January 21, 1998

OPINION NO. 98-004

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

Dear Auditor Petro:

We are in receipt of your letter requesting an opinion concerning the powers and duties of a regional council of governments formed pursuant to R.C. Chapter 167. You have asked whether the budgetary requirements set forth in R.C. Chapter 5705 that are applicable to school districts are also applicable to a regional council of governments that is composed of school districts and is formed for the purpose of challenging the constitutionality of Ohio's current school funding formula.[1]

The regional council of governments about which you have inquired has collected money from its member school districts and has expended that money for various purposes relating to the challenge of school funding. The council, however, has not assumed the budgetary function for its member political subdivisions. In conversations with my staff, your representative indicated that your question relates generally to operations of the regional council of governments and is not limited to particular acts undertaken by the council.

Your question arises in light of 1982 Op. Att'y Gen. No. 82-103, in which one of my predecessors stated:

> When a political subdivision enters into an agreement under R.C. 167.03(C) or 167.08 with the regional council of governments of which it is a member, whereby the regional council of governments assumes certain duties and responsibilities of the member political subdivision, the regional council of governments must comply with all

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[1] You have not asked whether the creation of a regional council of governments for this purpose is proper under R.C. Chapter 167 and this opinion does not address that issue.

> statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities.

1982 Op. Att'y Gen. No. 82-103 (syllabus). You have asked for clarification of the language stating that the council "assumes certain duties and responsibilities of the member political subdivision." *Id.*

Let us consider first the nature of a regional council of governments. The governing bodies of two or more political subdivisions, including school districts, may enter into an agreement for the establishment of a regional council of governments. R.C. 167.01. The council has authority to study governmental problems, promote cooperative arrangements, perform planning functions, and make recommendations, but it may not displace any other planning agency. R.C. 167.03.

A regional council of governments is authorized to adopt by-laws providing for the conduct of its business. R.C. 167.04(A). The by-laws must provide for the appointment of a fiscal officer "who shall receive, deposit, invest, and disburse the funds of the council in the manner authorized by the by-laws or action by the council." R.C. 167.04(B). Thus, a regional council of governments maintains its own funds. *See* 1989 Op. Att'y Gen. No. 89-063, at 2-273.

The council is permitted to employ staff, to contract for the services of consultants and experts, and to purchase, lease, or otherwise provide for supplies, materials, equipment, and facilities that it deems necessary and appropriate. R.C. 167.05. Such action is to be taken "in the manner and under procedures established by the by-laws of the council." *Id.*

A regional council of governments has been given no authority to levy taxes or issue bonds. *See, e.g.*, 1979 Op. Att'y Gen. No. 79-018, at 2-61 to 2-62; 1971 Op. Att'y Gen. No. 71-010, at 2-22. Rather, it receives money from its member governments, and it may establish schedules of dues for them to pay. R.C. 167.06(A). Members are also permitted to provide services of personnel, use of equipment, office space, and other services. *Id.* In addition, the council may receive gifts from governmental units or from private or civic sources. R.C. 167.06(A), (B). It must make an annual report of its activities to its member governments. R.C. 167.06(C).

A regional council of governments has authority, by appropriate action of the governing bodies of its members, to perform "functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern." R.C. 167.03(C); *see, e.g.*, 1990 Op. Att'y Gen. No. 90-091, at 2-390 to 2-391. In addition, the council may contract with its members or other political subdivisions to provide or receive services or to perform any function or render any service on behalf of a political subdivision that the political subdivision may perform or render. R.C. 167.08.

In the instant case, the regional council of governments is taking action on behalf of its member school districts to challenge the constitutionality of Ohio's current school funding formula. The question is whether, in taking such action, the council must comply with the budgetary provisions of R.C. Chapter 5705.

Let us now consider R.C. Chapter 5705. That chapter includes provisions relating to the imposition of tax levies, *see, e.g.*, R.C. 5705.03; R.C. 5705.06-.07, and the budgeting and expenditure of funds, *see, e.g.*, R.C. 5705.28-.29; R.C. 5705.41. In general, the provisions of R.C. Chapter 5705 apply to subdivisions and taxing units. *See, e.g.*, 1980 Op. Att'y Gen. No. 80-060, at 2-236 ("R.C. Chapter 5705, commonly known as the _Uniform Tax Levy Law,_ was enacted to effectuate a uniform system of taxation throughout the counties and to curb irresponsible spending practices of taxing units and subdivisions").

For purposes of R.C. Chapter 5705, the term "subdivision" is defined to include certain named entities, among them city, local, exempted village, cooperative education, and joint vocational school districts and county school financing districts. R.C. 5705.01(A). The definition does not include a regional council of governments. *Id.*

The term "taxing unit," as used in R.C. Chapter 5705, 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, metropolitan park districts, sanitary districts, road districts, and other districts." R.C. 5705.01(H). Because a regional council of governments has no authority to levy taxes or issue bonds, it is not included as a taxing unit.

"District authority" is another term defined in R.C. 5705.01. *See* R.C. 5705.01(I). It means "any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions." *Id.* The definition includes as examples such entities as educational service centers and district boards of health, which have statutorily-defined districts. *See, e.g.*, R.C. 3311.05 and 3311.055; R.C. 3709.01-.02. A regional council of governments is not included as one of the entities named in that definition. Further, it has been found that the term "district" has a specific statutory meaning and that regional entities are not districts for purposes of R.C. 5705.01(I). *See* 1983 Op. Att'y Gen. No. 83-021. Thus, a regional council of governments is not a district authority under R.C. Chapter 5705.

It is evident, therefore, that a regional council of governments is not a "subdivision," "taxing unit," or "district authority" under R.C. 5705.01 and is not directly subject to the provisions of R.C. Chapter 5705. In contrast, school districts are included as subdivisions and taxing units that are subject to applicable provisions of R.C. Chapter 5705. *See, e.g.*, 1980 Op. Att'y Gen. No. 80-060, at 2-236.

You have asked whether the budgetary requirements set forth in R.C. Chapter 5705 apply to a regional council of governments. In communications with my staff, your representative indicated that the budgetary requirements in question include, but are not limited to, those appearing in R.C. 5705.09-.17, R.C. 5705.28-.30, R.C. 5705.34, R.C. 5705.36, and R.C. 5705.38-.41. These provisions govern the establishment of funds by subdivisions and the allocation of moneys to the appropriate funds. *See* R.C. 5705.09; R.C. 5705.10-.16. They require that the taxing authority of each subdivision or other taxing unit adopt a tax budget setting forth its estimate of contemplated

revenue and expenditures and submit that budget to the county auditor for presentation to the county budget commission. *See* R.C. 5705.28-.31. The county budget commission then reviews the budgets, adjusts the tax levies as appropriate, and certifies the necessary tax rates to the taxing authorities for authorization. *See* R.C. 5705.31; R.C. 5705.32; R.C. 5705.34.

The budgetary requirements of R.C. Chapter 5705 also govern the appropriations from each fund of a subdivision or other taxing unit and require that total appropriations not exceed the total of estimated revenue available for expenditures, as certified by the budget commission, or in case of appeal, by the board of tax appeals. R.C. 5705.39. In the case of a school district, the county auditor must file with the Superintendent of Public Instruction a certificate that total appropriations from each fund, together with other outstanding appropriations, do not exceed the official estimate. *Id.* A board of education must also adopt a spending plan setting forth a schedule of revenues and expenses of appropriated funds for the fiscal year and submit it to the Superintendent of Public Instruction, who determines whether the district will be able to operate its school system with the revenue available to it from existing revenue sources. R.C. 5705.391.

In addition, there are restrictions upon the appropriation and expenditure of money of a subdivision or taxing unit. A subdivision or taxing unit may not spend money unless the money has been appropriated as provided in R.C. Chapter 5705 and may spend money only by a proper warrant drawn against an appropriate fund. R.C. 5705.41(B), (C). Subject to certain exceptions, a contract or order for the expenditure of money must be accompanied by a certificate of the fiscal officer that the amount required "has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances." R.C. 5705.41(D)(1).

District authorities, which are not directly subject to R.C. 5705.41, are brought within its coverage by the final paragraph of that section. The provision states: "No district authority shall, in transacting its own affairs, do any of the things prohibited to a subdivision by this section, but the appropriation referred to shall become the appropriation by the district authority, and the fiscal officer referred to shall mean the fiscal officer of the district authority." R.C. 5705.41. As noted above, a regional council of governments is not a district authority and, therefore, does not come within this provision. *See* 1983 Op. Att'y Gen. No. 83-021.

R.C. 5705.412 imposes additional spending restrictions upon school districts. It provides, in general, that a school district may not adopt an appropriation measure, make a contract, give an order involving the expenditure of money, or increase a wage or salary schedule without attaching a certificate that the school district has in effect for that fiscal year and the succeeding fiscal year the authorization to levy taxes that are sufficient, when combined with other sources of revenue, to provide an adequate educational program. This requirement applies to the various school districts that may be members of a regional council of governments, but it does not by its terms apply to the regional council itself.

Like R.C. 5705.412, various other budgetary requirements of R.C. Chapter 5705 apply to school districts, and a school district must comply with applicable requirements of R.C. Chapter

5705 before it can make payments to a regional council of governments. As discussed above, the provisions of R.C. Chapter 5705 do not by their terms apply to a regional council of governments because a regional council is not a subdivision, taxing unit, or district authority.

You have suggested that the provisions of R.C. Chapter 5705 might be applicable to a regional council of governments pursuant to the principle set forth in 1982 Op. Att'y Gen. No. 82-103 that, when assuming duties and responsibilities of a member political subdivision, a regional council of governments "must comply with all statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities." *Id*. at 2-282 (syllabus). This principle operates as a means of ensuring that a regional council of governments is not used to avoid requirements with which individual members would be required to comply. *See, e.g.,* 1990 Op. Att'y Gen. No. 90-091, at 2-390 to 2-391; 1982 Op. Att'y Gen. No. 82-103, at 2-283 ("[i]f a member political subdivision is restricted in carrying out a particular activity by requirements imposed by statute, the council's ability to act on behalf of the subdivision must be similarly restricted"); 1969 Op. Att'y Gen. No. 69-013.

This principle originates in the concept that the authority of a regional council of governments to act on behalf of its members is derived from its members and cannot exceed the authority that the members have. *See* 1982 Op. Att'y Gen. No. 82-103, at 2-283; *accord, e.g.,* 1990 Op. Att'y Gen. No. 90-091, at 2-390 to 2-391. Thus, for example, if a member of a council is restricted by competitive bidding requirements and authorizes a regional council to arrange a purchase on its behalf, the council must comply with the same bidding requirements. *See* 1969 Op. Att'y Gen. No. 69-013.

The principle does not require, however, that a regional council comply with statutory provisions if compliance has already been achieved by the member government and no duty of compliance is transferred to the regional council. If, for example, a member of a regional council arranges a purchase through a competitive bidding arrangement and then requests the council to administer the purchase, the council is not required to repeat the competitive bidding procedure.

Similarly, when a member of a regional council of governments is subject to the budgetary requirements of R.C. Chapter 5705 and complies with those requirements prior to making payments to the regional council, the statutory provisions have been satisfied. The regional council is not subject to them by direct application, and the member has not transferred to the regional council the duty or responsibility of complying with them.

On the facts that you have presented, the school districts that are members of the regional council of governments are required to comply with the budgetary provisions of R.C. Chapter 5705 before they make payments to the regional council. Therefore, compliance with R.C. Chapter 5705 is not a duty or responsibility assumed by the regional council of governments on behalf of its members. Because a regional council of governments is not itself subject to R.C. Chapter 5705, the regional council of governments is not required to comply with the budgetary provisions of R.C. Chapter 5705, either with respect to money it receives from its members or with respect to money it receives from other sources.

1982 Op. Att'y Gen. No. 82-103 considered a situation in which member subdivisions would order and receive goods and a regional council would receive, deposit, and invest the funds, and disburse them to the appropriate vendor upon receipt of a properly approved voucher from the member subdivision. The opinion concluded that, "in such a situation, the regional council of governments may receive, deposit, and invest the funds on behalf of a member subdivision only by complying with all statutory requirements imposed upon that member subdivision in the receipt, deposit and investment of such subdivision's funds." *Id.* at 2-283.

1982 Op. Att'y Gen. No. 82-103 did not name any statutes to which its analysis applied. In particular, it did not specifically consider the provisions of R.C. Chapter 5705. Having examined those provisions, as discussed above, we conclude in this instance that 1982 Op. Att'y Gen. No. 82-103 does not require that the regional council of governments comply with the budgetary provisions of R.C. Chapter 5705.

In the situation that you have described, the individual member school districts are responsible for complying with R.C. Chapter 5705 and the budgetary requirements of that chapter do not apply to the regional council of governments. Thus, a regional council of governments that is composed of school districts and is formed for the purpose of challenging the constitutionality of Ohio's school funding formula is not required to comply with the general budgetary requirements of R.C. Chapter 5705.

It should be noted that, even though R.C. Chapter 5705 does not apply to a regional council of governments, the moneys held and expended by a regional council of governments may be expended only for proper purposes and through proper procedures. The fact that a regional council of governments is not itself required to comply with R.C. Chapter 5705 does not mean that no safeguards apply to its funds. Moneys held by a regional council of governments are public moneys that are held in trust for the public and may be recovered by legal action if illegally expended or not properly accounted for. *See* R.C. 117.01(C), (D), (E); R.C. 117.28-.30; R.C. 117.42; 1973 Op. Att'y Gen. No. 73-119, at 2-457 (moneys of a regional council of governments are public moneys that are to be deposited or invested in accordance with the Uniform Depository Act). As a public office, a regional council of governments must file with the Auditor of State an annual financial report setting forth its income and expenditures. R.C. 117.38. *See generally, e.g.,* 1971 Op. Att'y Gen. No. 71-010 (a regional council of governments is a political subdivision for purposes of exemption from the payment of sales tax). As your letter indicates, a regional council of governments is subject to audit by the Auditor of State in accordance with auditing standards established by the Auditor of State. *See* R.C. 117.10; R.C. 117.11; R.C. 117.19; R.C. 117.43.

The conclusion that R.C. Chapter 5705 does not apply to a regional council of governments is compelled by the plain language of R.C. Chapter 5705. The definitions set forth in R.C. 5705.01 do not by their terms include regional councils of government, and rules of statutory construction require us to apply the definitions as written. *See, e.g., Wachendorf v. Shaver,* 149 Ohio St. 231, 232, 73 N.E.2d 370, 372 (1948) (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statue may not be restricted, constricted, qualified, narrowed, enlarged or abridged"). While it might be argued that a

different result was intended, the existing language of the statutes does not support such a result. *See, e.g., Slingluff v. Weaver*, 66 Ohio St. 621, 621, 64 N.E. 574, 574 (1902) (syllabus, paragraph 2) ("[t]he question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact"). Should the General Assembly seek a different result, it may secure that result by making appropriate statutory amendments.

For the reasons discussed above, it is my opinion and you are advised:

1. A regional council of governments is not a "subdivision," "taxing unit," or "district authority" under R.C. 5705.01 and is not directly subject to the provisions of R.C. Chapter 5705.

2. A regional council of governments that is composed of school districts and is formed for the purpose of challenging the constitutionality of Ohio's school funding formula is not required to comply with the general budgetary requirements of R.C. Chapter 5705.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

January 21, 1998

The Honorable Jim Petro
Auditor of State
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Columbus, Ohio 43216-1140

SYLLABUS: 98-004

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