

## OPINION NO. 72-039

## Syllabus:

A metropolitan housing authority is a political subdivision for purposes of Chapter 167, Revised Code. (Opinion No. 1736, Opinions of the Attorney General for 1960, approved and followed.)

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To: W. F. McKee, Richland County Pros. Atty., Mansfield, Ohio  
By: William J. Brown, Attorney General, May 12, 1972

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

"The general counsel for the Mansfield Metropolitan Housing Authority has requested this office to secure your opinion relating to a multi-county situation in which the opinion of this office would not be binding.

"The question which is presented is whether a Metropolitan Housing Authority established pursuant to the provisions of Section 3735.27, et seq., Revised Code, is a political subdivision of the state within the purview of Chapter 167, Revised Code.

"While it was established in Opinion No. 1736, Opinions of the Attorney General for 1960, that such a housing authority was a political subdivision within the meaning of Section 5923.05, Revised Code, this opinion was not broad enough in its content to necessarily be binding upon the present inquiry."

Chapter 167, Revised Code, is entitled "Regional Councils of Governments". Membership in such regional councils is open to political subdivisions only. Section 167.01, Revised Code, provides, in part, as follows:

"\* \* \* [G]overning bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special district, school districts, or other political subdivisions \* \* \* of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions."

In Opinion No. 1736, to which your letter refers, my predecessor held that a metropolitan housing authority was a "political subdivision" for purposes of a statute which used, but did not define that term. In the absence of a definition, my predecessor used the term in its most general sense. This holding is in accord with the definition of "political subdivision", which I recently gave in Opinion No. 72-035, Opinions of the Attorney General for 1972, the syllabus of which reads as follows:

"A political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function, as contrasted to an instrumentality of the State, which is a public agency with state-wide authority."

A metropolitan housing authority falls clearly within the scope of this definition. It is a public agency exercising a governmental function within a limited geographical area. In Opinion No. 1736, supra, my predecessor outlined its nature as follows:

"Section 3735.27, Revised Code, clearly provides for the territorial limits within which the governing body of a housing authority may act. The powers of a housing authority are found mainly in Section 3735.31, Revised Code, which provide that a metropolitan housing authority is a body corporate and politic, may sue or be sued, receive grants from the state, federal and other governments, conduct investigations relative to housing and living conditions, enter any buildings and property during such investigations, conduct examinations, subpoena and require the attendance of witnesses, and after determining that an area constitutes a slum area, acquire such area by eminent domain if necessary: Contracts for work to be done must be let on bids (Section 3735.36, Revised Code). Also, it has been held that funds coming into the possession of a metropolitan housing authority must be deposited in accordance with the uniform depository law (Opinion No. 2497, Opinions of the Attorney General for 1938, page 1085).

"It will also be noted that the employees of a metropolitan housing authority are entitled to membership in the public employees retirement system (Section 145.01, Revised Code), and that under Section 3735.26, Revised Code, such authorities:

"\* \* \* are hereby declared to be the agencies and instrumentalities of the state for the purpose of attaining the ends recited in this section and their necessity in the public interest is hereby declared as a matter of legislative determination."

Although Section 3735.26, Revised Code, just cited above, does not expressly apply to metropolitan housing authorities, it does not expressly apply to metropolitan housing authorities, it does refer to the State Board of Housing, which establishes such metropolitan authorities in areas where they are needed. Section 3735.27, Revised Code. Since the metropolitan authorities, once established, perform all the functions necessary to "attain the ends" desired, the "legislative determination" applies to them as well as to the State Board of Housing. I conclude that a metropolitan housing authority clearly fits the general definition of "political subdivision".

Section 3735.50, Revised Code, specifically provides that a metropolitan housing authority is a political subdivision for purposes of the sales tax exemption. My predecessor noted this

in Opinion No. 1736, supra, but concluded that the General Assembly did not mean to imply that such an authority was a political subdivision for that purpose only. The Opinion reads as follows:

"In arriving at the above conclusion, I am not unaware of the provisions of Section 3735.50, Revised Code, which provides:

"A metropolitan housing authority, created under section 3735.27 of the Revised Code, constitutes a political subdivision of the state within the meaning of section 5739.02 of the Revised Code."

"Although this section does provide that a housing authority is a political subdivision for a particular purpose, I do not believe that this should exclude it from being a political subdivision for other purposes. Rather, I think that the intention of Section 3735.50, supra, was to insure that a housing authority be considered a political subdivision under Section 5739.02, Revised Code, since the latter named section contains no definition of the words 'political subdivision.'"

First Central Trust Co. v. Lvatt, 145 Ohio St. 160, 60 N.E. 2d 926 (1945), held that a metropolitan housing authority is not a political subdivision for purposes of Section 5406, General Code (now Section 5725.03, Revised Code). Section 5406, supra, excepted from taxation bank deposits belonging to, inter alia, "the state of Ohio or any county, municipal corporation, school district, township, or other subdivision thereof". The Court thought that this language referred only to a certain type of political subdivision, which did not include a metropolitan housing authority. The Court reasoned as follows (145 Ohio St. at 168-169):

"It is a well accepted doctrine recognized by this court that, where words such as 'or other subdivision' are used in connection with preceding associated words, the word 'subdivision' is limited in meaning by the words which precede the conjunction. The doctrine is grounded upon the maxim noscitur a sociis. See State v. Liffing, 61 Ohio St., 39, 35 N.E., 168, 76 Am. St. Rep., 358, 46 L.R.A., 334, where it was held that in statutory provisions, which forbade the prescribing of 'any drug or medicine or other agency' for the treatment of an injury or a disease by one who had not obtained a certificate of qualification to practice medicine or surgery in Ohio, the word 'agency' was limited by the meaning of the associated words 'drug' and 'medicine' and did not include osteopathy whose adherents reject drugs and medicines for the cure of ailments and use mechanical correction, especially manipulation of parts of the body. See, also, State v. Gravett, 65 Ohio St., 289, 62 N.E., 325, 87 Am. St. Rep., 605, 55 L.R.A. 791.

"The word 'subdivision,' being limited in meaning by the associated words which precede it, would include only a subdivision of the kind indicated, and a state agency owning and operating a

low-rent housing project would not be a subdivision of the state within the meaning of Section 5406, General Code. The deposits in the Akron Metropolitan Housing Authority were, therefore, not exempt from taxation."

Consequently, the Court's holding that a metropolitan housing authority is not a political subdivision for purposes of Section 5406, supra, rests upon the restrictive definition of the term which that Section implies.

The type of political subdivision to which Section 167.01, supra, refers, however, is much broader than that of Section 5406, supra, because of the additional term "special district", which is undefined in statutory and case law but appears to cover the many districts created for other than school purposes. The addition of this broad term renders the language of the First Central Trust Co. case, supra, inapplicable here. The fact that Section 167.01, supra, refers to the political subdivisions of Ohio and those of other states in identical terms, is a further indication that those terms are broad enough to cover any type of political subdivision. Consequently, Section 167.01, supra, refers to "political subdivision" in its general sense.

One other objection should be noted briefly. Section 167.03 (B) (2), Revised Code, provides that a regional council of governments acts as a regional planning commission if no such commission is in existence. Regional planning commissions are authorized by Section 713.21, Revised Code, which reads, in pertinent part, as follows:

"The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, 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. After creation of a regional planning commission, school districts, special districts, authorities and any other units of local government may participate in the regional planning commission, upon such terms as may be agreed upon by the planning commissions and boards." (Emphasis added.)

It may be urged that, since Section 713.21, supra, specifically mentions "authorities" while Section 167.01, supra, does not do so, the General Assembly must have intended to exclude metropolitan housing authorities from the political subdivisions included in Section 167.01, supra. I do not think that this follows. In structure, the two statutes are not strictly comparable. Section 167.01, supra, groups all political subdivisions together, while Section 713.21, supra, divides them into two categories. In making that distinction, the latter Section was required to specify in more detail the governmental units included in each category. I conclude, therefore, that the exclusion of the term "authorities" from Section 167.01, supra, does not imply that the

legislature intended to exclude metropolitan housing authorities from the statute's coverage.

In specific answer to your question it is my opinion, and you are so advised, that a metropolitan housing authority is a political subdivision for purposes of Chapter 167, Revised Code. (Opinion No. 1736, Opinions of the Attorney General for 1960, approved and followed.)