

OPINION NO. 81-068**Syllabus:**

1. Pursuant to R.C. 306.54, a political subdivision may not unilaterally withdraw from membership in a regional transit authority, absent a provision in the ordinance or resolution creating the regional transit authority permitting such withdrawal, but, rather, may withdraw only by an act of the board of trustees with the consent of the other member subdivisions.
2. A board of trustees of a regional transit authority which levies a tax pursuant to R.C. 306.49(A) must levy the tax on all property within the territorial boundaries of the authority. The board of trustees of a regional transit authority may not levy a tax pursuant to R.C. 306.49(A) on property within a political subdivision which has withdrawn from the regional transit authority prior to the date on which the tax is levied.

To: John J. Plough, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, November 3, 1981

I have before me your request for my opinion in response to the following two questions:

1. If a property tax levy, placed on the ballot for the first time by a Regional Transit Authority, pursuant to R.C. §306.49(A), is voted for by at least a majority of the qualified electors within the territorial boundaries of the Regional Transit Authority voting on

the question at an election held for the purpose of authorizing the same, and if the Regional Transit Authority thereafter decides to levy such a tax, does R.C. §306.49(A) require that it must be levied on all the property within the territorial boundaries of the Authority, and not just on property within the political subdivision(s) where the levy received a majority vote?

2. Where the resolution creating the Regional Transit Authority contains no provision for modification in its membership, does R.C. §306.54 require that before a member may withdraw, the Board of Trustees of the Authority must approve such withdrawal with the consent of all subdivisions that created the Authority?

It is my understanding, based on the information contained in your letter and on conversations between a member of my staff and your office, that your questions arise in the context of the following facts. The Portage Area Regional Transit Authority (PARTA) was created in 1975 pursuant to the provisions of R.C. 306.32. The Authority was expanded in 1980 to include the City of Ravenna, Ravenna Township and the Village of Brady Lake. The City of Ravenna joined the Authority under the assurance by a representative of PARTA that the city could withdraw from PARTA in the event that any tax levy proposed by the board of trustees of PARTA was not accepted by a majority of the city's electorate. This was to be an option open to the city even if a majority of the residents within the territorial boundaries of PARTA as a whole voted in favor of the levy. After the City of Ravenna completed the formalities necessary to become a member of PARTA, it came to the city's attention that there was no provision in the ordinance expanding PARTA which would permit the city's withdrawal under the circumstances described above. The city then unilaterally withdrew from PARTA. In an effort to overcome this apparent impasse, a suggestion was made that a provision similar to that set out in 1972 Op. Att'y Gen. No. 72-053 be incorporated into the ordinance (adopted by all member subdivisions) governing PARTA. Pursuant to the suggested provision, any political subdivision which is a member of PARTA could withdraw if a majority of the electors within that subdivision do not vote in favor of the tax levy proposed by PARTA. At the present time, the clause concerning withdrawal has not been adopted and there has been no attempt by PARTA to place a tax levy on the ballot for voter approval.

For ease of discussion, I will first address your second question, which concerns the withdrawal of a member subdivision from a regional transit authority. The dissolution or modification in membership of such an authority is governed by R.C. 306.54, which reads, in pertinent part, as follows:

Subject to making due provisions for the payment and performance of its obligations, the resolution or ordinance creating the regional transit authority may provide for its dissolution or modification in membership under circumstances described therein, or a regional transit authority may be dissolved or its membership modified by its board of trustees with the consent of the subdivision or subdivisions creating such regional transit authority.

Thus, under R.C. 306.54, the membership of a regional transit authority may be modified in one of two ways.¹ A member subdivision may withdraw by following the procedure set forth in the resolution or ordinance which created the authority, or alternatively, if no such procedure exists, the modification in membership may be accomplished by act of the board of trustees with the consent of all member subdivisions.

¹Your facts indicate that a representative of PARTA made statements concerning the ability of the City of Ravenna to withdraw its membership. These statements do not, however, conform with R.C. 306.54 and, consequently, have no legal effect.

In the situation described in your letter, no procedure for the modification of the regional transit authority's membership was incorporated into the ordinance or resolution which created PARTA. Consequently, the withdrawal of a member subdivision may occur only when the board of trustees and the other member subdivisions have consented to such an action as required by R.C. 306.54. R.C. 306.54 does not permit the unilateral withdrawal of a member subdivision from a regional transit authority. I conclude, therefore, that, in the absence of a method which specifically provides otherwise and which has been adopted as part of the resolution or ordinance creating a regional transit authority, a member subdivision may not unilaterally act to withdraw from such authority but, rather, may withdraw only by an act of the board of trustees with the consent of the other member subdivisions.

Your other question concerns the levying of a tax upon property within the boundaries of a regional transit authority. It is my understanding, based on conversations between a member of my staff and your office, that your primary concern is with the effect of a withdrawal of a member subdivision which has taken place after a majority of the electorate within the regional transit authority has voted in favor of a tax levy, but prior to the actual levying of the tax by the board of trustees. For the purposes of this question, I assume that the subdivision has followed an authorized procedure in withdrawing from the regional transit authority. The levying of a tax by a board of trustees of a regional transit authority, after that tax has been approved by a majority of those voting, is governed by R.C. 306.49(A). This section reads, in pertinent part, as follows:

Upon the affirmative vote of at least a majority of the qualified electors within the territorial boundaries of the regional transit authority voting on the question at an election held for the purpose of authorizing same, the regional transit authority may levy upon the property within its territorial boundaries a tax. . . . (Emphasis added.)

R.C. 306.49(A) clearly states that a board of trustees may levy² a tax "upon the property within its territorial boundaries." This section does not give the board of trustees the authority to select those portions of the property within its taxing district upon which a tax shall be levied. Instead, R.C. 306.49(A) speaks of "the property" as a whole. It is apparent, therefore, that R.C. 306.49(A) does require the board of trustees of a regional transit authority to levy upon all property within its territorial boundaries.³ To conclude otherwise would be to invite a violation of Ohio Const. art. XII, §2, which provides that "land and improvements thereon shall be taxed by uniform rule according to law." See also 1981 Op. Att'y Gen. No. 81-044 ("Ohio Const. art. [XII], §2 requires that each tax levy apply uniformly throughout the taxing authority"). However, if a political subdivision has withdrawn from a regional transit authority in a manner authorized by R.C. 306.54, the property within that subdivision obviously is no longer within the territorial boundaries of the transit authority, regardless of whether its citizens voted on the levy. Thus, it is not subject to a levy imposed after the date of withdrawal. See generally State ex rel. Summit County Board of Education v. Medina County Board of Education, 45 Ohio St. 2d 210, 210, 343 N.E.2d 110, 111 (1976) ("Pursuant to R.C. 5705.03, only the taxing authority of the taxing subdivision in which property is located on the date

²R.C. 306.49(C) states that the tax is levied in accordance with R.C. 5705.34. Pursuant to R.C. 5705.34 the taxing authority levies a tax by means of a resolution or ordinance which is then certified "to the county auditor before the first day of October in each year, or at such later date as is approved by the commissioner of tax equalization."

³R.C. 306.49(A) is to be contrasted with R.C. 306.49(B), which authorizes the taxing of property in separate subdivisions within the boundaries of the regional transit authority after a tax levy proposed by the board of trustees has been rejected by a majority of those voting within the authority as a whole.

of the tax is authorized to levy real and personal property taxes thereon for the year"). The board of trustees, therefore, is without authority under R.C. 306.49(A) to levy a tax upon the property of a political subdivision which has withdrawn its membership in the regional transit authority.

It is important to point out that the conclusion above applies only to a situation in which the political subdivision in question has withdrawn from the transit authority prior to the time that a tax is levied. Your question does not ask about, nor have I attempted to analyze, the effect of a withdrawal after a tax has been levied.

Therefore, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 306.54, a political subdivision may not unilaterally withdraw from membership in a regional transit authority, absent a provision in the ordinance or resolution creating the regional transit authority permitting such withdrawal, but, rather, may withdraw only by an act of the board of trustees with the consent of the other member subdivisions.
2. A board of trustees of a regional transit authority which levies a tax pursuant to R.C. 306.49(A) must levy the tax on all property within the territorial boundaries of the authority. The board of trustees of a regional transit authority may not levy a tax pursuant to R.C. 306.49(A) on property within a political subdivision which has withdrawn from the regional transit authority prior to the date on which the tax is levied.