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PLANNING COMMISSIONS, REGIONAL—NOT ENTITLED TO LEGAL ADVICE OF PROSECUTING ATTORNEYS OF MEMBER COUNTIES—§309.09 R.C.—SUCH COMMISSION MAY EMPLOY COUNSEL IF FUNDS AVAILABLE, §713.21 R. C.

SYLLABUS:

1. A regional planning commission, having more than one participating county, is not a “county board,” nor its members “county officers,” within the meaning of Section 309.09, Revised Code, and such commission is not eligible to receive under this section the services of the prosecuting attorney of a member county as its legal advisor.

2. Section 713.21, Revised Code, authorizes a regional planning commission to employ counsel if such employment is necessary and if funds therefor are available within the amounts agreed upon and appropriated by the agencies participating in the creation and operation of such commission.

Columbus, Ohio, September 15, 1958

Hon. John S. Ballard, Prosecuting Attorney  
Summit County, Akron, Ohio

Dear Sir :

I have before me your request for my opinion which reads as follows :

“In this area there has been established a Regional Planning Commission and Summit County is one of three Counties that is participating in what has been designated as the Tri-County Regional Planning Commission. Each of these three Counties, of course, contributes to the budget of such Regional Planning Commission, and, of course, each of the three Counties has its own Prosecuting Attorney.

“We respectfully request your opinion on the following questions :

“(1) Is such a Regional Planning Commission a County board or office which would be eligible to receive the services of the Prosecuting Attorney as its legal advisor ?

“(2) If the answer to question No. 1 is in the affirmative, would it then be proper for the Prosecuting Attorney of one of these three Counties to represent such Regional Planning Commission since his advices would encompass all three Counties ?

“(3) If the Prosecuting Attorney cannot act as the legal advisor for such Regional Planning Commission, can the Commission lawfully hire and expend funds for such counsel ?”

Section 713.21, Revised Code, provides :

“The planning commission of any municipal corporation or group of municipal corporations, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission.

“The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations and counties in the region shall be

such as is determined by the planning commissions and boards. Such boards and the legislative authorities of such municipal corporations may appropriate their respective shares of such costs. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by sections 713.21 to 713.27, inclusive, of the Revised Code. The regional planning commission may accept, receive and expend funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government, or from civil sources, and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid. Within the amounts thus agreed upon and appropriated or otherwise received, *the regional planning commission may employ such engineers, accountants, and other employees as are necessary* and may rent such space and make such purchases as it deems necessary to its use." (Emphasis added)

Section 713.23, Revised Code, provides :

"The regional or county planning commission shall make plans and maps of the region or county respectively, showing the commission's recommendation for systems of transportation, highways, park and recreational facilities, the water supply, sewerage and sewage disposal, garbage disposal, civic centers and other public improvements which affect the development of the region or county respectively, as a whole or as more than one political unit within the region or county, and which do not begin and terminate within the boundaries of any single municipal corporation."

Since a prosecuting attorney is a public officer, the problem here presented must be approached in view of the familiar rule that "public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those delegated." 32 Ohio Jurisprudence, pp. 643, 933, 934.

Section 309.09, Revised Code, provides in part :

"The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, *and all other county officers and boards*, including all tax supported public libraries except those organized as a part of a city school district or of a municipal corporation, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party,

and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.” (Emphasis added)

An affirmative answer to your first question as to whether a regional planning commission, such as the one here presented, is eligible to receive the services of the prosecuting attorney of a participating county depends on whether the members of the planning commission can be classified as either “county officers” or a “county board,” as provided for in Section 309.09, *supra*, set forth above.

Article X, Section 1, Ohio Constitution, requires that all county officers be elected, and since, as seen in Section 713.21, *supra*, the members of the regional planning commission are not, they cannot be designated “county officers.”

In my examination of the authorities, I find the problem as to what constitutes a “county board” to be subject to possible doubt in the case of boards or commissions whose territorial jurisdiction is equal to or less than that of the entire county, but on this question, not being called upon to do so, I express no opinion.

From the facts provided, it is apparent that a planning commission, such as the one here presented, is a multi-county regional planning commission, organized under Section 713.21, *supra*, and with powers and duties as provided by Section 713.23, *supra*. It is obvious that such a commission, by its very nature, is not a “county board” within the purview of Section 309.09, *supra*.

Concluding on this basis that a multi-county regional planning commission is not such a “county board,” nor its members such “county officers” as would render it eligible to receive the services of the prosecuting attorney under the provisions of Section 309.09, *supra*, quoted above, your first question must be answered negatively.

Your second question as to whether it would be proper for the prosecuting attorney of one of the participating counties to represent the planning commission in question becomes moot since an affirmative answer to your first question is a necessary prerequisite to an affirmative answer to your second.

The third question of your inquiry is whether the planning commission may hire and expend funds for counsel if the first two questions are answered in the negative.

The answer to this question is readily answered in the affirmative by reference to Section 713.21, *supra*, quoted above, which expressly authorizes the employment of "such engineers, accountants, and other employees as are necessary" and within the amounts thus agreed upon and appropriated by the planning commissions and boards. The fact that the prosecuting attorney's services are not available to the commission at once suggests that the inclusion of counsel among other employees is indeed "necessary."

Accordingly, it is my opinion, and you are so advised, as follows:

1. A regional planning commission, having more than one participating county, is not a "county board," nor its members "county officers," within the meaning of Section 309.09, Revised Code, and such commission is not eligible to receive under this section the services of the prosecuting attorney of a member county as its legal advisor.

2. Section 713.21, Revised Code, authorizes a regional planning commission to employ counsel if such employment is necessary and if funds therefor are available within the amounts agreed upon and appropriated by the agencies participating in the creation and operation of such commission.

Respectfully,  
WILLIAM SAXBE  
Attorney General