A)(2). Let us, therefore, examine the statutory scheme governing the creation and operation of regional water and sewer districts.

R.C. 6119.01 authorizes “[a]ny area situated in any unincorporated part of one or more contiguous counties or in one or more municipal corporations, or both,” to organize “as a regional water and sewer district” for either or both of the following purposes: “(A) [t]o supply water to users within and without the district; [or] (B) [t]o provide for the collection, treatment, and disposal of waste water within and without the district.” Pursuant to R.C. 6119.02, proceedings for the organization of a regional water and sewer district are initiated by a petition by one or more municipalities, counties, or townships, or by any combination of them. The court of common pleas constituted in accordance with R.C. 6119.03 may then conduct a preliminary hearing, and, upon making certain findings, issue an order declaring the district to be organized

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<sup>2</sup> As used in R.C. Chapter 5705, “[s]ubdivision” means “any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention home district; a district organized under [R.C. 2151.65]; a combined district organized under [R.C. 2151.34 and R.C. 2151.65]; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district created under [R.C. 6131.52]; a union cemetery district; a county school financing district; or a city, local, exempted village, cooperative education, or joint vocational school district.” R.C. 5705.01(A). Although many governmental districts are included in the definition of “subdivision” for purposes of R.C. 5705.28, a regional water and sewer district created in accordance with R.C. Chapter 6119 is not included in the definition.

As mentioned in your request, 1977 Op. Att’y Gen. No. 77-068 at 2-244 found that because a regional water and sewer district was designated by former R.C. 6119.39 as a “subdivision,” it “would be subject to the requirements of R.C. 5705.27 through R.C. 5705.412 if it were exercising its taxing power.” The 1977 opinion did not, however, consider the definition of the term “subdivision” found in former R.C. 5705.01, *see* 1975-1976 Ohio Laws, Part I, 1547 (Am. Sub. H.B. 111, eff. Aug. 31, 1976), which defined that term for purposes of R.C. Chapter 5705 and did not include a regional water and sewer district within its meaning. In light of the statutory definition of “[s]ubdivision” contained in R.C. 5705.01(A), we overrule the conclusion in 1977 Op. Att’y Gen. No. 77-068 that a regional water and sewer district created under R.C. Chapter 6119 is a “subdivision” for purposes of R.C. 5705.28.

and an independent political subdivision of the state for the purpose, among others, of preparing a plan of operation for the district. R.C. 6119.04(B). Thereafter, pursuant to R.C. 6119.04(D):

Upon final hearing, whether or not a preliminary hearing is requested in the petition, if it appears that the proposed district is necessary, that it and the plan for the operation of the district are conducive to the public health, safety, convenience, and welfare, and that the plan for the operation of the district is economical, feasible, fair, and reasonable, the court, after disposing of all objections as justice and equity require and by its findings, entered of record, shall declare the district finally and completely organized and to be, or to be empowered to continue as, *a political subdivision*. Thereupon the district shall have power to sue and be sued; to incur debts, liabilities, and obligations; to exercise the right of *eminent domain* and of *taxation and assessment* as provided in [R.C. Chapter 6119]; to issue bonds; and to perform all acts authorized in this chapter and to execute and carry out the plan for the operation of the district and to amend, modify, change, or alter the plan for its operation as the board of trustees from time to time may determine necessary. (Emphasis added.)

Thus, an area that organizes into a regional water and sewer district in accordance with R.C. 6119.04 becomes a political subdivision of the state and possesses various governmental powers, *e.g.*, eminent domain and taxation. *See generally Herrick v. Lindley*, 59 Ohio St. 2d 22, 391 N.E.2d 729 (1979) (the power to tax is a governmental power); *State ex rel. McCann v. City of Defiance*, 167 Ohio St. 313, 148 N.E.2d 221 (1958) (characterizing eminent domain as a governmental power); *City of Columbus v. Public Utilities Comm'n*, 103 Ohio St. 79, 135, 133 N.E. 800, 818 (1921) (Wanamaker, J., concurring) (“[e]liminating the power of taxation and the power of eminent domain, little remains of government but the police power”). Although the term “governmental district,” as used in R.C. 5705.01(H), is not defined, we do not hesitate to conclude that a regional water and sewer district established and operating in accordance with R.C. Chapter 6119 constitutes a “governmental district” for purposes of R.C. 5705.01(H).

In order to constitute a “taxing unit,” as defined in R.C. 5705.01(H), a governmental district must possess the power to “levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district.” Among the powers of a properly constituted and certified regional water and sewer district is the power to “[l]evy and collect taxes and special assessments.” R.C. 6119.06(I). *See also* R.C. 6119.17 (voter approved levy outside ten-mill limitation to amortize debt); R.C. 6119.18 (voter approved levy outside ten-mill limitation on property within district for current expenses or water resource projects). It is clear, therefore, that a regional water and sewer district’s power to levy taxes on property in the district qualifies it as a “taxing unit,” as defined by R.C. 5705.01(H). In answer to your first question, we find, therefore, that a regional water and sewer district is a “taxing unit,” as defined in R.C. 5705.01(H).

Your second question asks whether a regional water and sewer district created under R.C. Chapter 6119 is “subject to all other requirements contained in R.C. Chapter 5705 that are

applicable to taxing units as defined in R.C. 5705.01(H).”<sup>3</sup> Your opinion request suggests that this question arises from the conclusion in 1977 Op. Att’y Gen. No. 77-068 that a subdivision or taxing unit that does not impose taxes or share in tax revenues need not file a tax budget. Although we disagree with the statement in the 1977 opinion that a regional water and sewer district is a “subdivision” for purposes of R.C. 5705.28(A), we have found that it is a “taxing unit.” Because R.C. 5705.28(A) requires “the taxing authority of each subdivision or other taxing unit” to adopt a tax budget, you have asked that we reconsider the conclusion in 1977 Op. Att’y Gen. No. 77-068 that a regional water and sewer district that neither levies taxes nor shares in the proceeds of such levies is not subject to the requirement imposed upon the taxing authority of a subdivision or other taxing unit by R.C. 5705.28(A) to adopt a tax budget.

In concluding that the taxing authority of a subdivision or taxing unit that does not levy taxes or share in tax revenues need not file a tax budget, 1977 Op. Att’y Gen. No. 77-068 reasoned as follows:

A “tax budget” would necessarily imply that tax revenues would be included therein. A budget which does not include a provision for revenues derived from taxes would not be a tax budget. This functional definition is buttressed by the requirements of a tax budget, set forth in R.C. 5705.29. That section requires, *inter alia*, information on current tax revenues as well as required distribution from the general property tax fund. When a subdivision is not sharing in any tax funds and does not levy any taxes, it cannot provide the information that is mandated by that section. Therefore, it is incapable of

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<sup>3</sup> R.C. Chapter 5705 imposes a number of requirements upon entities that are “taxing units,” as defined in R.C. 5705.01(H). *See, e.g.*, R.C. 5705.03(A) (stating in part: “[t]he taxing authority of each subdivision and *taxing unit* shall, subject to the limitations of [R.C. 5705.01-.47], levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and *taxing unit*, including levies in anticipation of which the subdivision or *taxing unit* has incurred indebtedness” (emphasis added)); R.C. 5705.35(A) (stating in part, “[b]efore the end of the fiscal year, the taxing authority of each subdivision and other *taxing unit* shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure” (emphasis added)); R.C. 5705.38(A) (stating in part, “[o]n or about the first day of each year, the taxing authority of each subdivision or other *taxing unit* shall pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate” (emphasis added)); R.C. 5705.41 (imposing limitations upon subdivisions and taxing units in the appropriation and expenditure of funds and the making of contracts).

adopting a tax budget as is otherwise required by R.C. 5705.28. I cannot conclude that the General Assembly would require a governmental unit to do an act that on the face of the applicable statute is incapable of being performed. It would thus seem that R.C. 5705.27 through 5705.412 are inapplicable to such a subdivision.

1977 Op. Att’y Gen. No. 77-068 at 2-244.

In addition, 1977 Op. Att’y Gen. No. 77-068 stated at 2-245 that the purposes to be served by R.C. 5705.27-.412 were simply “to insure that tax levies comply with the ten mill limit and to allocate funds derived from property taxes.” The opinion concluded that neither of such purposes would be served “if a subdivision not exercising its taxing powers or sharing in the proceeds of general property tax levies followed the procedures outlined in those sections.” 1977 Op. Att’y Gen. No. 77-068 at 2-245. For these reasons, the 1977 opinion found that those subdivisions or taxing units that levy no taxes and receive no tax revenues were *impliedly* excepted from the duty imposed by R.C. 5705.28 upon subdivisions and taxing units to adopt tax budgets.

In reviewing the analysis of the 1977 opinion, let us begin by examining the precise language of R.C. 5705.28(A), which states:

(A) Except as provided in division (B) of this section or in [R.C. 5705.281], the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year:

(1) On or before the fifteenth day of January in the case of a school district;

(2) On or before the fifteenth day of July in the case of all other subdivisions and taxing units.

R.C. 5705.28(A) thus expressly creates only two exceptions from the duty of each subdivision or other taxing unit to adopt a tax budget by the deadlines specified therein. The first is found in R.C. 5705.28(B), which requires the board of trustees of a school library district, in certain circumstances, to prepare a tax budget and to submit that budget to the appropriate school district board of education, which is required to adopt a tax budget on behalf of the school library district by the fifteenth day of July. The second exception is found in R.C. 5705.281 which allows the county budget commission, in certain circumstances, to waive, either in whole or in part, the duty to adopt a tax budget by the specified deadline for any subdivision or taxing unit that shares in the distribution of the county undivided local government fund and the county undivided local government revenue assistance fund. This exception applies only to the taxing authority of a subdivision or taxing unit entitled to participate in the apportionment of the county undivided local government fund and the county undivided local government revenue assistance fund and only when the county budget commission has provided an alternative method of such apportionment. The only subdivisions or taxing units that are entitled to participate in the distribution of such funds are counties, townships, park districts, and municipal corporations.

1997 Op. Att’y Gen. No. 97-017. *See Warren County Park Dist. v. Warren County Budget Comm’n*, 37 Ohio St. 3d 68, 523 N.E.2d 843 (1988).

The General Assembly’s detailed description of the exceptions from the duty of each subdivision and taxing unit to adopt a tax budget by the prescribed deadlines indicates its intention that those are to be the sole exceptions. *See* 1997 Op. Att’y Gen. No. 97-017 at 2-94 and 2-95 n.5. *See generally Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997, 1000 (1997) (“*[e]xpressio unius est exclusio alterius* means ‘the expression of one thing is the exclusion of the other.’ Under this maxim, ‘if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.’ Black’s Law Dictionary (6 Ed.1990) 581”). Moreover, had the General Assembly intended to except the taxing authority of a subdivision or other taxing unit that does not levy taxes or receive moneys from tax revenues from the duty to adopt a tax budget, it could have expressly so provided in R.C. 5705.28(A), as it did with respect to the exceptions set forth in R.C. 5705.28(B) and R.C. 5705.281. *See generally State ex rel. Enos v. Stone*, 92 Ohio St. 63, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Let us now turn to the proposition contained in 1977 Op. Att’y Gen. No. 77-068 at 2-245 that, “R.C. 5705.27 through R.C. 5705.412 are intended to insure that tax levies comply with the ten mill limit and to allocate funds derived from property taxes,” and that the filing of a tax budget by a subdivision that levies no tax and participates in no tax revenues would serve neither purpose. While we agree that the filing of a tax budget by a subdivision or taxing unit that levies no tax and receives no tax revenues does not serve either of the purposes specified in 1977 Op. Att’y Gen. No. 77-068, we find that the preparation and filing of a tax budget by such a subdivision or taxing unit serve other important, statutory purposes.

By way of example, let us examine R.C. 5705.41, which states in pertinent part:

No subdivision or *taxing unit* shall:

(A) Make any appropriation of money except as provided in [R.C. Chapter 5705]; provided, that the authorization of a bond issue shall be deemed to be an appropriation of the proceeds of the bond issue for the purpose for which such bonds were issued, but no expenditure shall be made from any bond fund until first authorized by the taxing authority; [or]

(B) Make any expenditure of money unless it has been appropriated as provided in such chapter.... (Emphasis added.)

Thus, each subdivision or taxing unit, whether or not it levies a tax or receives tax revenues, is subject to, among other things, the prohibitions contained in R.C. 5705.41(A) and (B), both of which require the adoption of an annual appropriation measure,<sup>4</sup> which is based upon the revision of the budget by the subdivision or taxing unit in accordance with its official certificate of estimated resources, which is prepared by the budget commission, based upon the original tax budget of the subdivision or taxing unit.<sup>5</sup> See also R.C. 5705.36(A)(5) (stating: "The total

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<sup>4</sup> R.C. 5705.38(A) states, in pertinent part:

[T]he taxing authority of each *subdivision or other taxing unit shall* pass an appropriation measure, and thereafter during the year it may pass any supplemental appropriation measures as it finds necessary, *based on the revised tax budget and the official certificate of estimated resources or amendments of the certificate*. If adoption of a tax budget was waived under [R.C. 5705.281], appropriation measures shall be based on the official certificate of estimated resources. (Emphasis added.)

<sup>5</sup> R.C. 5705.35(A) states, in pertinent part:

The certification of the budget commission to the taxing authority of each subdivision or taxing unit, as set forth in [R.C. 5705.34], shall show the various funds of such subdivisions other than funds to be created by transfer and shall be filed by the county budget commission with such taxing authority ... on or before the first day of September in each year in the case of all other taxing authorities. There shall be set forth on the credit side of each fund the estimated unencumbered balances and receipts, and if a tax is to be levied for such fund, the estimated revenue to be derived therefrom, the rate of the levy, and what portion thereof is within, and what in excess of, the ten-mill tax limitation, and on the debit side, the total appropriations that may be made therefrom.... There shall be attached to the certification a summary, which shall be known as the "*official certificate of estimated resources*," that shall state the total estimated resources of

appropriations made during the fiscal year from any fund shall not exceed the amount set forth as available for expenditure from such fund in the official certificate of estimated resources, or any amendment thereof, certified prior to the making of the appropriation or supplemental appropriation”).

Thus, although a subdivision or taxing unit might not levy a tax or receive tax revenues, the adoption of a tax budget subjects the finances of the subdivision or taxing unit to public view, to ensure, among other things, the proper expenditure of the moneys of the subdivision or taxing unit and to prevent the expenditures of the subdivision or taxing unit from exceeding its available resources. We, therefore, reject the proposition that the preparation and filing of a tax budget and the associated activities of the county budget commission with respect thereto serve no purpose in those instances in which a subdivision or taxing unit neither levies taxes nor participates in tax revenues. *See* 1994 Op. Att’y Gen. No. 94-057 at 2-280 (“[t]he taxing authority of each taxing unit is required to adopt a tax budget and submit it to the county auditor. R.C. 5705.28-.31”).

Accordingly, we conclude that, because a regional water and sewer district does not fall within either exception mentioned in R.C. 5705.28(A), a regional water and sewer district, as a “taxing unit” for purposes of R.C. Chapter 5705, must comply with the duty imposed upon the taxing authority of each subdivision or other taxing unit by R.C. 5705.28(A) to adopt a tax budget. Based upon this conclusion, we hereby overrule 1977 Op. Att’y Gen. No. 77-068 (syllabus, paragraph two).

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each fund of the subdivision that are available for appropriation in the fiscal year, other than funds to be created by transfer, and a statement of the amount of the total tax duplicate of the school district to be used in the collection of taxes for the following calendar year. *Before the end of the fiscal year, the taxing authority of each subdivision and other taxing unit shall revise its tax budget so that the total contemplated expenditures from any fund during the ensuing fiscal year will not exceed the total appropriations that may be made from such fund, as determined by the budget commission in its certification; and such revised budget shall be the basis of the annual appropriation measure.* (Emphasis added.)

It is, therefore, my opinion, and you are hereby advised, that a regional water and sewer district is a “taxing unit” under R.C. 5705.01(H) for purposes of complying with the provisions of R.C. Chapter 5705, including R.C. 5705.28(A). (1977 Op. Att’y Gen. No. 77-068, syllabus, paragraph two, overruled.)

Respectfully,

BETTY D. MONTGOMERY  
Attorney General

March 16, 1999

The Honorable Jim Petro  
Auditor of State  
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SYLLABUS:

99-020

A regional water and sewer district is a "taxing unit" under R.C. 5705.01(H) for purposes of complying with the provisions of R.C. Chapter 5705, including R.C. 5705.28(A). (1977 Op. Att'y Gen. No. 77-068, syllabus, paragraph two, overruled.)