

October 15, 1996

OPINION NO. 96-053

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park--Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have requested an opinion regarding the payment of compensation to members of the governing board of a regional solid waste management authority. Specifically, you have asked whether individual members of the board of trustees of the Richland County Regional Solid Waste Management Authority may receive compensation for their attendance at meetings of the Authority, similar to the manner in which members of a board of education receive compensation for their attendance at any meeting of the board. One of your assistants has informed me that the board of trustees plans to set the amount of compensation to be received by the individual members of the board. The amount of that compensation will be paid from public moneys of the Authority that it receives from an area landfill pursuant to a services contract between the landfill and the Authority. *See* R.C. 343.02. *See also* R.C. 343.011. For the following reasons, I am of the opinion that the individual members of the board of trustees of the Richland County Regional Solid Waste Management Authority are not permitted to receive compensation for the time they spend attending meetings of the Authority.

R.C. 343.011 provides that a regional solid waste management authority may be established to assume the operations of either a county solid waste management district or a joint solid waste management district, and describes the procedures for forming a regional solid waste management authority. In the case of a county solid waste management district, a resolution proposing to establish a regional solid waste management authority is adopted by the board of county commissioners; in the case of a joint solid waste management district, the resolution proposing to establish a regional solid waste management authority is adopted by the joint district's board of directors. R.C. 343.011(A). Thereafter, the resolution must be adopted by the legislative authorities of the more populous municipal corporations and townships within the boundaries of the district.

The statute then describes the appointment and composition of the regional solid waste management authority's board of trustees:

Upon the adoption of the proposal, the board of county commissioners or board of directors shall enter into an agreement with the legislative authorities of the municipal corporations and townships in the district to form a regional solid waste management authority, which agreement shall include, without limitation, procedures for the appointment of a board of trustees of the authority to be comprised of at least the president of the board of county commissioners of each county in the district or his designee, the chief executive officer of the municipal corporation having the largest population within the boundaries of each county in the district or his designee, a member representing the townships within each county in the district chosen by a majority of the boards of township trustees within each county, the health commissioner of the health district having the largest territorial jurisdiction within each county in the district or his designee, and one member representing the public to be appointed by the other members of the board.

R.C. 343.011(A).

Following the formation of a regional solid waste management authority under R.C. 343.011(A), "all the duties and responsibilities imposed on or granted to a board of county commissioners or a board of directors under [R.C. Chapter 343] shall be vested in and exercised by the board of trustees of the regional authority." R.C. 343.011(B). Those duties and responsibilities shall include, without limitation, the matters listed in R.C. 343.011(B)(1)-(8), and the items described in R.C. 343.011(C) and (D). The board of trustees of a regional solid waste management authority also exercises specific duties, powers, and responsibilities as are set forth in R.C. Chapter 3734 (solid and hazardous wastes). *See* R.C. 3734.52-.575.

Syllabus paragraph two of *State ex rel. Leis v. Ferguson*, 149 Ohio St. 555, 80 N.E.2d 118 (1948), establishes the following standard regarding the payment of compensation to public officials whenever a question is raised regarding their entitlement to compensation: "Statutes relating to compensation and allowances of public officers are to be strictly construed, and such officers are entitled to no more than that clearly given thereby." Similar statements by the court appear in *Clark v. Board of County Commissioners*, 58 Ohio St. 107, 50 N.E. 356 (1898) (syllabus, paragraph one) ("[t]o warrant the payment of fees or compensation to an officer, out of the county treasury, it must appear that such payment is authorized by statute") and *Anderson v. Board of Commissioners*, 25 Ohio St. 13, 13 (1874) ("[w]here a service for the benefit of the public is required by law, and no provision for its payment is made, it must be regarded as gratuitous, and no claim for compensation can be enforced"). *See also Somerset Bank v. Edmund*, 76 Ohio St. 396, 81 N.E. 641 (1907); *Debolt v. Trustees of Cincinnati Township*, 7 Ohio St. 237 (1857); *Gilmore v. Lewis*, 12 Ohio 281 (1843).

Whenever it is the General Assembly's intention that individual members of a public board are to be compensated for the time they devote to carrying out the board's statutory responsibilities, it expressly communicates that intention in language that is plain, direct, and unequivocal. In your letter, for example, you mention the compensation received by members of a board of education. The General Assembly has made express provision for such compensation in R.C. 3313.12:

Each member of the educational service center governing board may be paid such compensation as the governing board provides by resolution, provided that any such compensation shall not exceed eighty dollars a day plus mileage both ways, at the rate per mile provided by resolution of the governing board, to cover the actual and necessary expenses incurred during attendance upon any meeting of the board. Such expenses and the expenses of the educational service center superintendent, itemized and verified, shall be paid from the educational service center governing board fund upon vouchers signed by the president of the board.

The board of education of any city, local, or exempted village school district may provide by resolution for compensation of its members, provided that such compensation shall not exceed eighty dollars per member for meetings attended.

The board may provide by resolution for the deduction of amounts payable for benefits under division (D) of section 3313.202 of the Revised Code.

Examples of other public boards and the express authority granted for the payment of compensation to the individual members of those boards appear throughout the Revised Code. *See, e.g.*, R.C. 127.12 (per diem compensation for legislative members of the Controlling Board, when engaged in their duties as members of the Board); R.C. 175.03(A)(1), (2) (the Ohio Housing Finance Agency shall consist of nine members, and "[e]ach appointed member of the agency shall receive compensation at the rate of one hundred fifty dollars per agency meeting attended in person, not to exceed a maximum of three thousand dollars per year"); R.C. 306.02 (the compensation of the seven members of a county transit board "shall be determined by the county commissioners"); R.C. 991.02(E) ("[e]ach of the members of the [Ohio Expositions Commission] appointed by the governor shall be paid the rate established pursuant to [R.C. 124.15(J)]"); R.C. 1513.05 (each member of the Reclamation Board of Review "shall be paid as compensation for his work as a member one hundred fifty dollars per day when actually engaged in the performance of his work as a member and when engaged in travel necessary in connection with such work"); R.C. 3301.03 (each voting member of the State Board of Education shall be paid a salary fixed pursuant to R.C. 124.15(J)); R.C. 3304.12(C) (members of the Rehabilitation Services Commission shall receive an amount fixed pursuant to R.C. 124.15(J) while actually engaged in attendance at meetings or in the performance of their duties); R.C. 4301.07 (each member of the Liquor Control Commission, and the chairman thereof, shall receive a salary fixed pursuant to R.C. 124.15(J)); R.C. 4582.03(A) ("[e]ach member of the board of directors of a port authority shall be entitled to receive from the port authority such sum of money as the board of directors may determine as compensation for his services as director"); R.C. 4582.27(A) (same, port authorities created after December 16, 1994); R.C. 4901.021(G) (members of the Public Utilities Commission Nominating Council "shall be compensated on a per diem basis pursuant to the procedures set forth in [R.C. 124.14]"); R.C. 4905.10(C) ("[e]ach public utilities commissioner shall receive a salary fixed at the level set by pay range 49 under schedule E-2 of [R.C. 124.152]"); R.C. 5901.04 (a board of county commissioners "shall fix a fair compensation" for the services performed by the members of the county veterans service commission); R.C. 6101.67 (compensation of members of the board of directors and board of appraisers of a conservancy district); R.C. 6115.65 (compensation of members of the board of directors and board of appraisers of a sanitary district). *Cf. also* R.C. 351.04 (a board of county

commissioners may fix the compensation of the members of the board of directors of a convention facilities authority, or it may determine that those board members shall serve without compensation).

No provision within either R.C. Chapter 343 or R.C. Chapter 3734, however, expressly authorizes the payment of compensation to individual members of the board of trustees of a regional solid waste management authority for attending meetings of the authority. The composition of the board of trustees of a regional solid waste management authority may explain why the General Assembly has not authorized the payment of compensation to the individual trustees for the services they provide as members of the board. R.C. 343.011(A) specifies several individuals that must be included as members of the board of trustees by reason of the public positions those individuals hold as county commissioner, municipal corporation mayor, and health district commissioner respectively. It may be the view of the General Assembly that such public officials should not receive additional compensation for the service they render a regional solid waste management authority as members of the authority's board of trustees. *Cf. generally* R.C. 2921.43(A)(1) (prohibition against a public servant soliciting or accepting, other than as allowed by R.C. 102.03(G)-(I) or other provision of law, any compensation to perform his official duties, or as a supplement to the public servant's public compensation); 1984 Op. Att'y Gen. No. 84-019 at 2-64 ("R.C. 2921.43(A) is a codification of the common law rule that a public officer may not receive remuneration other than that allowed by law for the performance of his official duties"). Moreover, no provision within either R.C. Chapter 343 or R.C. Chapter 3734 provides an explicit grant of authority to the board of trustees of a regional solid waste management authority either to authorize the payment of compensation to individual members of the board, or to set the amount of any such compensation.

Accordingly, I conclude that individual members of the board of trustees of the Richland County Regional Solid Waste Management Authority are not entitled to receive compensation for their attendance at meetings of the Authority, nor may the board of trustees either authorize the payment of compensation to individual members of the board, or set the amount of such compensation. *Cf., e.g.,* 1992 Op. Att'y Gen. No. 92-012 at 2-41 and 2-42 (eschewing a reading of R.C. 3375.54 that would permit funds derived under R.C. 3375.50-.53 to be expended for the payment of compensation to trustees of a county law library association when such a reading would "permit the law library trustees to use public funds to compensate themselves").

It is, therefore, my opinion, and you are advised that absent express statutory authority therefor, individual members of the board of trustees of the Richland County Regional Solid Waste Management Authority are not entitled to receive compensation for their attendance at meetings of the Authority, nor may the board of trustees either authorize the payment of compensation to individual members of the board, or set the amount of such compensation.

Respectfully,

BETTY D. MONTGOMERY

The Honorable James J. Mayer, Jr.

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Attorney General

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SYLLABUS:

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