

OPINION NO. 85-096**Syllabus:**

A board of county commissioners of a county which is a member of a regional transit authority may not, in its resolution creating the regional transit authority, limit the number of terms that a trustee may serve as a member of the board of trustees of the regional transit authority.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985

I have before me your request for my opinion as to whether the board of county commissioners of a county which is a member of a regional transit authority may limit the number of terms that a trustee may serve as a member of the board of trustees of the regional transit authority.

I note initially that a board of county commissioners is a creature of statute and has only those powers which are expressly granted by statute or which may be necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947).

R.C. 306.32 authorizes a board of county commissioners to join in the creation of a regional transit authority as follows:

Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which is to create or to join in the creation of the regional transit authority

See R.C. 306.31 (setting forth the purposes for which a regional transit authority may be created); R.C. 306.35 (powers and duties of a regional transit authority). R.C. 306.32 further indicates that the resolution or ordinance adopted by each legislative authority creating or joining in the creation of a regional transit authority must include certain provisions, including a statement as to the "number, term, and compensation ... of the members of the board of trustees of the regional transit authority." R.C. 306.32(E). Thus, R.C. 306.32(E) grants a board of county commissioners authority to provide, in its resolution, for the terms of the trustees of the regional transit authority. R.C. 306.32(E) must, however, be read in pari materia with R.C. 306.33. See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are in pari materia and should be read together to ascertain and effectuate if possible the legislative intent"); National Distillers Products Corp. v. Evatt, 143 Ohio St. 99, 54 N.E.2d 146 (1944).

R.C. 306.33 provides in part that:

Within sixty days after a regional transit authority has been created under section 306.32 of the Revised Code, the board of trustees for such regional transit authority shall be appointed as provided in this section.

Members of a board of trustees of an authority created by the exclusive action of a county shall be appointed by the county commissioners of such county. A board of trustees of an authority created by two or more political subdivisions shall consist of such number of members, who shall have such qualifications and who shall be appointed by such public officers as shall be provided in the resolutions or ordinances creating such authority, or any amendments thereto....

The trustees of any authority first appointed shall serve staggered terms. Thereafter each successor shall serve terms of three years, except that any person appointed to fill a vacancy shall be appointed to only the unexpired term. Any appointed trustee is eligible for reappointment. (Emphasis added.)

Construing R.C. 306.32 and R.C. 306.33 in pari materia, it is my opinion that the board of county commissioners is without authority to limit the number of terms that a trustee may serve as a member of the board of trustees of the regional transit authority. While R.C. 306.32 authorizes a board of county commissioners to provide generally in its resolution creating a regional transit authority for the number, term, and compensation of the members of the board of trustees, R.C. 306.33 affirmatively provides that any appointed trustee is eligible for reappointment. Thus, the authority of a board of county commissioners to provide for the terms of the members of the board of trustees is restricted by the statutory pronouncement that all appointed trustees are eligible for reappointment.¹ While the resolution of the county commissioners providing for the number, term, and compensation

¹ R.C. 306.33 also provides that trustees shall serve three year terms.

of the trustees of the regional transit authority may complement state statutes, the resolution may not conflict with state statutes. See State v. Glidden, 31 Ohio St. 309, 313 (1877) ("[w]here authority is vested in a public officer, and the mode is prescribed for exercising the authority, that mode must be followed"). See also State ex rel. Curtis v. DeCorps, 134 Ohio St. 295, 297, 16 N.E.2d 459, 461 (1938) (rule of administrative body may not conflict with state statutes; to be inconsistent, the rule "must contravene or be in derogation of some express provision" of state law).

It is of interest to note that R.C. 306.32 was enacted by 1965 Ohio Laws 191, 1814 (Am. H.B. 421, eff. Nov. 1, 1965) and read, as it does currently, to provide that each resolution or ordinance creating a regional transit authority must state the number, term, and compensation of the members of the board of trustees. R.C. 306.33 was also enacted by Am. H.B. 421, and provided that, "[w]ithin sixty days after a regional transit authority has been created under [R.C. 306.32], the board of trustees for such regional transit authority shall be appointed as provided in the resolution creating it." (Emphasis added.) No mention was made of a trustee's eligibility for reappointment. R.C. 306.33 was amended by 1969-1970 Ohio Laws, Part I, 304, 311-12 (Am. Sub. S.B. 125, eff. Aug. 25, 1970) to read: "Within sixty days after a regional transit authority has been created under [R.C. 306.32], the board of trustees for such regional transit authority shall be appointed as provided in this section" (emphasis added). Am. Sub. S.B. 125 also added the following language to R.C. 306.33: "Any appointed trustee is eligible for reappointment." Thus, the General Assembly, cognizant of the counties' general authority to provide for the terms of the board members, amended R.C. 306.33 to provide that trustees are to be appointed as provided in that section, rather than in the resolution creating the regional transit authority, and to provide that appointed trustees are eligible for reappointment. See generally Eggleston v. Harrison, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900) ("[t]he presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject. Therefore acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts"). It is evident that the legislature intended to restrict the counties' authority to limit an appointed trustee's eligibility for reappointment and to permit the unlimited reappointment of trustees. See generally R.C. 1.51; R.C. 1.52.

Therefore, it is my opinion, and you are advised, that a board of county commissioners of a county which is a member of a regional transit authority may not, in its resolution creating the regional transit authority, limit the number of terms that a trustee may serve as a member of the board of trustees of the regional transit authority.