

OPINION NO. 87-058

Syllabus:

An Ohio political subdivision is not authorized by R.C. 2744.081, or any other law, to enter into risk pools with governmental entities of other states.

To: George Fabe, Director, Department of Insurance, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 20, 1987

I have before me your request for my opinion in which you ask the following questions:

1. May an Ohio political subdivision, pursuant to a written agreement, join with governmental entities of other states in establishing a pool pursuant to R.C. 2744.081?
2. If the answer to the above is negative, does other law permit Ohio political subdivisions to contract with governmental entities of other states in establishing a risk pool?
3. If the answer to any of the above is affirmative, must a pool established pursuant to foreign law be licensed by this Department before it can solicit participation by Ohio political subdivisions?
4. Likewise, must the administrators of these pools be licensed by this Department as insurance agents before they can solicit participation by Ohio political subdivisions?

Political subdivisions are creatures of statute, and have only such powers as are expressly conferred by statute or necessarily implied therefrom.¹ See e.g. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (county commissioners); State ex rel. Schramm v.

¹ Municipal authority is conferred by Ohio Const. art. XVIII, §§2, 3 and 7. However, "[t]he power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of a statute conferring a broader power, municipal legislation must be confined to that area." Village of Beachwood v. Board of Elections, 167 Ohio St. 369, 148 N.E.2d 921 (1958) (syllabus, paragraph one). The home rule authority does not enable a municipal corporation to act beyond its borders. See 1985 Op. Att'y Gen. No. 85-034. Thus, for purposes of engaging in interstate risk pools, municipalities have no greater authority than other political subdivisions within the state.

Ayres, 158 Ohio St. 30, 106 N.E.2d 630 (1952) (township trustees); Schwing v. McClure, 120 Ohio St. 335, 166 N.E. 230 (1929) (boards of education). Accordingly, the authority to enter into risk pool agreements with out-of-state governmental entities must be expressly provided by statute or necessarily implied from those powers expressly conferred.

R.C. 2744.081 authorizes a political subdivision to:

join with other political subdivisions in establishing and maintaining a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expense, loss, and damage that arises, or is claimed to have arisen, from an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function....

R.C. 2744.01(F) defines a political subdivision as "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state."² The definition also includes "a county hospital commission appointed under [R.C. 339.14], regional planning commission created pursuant to [R.C. 713.21], county planning commission created pursuant to [R.C. 713.22], joint planning council created pursuant to [R.C. 713.231], interstate regional planning commission created pursuant to [R.C. 713.30], and regional councils of political subdivisions established pursuant to [R.C. Chapter 167]."

You have inquired whether political subdivisions in Ohio may engage in interstate risk pools with political subdivisions of other states. Although R.C. 2744.081 expressly authorizes political subdivisions, as defined by Ohio law, to join with other political subdivisions in establishing and maintaining joint self-insurance pools, there is no mention of such authority to enter into agreements with entities outside this state.³ Where the General Assembly intends to confer authority upon Ohio political subdivisions to act in concert with political subdivisions or governmental entities outside the state it generally provides express authority therefor. See e.g. R.C. 9.60(C) ("[a]ny county, political subdivision, or state agency or instrumentality may contract with a firefighting agency of this state, a private fire company, or a governmental entity of an adjoining state to obtain fire protection"); R.C. 307.05 ("[a] board of county commissioners may...enter into a contract with one or more counties,

² "State" is defined in R.C. 2744.01(H) as "the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, colleges and universities, institutions, and other instrumentalities of the state of Ohio."

³ You have noted in your request that the State of Virginia expressly authorizes its political subdivisions to form group self-insurance pools with political subdivisions within or without the state. See Va. Code §15.1-503.4:3 ("any political subdivision of this Commonwealth may, by

townships, municipal corporations, non-profit corporations, or private ambulance owners, regardless of whether such counties, townships, municipal corporations, nonprofit corporations, or private ambulance owners are located within or without the state, to obtain ambulance or emergency medical services); R.C. 713.21 (a "regional planning commission may accept, receive, and expend funds, grants, and services...from departments, agencies, and instrumentalities of this state or any adjoining state") (emphasis added). See also 1986 Op. Att'y Gen. No. 86-044 (absent express statutory authority, a county may not provide emergency medical services outside the State of Ohio). It must be assumed, therefore, that the term "political subdivision" as used in R.C. 2744.081 applies only to political subdivisions in the State of Ohio. I am aware of no other law which expressly permits entry into interstate governmental risk pools.

Furthermore, there is no basis for implying authority to enter into interstate governmental risk pools. Generally, the insurance industry is highly regulated by the Ohio Department of Insurance. R.C. 3905.42 provides, in part, that:

No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein...unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with.

While this provision does not apply to Ohio political subdivisions, see R.C. 2744.081(D)(2) (exempting joint self-insurance pools, created pursuant to R.C. 2744.081, from the insurance laws of the state);⁴ 1986 Op. Att'y Gen. No. 86-085 (the terms "company," "corporation," or "association" do not include Ohio political subdivisions), it evidences an intent to regulate foreign and domestic enterprises offering insurance in order to protect the public from unreliable and untrustworthy companies and associations. See State ex rel. Richards v. Ackerman, 51 Ohio St. 163, 37 N.E. 828 (1894). Given this legislative purpose, it is unlikely that the General

contract with one or more political subdivisions of this Commonwealth or of another state, form a group self-insurance pool..."). Michigan law is similar to Ohio's in that it authorizes political subdivisions to self-insure by intergovernmental agreements, but it does not mention authority to do so outside the state. See 1982 Mich. Pub. Acts 138; Mich. Comp. Laws Ann. §124.1 et seq.; Mich. Stat. Ann. §5.4081 et seq. To the contrary, correspondence from the Michigan Attorney General to the Michigan Department of Treasury clearly states that only Michigan governmental authorities and local agencies may enter into intergovernmental risk pools within the state.

⁴ However, R.C. 2744.081(A)(1) requires that a report of funds reserved to cover potential liability and disbursements made from the funds, "together with a written report of a member of the American academy of actuaries certifying whether the amounts reserved conform to the requirements of [R.C. 2744.081]" be submitted to the Superintendent of Insurance for his approval.

Assembly would authorize interstate risk pool arrangements without express provision therefor.

Accordingly, it is my opinion and you are advised that an Ohio political subdivision is not authorized by R.C. 2744.081, or any other law, to enter into risk pools with governmental entities of other states. Since I have so concluded, it is unnecessary to respond to your remaining questions.