

OPINION NO. 94-082

Syllabus:

A regional transit authority is not a county board and is not entitled to legal representation by the county prosecuting attorney, regardless of whether it consists of a single county or a number of participants.

To: John W. Baker, Knox County Prosecuting Attorney, Mt. Vernon, Ohio
By: Lee Fisher, Attorney General, November 29, 1994

You have asked for an opinion on the question whether, pursuant to R.C. 309.09, a regional transit authority is a county board and thus entitled to legal representation by the county prosecuting attorney. You are concerned, in particular, with a regional transit authority that consists of a single county.

Duty of the County Prosecuting Attorney to Represent County Boards

The county prosecuting attorney is designated by statute as legal adviser of "the board of county commissioners, board of elections, and all of the county officials and boards." R.C. 30909(A). The county prosecuting attorney is required to provide those officers and boards with legal advice in matters connected with their official duties and to prosecute and defend suits and actions which they direct or to which they are parties. *Id.* County officers are prohibited from procuring other legal assistance at the expense of the county except as provided by statute. *Id.*; *see also* R.C. 305.14. Therefore, if a regional transit authority consists of a single county is a county board, the authority is entitled to legal representation by the county prosecuting attorney.

A Regional Transit Authority is not a County Board

A review of the statutes governing regional transit authorities, *see* R.C. 306.30.71, compels the conclusion that such authorities are independent entities, rather than county boards. A regional transit authority is created pursuant to R.C. 306.32 for one or more purposes relating to the provision of transit facilities. *See* R.C. 306.31. Such an authority is governed by a board of trustees, which is appointed in accordance with statute, *see* R.C. 306.33, and vested with power to manage and conduct the affairs of the authority, *see* R.C. 306.34.

By statute, a regional transit authority is designated as a "political subdivision of the state and a body corporate with all the powers of a corporation." R.C. 306.31; *see also, e.g., Falzone v. Rutkowski*, 46 Ohio App. 3d 166, 546 N.E. 449 (Lucas County), *motion overruled*, 38 Ohio St. 3d 704, 532 N.E.2d 1321 (1988). Such an authority is empowered to sue and be sued in its corporate name, to enter into contracts, to have jurisdiction and control of property, to levy and collect taxes, to issue bonds, and to exercise the power of eminent domain. *See* R.C. 306.35; *see also, e.g.,* R.C. 306.36-.40, .49. It is thus evident that a regional transit authority is not simply an agency of a county. Rather, such an authority is an independent entity that cannot be considered a county board for purposes of R.C. 309.09(A).¹ *See* 1988 Op. Att'y Gen. No. 88-083 (concluding that a regional transit authority is separate and independent from a participating county so that its records are not county records for purposes of R.C. 149.38 and supporting that conclusion with authorities under R.C. 309.09); *see also, e.g.,* 1990 Op. Att'y Gen. No. 90-073 (a regional water and sewer district is an independent political subdivision and is not a county board for purposes of R.C. 309.09(A)); 1989 Op. Att'y Gen. No. 89-102 (a joint solid waste management district is an autonomous legal entity and is not a county board for purposes of R.C. 309.09(A)).

¹ It is apparent that the General Assembly was aware that, as created pursuant to statute, a regional transit authority would not be entitled to legal representation by the county prosecuting attorney, for the legislators expressly granted such an authority the power to employ and fix the compensation of attorneys. *See* R.C. 306.35(S).

A regional transit authority may be created by "[a]ny county, or any two or more counties, municipal corporations, townships, or any combination thereof," R.C. 306.32, for one or more of a variety of purposes specified by statute, *see* R.C. 306.31. It is clear that an entity consisting of more than one county is not a county board for purposes of R.C. 309.09. *See, e.g.,* 1993 Op. Att'y Gen. No. 93-001 at 2-5 to 2-6; Op. No. 89-102.

You have described a situation in which a regional transit authority was formed by three counties, but two of them withdrew, leaving a single county in the authority. *See* 1981 Op. Att'y Gen. No. 81-068. The fact that the authority now consists of a single county, however, does not affect the conclusion that it is not a county board. The statutes governing regional transit authorities permit the creation of single county authorities and grant those authorities the same powers that are given to authorities consisting of multiple entities. *See, e.g.,* R.C. 306.32, .35. Regardless of its size or the number of its participants, a regional transit authority has statutory powers that make it a separate political subdivision, rather than a county board. *See* Op. No. 88-083; *see also, e.g.,* 1990 Op. Att'y Gen. No. 90-087 (a regional airport authority, which may be created by one or more counties, is separate and independent from the county or counties that create it). Therefore, in the situation you have described, the regional transit authority is not entitled to legal representation by the county prosecuting attorney.

Conclusion

A regional transit authority is not a county board and is not entitled to legal representation by the county prosecuting attorney, whether the regional transit authority consists of a single county or of two or more political subdivisions.