

## OPINION NO. 74-080

## Syllabus:

A regional council of school districts, organized pursuant to R.C. Chapter 167, is not entitled to receive school foundation payments pursuant to R.C. Chapter 3317.

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To: Martin W. Essex, Superintendent of Public Instruction, Columbus, Ohio  
By: William J. Brown, Attorney General, September 30, 1974

I have before me your request for my opinion on the following question:

"May a council of public school districts, organized pursuant to Chapter 167 of the Revised Code, receive direct payments authorized by Chapter 3317 of the Revised Code for those functions or services rendered by the council for its members for which payment would be made to the individual member school districts pursuant to Chapter 3317 of the Revised Code if such function or service was performed by the member districts in their own behalf?"

R.C. 167.01, which provides for the establishment of regional councils of governments, reads as follows:

"The governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions."

(Emphasis added.)

R.C. 167.03, which provides the powers of such regional councils, states in part that:

"(C) The council may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern."

See also R.C. 167.08, which authorizes regional councils to contract with a political subdivision to perform any function or render any service on behalf of such political subdivision, which such political subdivision may perform or render. These provisions are discussed in Opinion No. 69-013, Opinions of the Attorney General for 1969.

Your request is concerned with a regional council composed of school districts. Such a council has the authority, pursuant to R.C. 167.03(C) and 167.08, with the consent of its members, to perform such functions as the individual member school districts are authorized to perform, and are "necessary or desirable for dealing with problems of mutual concern." One such function might well be the operation of classes for the handicapped, which a board of education is authorized to operate, with the permission of the state board of education, pursuant to R.C. 3323.01.

However, the payment of state subsidies for education is made pursuant to the school foundation program, set forth in R.C. Chapter 3317. For a brief history of the school foundation program, see Opinion No. 72-083, Opinions of the Attorney General for 1972. R.C. 3317.01 sets forth the eligibility requirements for participation in the school foundation program and reads, in part, as follows:

"Chapter 3317. of the Revised Code shall be administered by the state board of education, with the approval of the controlling board. The superintendent of public instruction shall calculate the amounts payable to each district and shall certify the amounts payable to each eligible district to the clerk of the district as provided by this chapter.

\* \* \* \* \*

\* \* \* \* \* The payments authorized by this chapter shall be made only to those school districts in which:

"(A) Beginning June 30, 1973, the district has the authority to levy in calendar year 1974, and has in each year thereafter, a current tax levy for school operations of at least twenty mills, except that this requirement shall be waived by the superintendent of public instruction for one year if the district has had its total millage reduced below such amount by action of the county budget commission, board of tax appeals, or county auditor. Levies for joint vocational school districts, limited to or to the extent apportioned to current expenses, may be included in this qualification requirement.

"(B) The school year next preceding the fiscal year for which such payments are authorized

meets the requirement of section 3313.48, 3313.481, 3313.482, 3313.484, or 3313.485 of the Revised Code with regard to the minimum number of days or hours school must be open for instruction with pupils in attendance, \* \* \*.

\* \* \* \* \*

"(C) The district has on file, and is paying in accordance with, a teachers' salary schedule which complies with section 3317.13 of the Revised Code.

\* \* \* \* \*

"Unless otherwise specified, 'school district,' for the purposes of this chapter means city, exempted village, and local school district.

\* \* \* \* \*"  
(Emphasis added.)

Under R.C. 3317.01, state support of public schools is paid to each school district having a current tax levy for school operations of at least twenty mills. Some other requirements are that the school must have been open for instruction during the previous school year for at least the number of school days specified by statute and that the teachers in such district must be paid at least the minimum annual salary specified by statute. Since R.C. 3317.01 only provides for school foundation payments to "school districts", and that Section defines "school district" to include only city, exempted village, and local school districts, I conclude that a regional council of school districts does not qualify as a "school district" for purposes of R.C. Chapter 3317, and therefore cannot be granted school foundation payments pursuant to that Chapter. See Opinion No. 73-030, Opinions of the Attorney General for 1973, and Opinion No. 72-049, Opinions of the Attorney General for 1972, in which I determined that both county school districts and joint vocational school districts are excluded from the benefits of R.C. Chapter 3317 unless specifically included. Such is also the case with a regional council of school districts.

Moreover, a regional council of school districts could not meet the requirement of R.C. 3317.01(A), of a current tax levy of twenty mills. R.C. 5705.192, which provides the authority for a tax levy for school purposes, limits the use of such authority to the board of education of a city, exempted village, or local school district. A regional council of school districts would have no power to levy a tax, under R.C. 167.03(C), if for no other reason than that such power is not "necessary or desirable for dealing with problems of mutual concern." R.C. 167.06 provides that a council of governments may be funded by appropriations of its member subdivisions and by grants from the state and the United States. There is no indication of a legislative intent to confer taxing power upon such a council, which would make it, in effect, a governmental subdivision rather than a council of subdivisions. In accord is Opinion No. 71-010, Opinions of the Attorney General for 1971. See also Opinion No. 69-103, Opinions of the Attorney General for 1969. Thus, while a regional council of school districts has

the authority to perform certain functions and duties which its members are authorized to perform, and may even accept funds from the state (R.C. 167.06), such authority does not permit the state board of education to make school foundation payments directly to such a regional council pursuant to R.C. Chapter 3317.

In specific answer to your question, it is my opinion and you are so advised that a regional council of school districts, organized pursuant to R.C. Chapter 167, is not entitled to receive school foundation payments pursuant to R.C. Chapter 3317.