

**Note from the Attorney General's Office:**

1977 Op. Att'y Gen. No. 77-068 was modified by  
1978 Op. Att'y Gen. No. 78-025.

1977 Op. Att'y Gen. No. 77-068 was questioned by  
1997 Op. Att'y Gen. No. 97-017.

1977 Op. Att'y Gen. No. 77-068 was overruled in part by  
1999 Op. Att'y Gen. No. 99-020.

## OPINION NO. 77-068

## Syllabus:

1. A regional water and sewer district, created pursuant to R.C. Chapter 6119 does not possess either express or necessarily implied power to employ the auditing services of a public accounting firm.
2. 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.

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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, October 31, 1977

I have before me your request for my opinion which poses the following questions:

1. Is a regional water and sewer district, created pursuant to R.C. Chapter 6119 and subject to inspection and audit by the Bureau of Inspection and Supervision of Public Offices, pursuant to R.C. 6119.38, authorized to employ the auditing services of a public accounting firm?
2. If such a regional water and sewer district elects not to exercise its authority under R.C. 6119.18 to levy a tax upon the real property within said district, is it, nevertheless, subject to the requirements of R.C. 5705.27 through R.C. 5705.412 as to the adoption of a tax budget, submission of a tax budget to the county budget commission, adoption of an annual appropriation resolution, and the expenditure of monies?

With respect to your first question, a regional water sewer district is a creature of statute. As a result, it may only perform such acts as are expressly allowed by statute or are necessarily implied therefrom. State ex. rel. v. Pierce, 96 Ohio St. 44, 47 (1916). R.C. 6119.06 sets forth the rights, powers and duties of a regional water and sewer district. A review of this section reveals that there is no express or necessarily implied authority for a regional water and sewer district to engage the services of a public accounting firm to perform an audit.

It should be noted that the General Assembly has imbued some governmental bodies with the authority to employ public accountants. For example, R.C. 9.36 authorizes a board of county commissioners to contract for the services of fiscal and

management consultants to aid it in the performance of its duties. In 1975 Op. Att'y Gen. No. 75-084, I concluded that a single county mental health and retardation board could properly employ the auditing, consulting and accounting services of an accounting firm, notwithstanding the fact that the county treasurer is the custodian of its fund. This authority was found in R.C. 340(E), which empowers the board's executive director to:

(E) Employ and remove from office such employees and consultants as may be necessary for the work of the board, and fix their compensation . . . (Emphasis added).

However, no such express authorization is found in R.C. Chapter 6119 and I am unable to conclude that such authorization is necessarily implied from the express provisions therein. Absent such express or necessarily implied authority, a regional sewer and water district may not contract with a public accounting firm for auditing services.

With respect to your second question, it is first necessary to consider the purposes for which the county budget commissions were created by the General Assembly. In Ohio Legislative Service Commission, County Budget Commissions in Ohio (Report No. 91, 1969), these purposes are summarized as follows:

County budget commissions were established in 1911 to assure that unvoted levies on taxable property did not exceed the ten mill limit. Later, they were also made responsible for the allocation of both state and local intangible property taxes. Id., at p. 1.

R.C. 5705.27 establishes county budget commissions in Ohio. R.C. 5705.28 sets forth in detail the required procedure for adopting tax budgets for submission to the commission. It provides, in part, as follows:

On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, 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 first day of June in each year, 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 bureau of supervision and inspection of public offices. The taxing authority shall include in its budget of expenditures the full amounts requested by district authori-

ties, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. . . (Emphasis added)

After this procedure has been followed, R.C. 5705.30 mandates that the adopted budget:

. . . shall be submitted to the county auditor on or before the twentieth day of July, or at such a later time as is prescribed by the commissioner of equalization.

The tax budget must, pursuant to R.C. 5705.29, contain various items relating to the projected revenues, including tax revenues, and expenditures of the subdivision. R.C. 5705.29 (B)(2) requires that the budget include the amount each fund of the subdivision requires from the general property tax. The budget, after its adoption, must be submitted to the county auditor. R.C. 5705.30 states that the failure of the subdivision to submit the tax budget to the auditor precludes it from sharing in the apportionment of the local government fund distribution.

A regional water and sewer district created is labeled a "subdivision" by R.C. 6119.39 and, as such, would be subject to the requirements of R.C. 5705.27 through 5705.412 if it were exercising its taxing power. The question of whether it is required to comply with the provisions of R.C. 5705.27 through 5705.412, when it is neither sharing in any general tax levies of the counties in which it is located nor levying any taxes pursuant to its authority under R.C. Chapter 6119, thus depends on the definition of the term "tax budget" as used in R.C. 5705.28.

At the outset, it should be noted that the term "tax budget" is not defined in the Ohio Revised Code. Therefore, it is necessary to employ the rules of statutory construction in order to determine its meaning. R.C. 1.42 provides the following basis for the interpretation of statutes:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. . .

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 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.

Further support for this conclusion is derived from the purposes sought to be accomplished by the county budget commission process. As was stated earlier, 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. Neither purpose 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. Illustrative of the uselessness of such actions is R.C. 5705.30, which precludes subdivisions that do not submit their tax budgets to the county auditor from sharing in the local government fund distribution. Since the subdivision in question has no intention of sharing in that distribution, the penalty therein specified would be illusory. Therefore, based upon the preceding discussion, it is my opinion that R.C. 5705.27 through R.C. 5705.412 do not apply to a regional water and sewer district established pursuant to R.C. Chapter 6119 which does not exercise its taxing power or share in the distribution of general tax funds.

Accordingly, it is my conclusion, and you are so advised, that:

1. A regional water and sewer district, created pursuant to R.C. Chapter 6119 does not possess either express or necessarily implied power to employ the auditing services of a public accounting firm.
2. 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.