

OPINION NO. 69-013**Syllabus:**

1. A Council of Governments may perform joint purchasing on behalf of its members of items, the cost of which to each political subdivision would be less than the statutory amount for which competitive bidding would be required.

2. A Council of Governments may not jointly purchase items without competitive bids on behalf of its members, the cost of which to each political subdivision would exceed the statutory amount for which competitive bidding is required.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: Paul W. Brown, Attorney General, February 7, 1969

You state that the Miami Valley Council of Governments wishes to provide joint purchasing services by that organization to its members under the provisions of Section 167.08, Revised Code. You request my opinion on questions that read as follows:

"1. May a Council of Governments perform joint purchasing on a contract basis on behalf of its members for items the cost of which to each political subdivision would be less than the statutory amount for which competitive bidding would be required for the particular type of political subdivision? (city, county, township, village, etc.)

"2. May a Council of Governments perform joint purchasing on a contract basis on behalf of its members for items the cost of which to each political subdivision would exceed the statutory amount for which competitive bidding would be required for the particular type of political subdivision?"

Section 167.08, supra, constituting the final section in Chapter 167, Revised Code, entitled "Regional Councils of Governments," provides as follows:

"The appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may contract with any council established pursuant to sections 167.01 to 167.07, inclusive, of the Revised Code to receive any service from such council or to provide any service to such council. Such contracts may also authorize the council to perform any

function or render any service in behalf of such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions, which such counties, municipal corporations, township, special districts, school districts, or other political subdivisions may perform or render."

This section thus specifically provides that any one or group of political subdivisions may contract with the council to perform any function which the subdivisions themselves may perform. This language appears clearly to be broad enough to enable the council to perform purchasing on behalf of its contracting members. There is nothing in the statutory language to impede the conduct of this purchasing function on a joint purchasing basis.

On the contrary, other provisions in Chapter 167, supra, are in support of a joint purchasing basis. Section 167.03, Revised Code, reads in part as follows:

"(A) The Council shall have the power to:

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"(4) Promote cooperative agreements and contracts among its members or other governmental agencies and private persons, cooperation [corporations], or agencies;

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"(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.

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It will be noted, however, that in each reference the council is limited to performing on behalf of its contracting subdivisions just those functions which the subdivision itself is able to perform. This would rule out purchasing items without competitive bids on behalf of a subdivision the cost of which would exceed the statutory amount for which competitive bidding would be required. By the same test, however, it appears to follow that such purchasing function could be carried out on a competitive bid basis.

I am, therefore, of the opinion, and you are so advised:

1. A Council of Governments may perform joint purchasing on behalf of its members of items, the cost of which to each political subdivision would be less than the statutory amount for which competitive bidding would be required.
2. A Council of Governments may not jointly purchase items without competitive bids on behalf of its members, the cost of which to each political subdivision would exceed the statutory amount for which competitive bidding is required.