

OPINION NO. 72-053

Syllabus:

When a regional transit authority has been legally established by two municipalities, the withdrawal of one municipality under the provisions of Section 306.54, Revised Code, will permit the continued existence of the authority within the boundaries of the other municipality.

To: Vincent E. Gilmartin, Mahoning County Pros. Atty., Youngstown, Ohio
By: William J. Brown, Attorney General, June 26, 1972

You have requested my opinion as to the status of a regional transit authority after withdrawal of one of the two municipalities of which the authority was originally comprised. Your letter states the facts and the question in the following language:

"The Western Reserve Transit Authority was created in October, 1971, with the City of Youngstown and the Village of Canfield as the participating municipalities. From time to time the ordinances passed by the councils of the respective political subdivisions were amended as various situations arose. A one (1) mill tax levy was submitted to the electorate at the May primary election and throughout the taxing authority the levy received a majority of approximately 2,000 votes; the City of Youngstown giving said levy a majority of approximately 2500 votes and the levy being defeated in the Village of Canfield by some 500 votes.

"Both the City of Youngstown and the Village of Canfield agreed that in the event the electorate of either political subdivision did not give the tax levy an affirmative majority that political subdivision would be able to withdraw from the authority after fulfilling certain requirements. The Village of Canfield having defeated the tax levy, then fulfilled the requirements for withdrawal from the transit authority. The question to be answered by your office is, 'once a transit authority has been legally established according to state statutes, does the withdrawal of a member of said authority cause the transit authority to cease existence in the event there is only one political subdivision remaining as a member of the authority?'"

You have also submitted for my consideration Ordinances of the Village of Canfield and the City of Youngstown, Numbers 1972-13 and 84309, respectively, enacted May 16 and

May 24, 1972, each of which contain the following, or substantially similar, provisions:

"The Western Reserve Transit Authority created as herein provided may be dissolved at any time upon enactment of an ordinance or resolution by each of the undersigned and any other county, municipal corporation or township which hereafter joins the transit authority providing for such dissolution and the terms thereof as hereinafter provided; if any city or subdivision chooses to withdraw at any time they must give thirty days notification; provided that upon dissolution, any real or personal property or combination thereof which has been received from or made available by any of the undersigned shall be returned to the subdivision from which received or by which made available. In the event of such dissolution and after paying all expenses and costs of the "Authority" and any balance remaining in the transit authority's funds shall be distributed to the undersigned and any county, municipal corporation or township which hereafter joins the transit authority pro rata to the contributions of the members to the authority.

"In the event that the electorates within the Transit Authority, and within each individual subdivision which is a member of the Transit Authority, have not approved a levy of a tax by the Transit Authority prior to May 31, 1972, then the subdivision in which the levy was not approved shall have the right to withdraw from the Transit Authority by giving notice of said withdrawal to the other member subdivision or subdivisions. Any such withdrawal shall be effective upon that date specified in said notice provided that no such withdrawal shall be effective until such time as the Secretary-Treasurer of the Transit Authority has certified that all financial commitments of the subdivision to the Authority have been fully satisfied.
* * *

Provision for the creation and operation of a regional transit authority is made in Sections 306.30 through 306.53, Revised Code. Section 306.32, Revised Code, provides in pertinent part:

"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 * * *.

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"The resolution or ordinance creating a regional transit authority may be amended to include additional counties, municipal corpora-

tions, or townships or for any other purpose, by the adoption of such amendment 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 has created or joined or proposes to join the regional transit authority.

" * * * * * " * * * * * " * * * * * "

It is clear from this language that no single municipal corporation could create a regional transit authority by itself, but only in unison with at least one other municipality, county or township. It is also clear that such an authority could be augmented by the addition of other counties, municipalities or townships. But there was originally no provision for dissolution of the authority, once created, or for a diminution of the number of political subdivisions which had united in its formation.

These omissions were supplied by Amended House Bill No. 1114, which was enacted by the 109th General Assembly and which became effective as an emergency measure on March 22, 1972. The text of that bill reads as follows:

"Be it enacted by the General Assembly of the State of Ohio:

"Section 1. That section 306.54 of the Revised Code be enacted to read as follows:

"Sec. 306.54. Subject to making due provisions for the payment and performance of its obligations, the resolution or ordinance creating the regional transit authority may provide for its dissolution or modification in membership under circumstances described therein, or a regional transit authority may be dissolved or its membership modified by its board of trustees with the consent of the subdivision or subdivisions creating such regional transit authority. In the event of dissolution the properties of the regional trust authority shall be transferred to the subdivision creating it, or if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon by such subdivisions.

"Section 2. Notwithstanding Chapter 5705. of the Revised Code in the submission to the electors at the election to be held May 2, 1972, of the question of a tax levy pursuant to section 306.49 of the Revised Code, the resolution declaring the necessity thereof may be certified to the board of elections not less than forty days of the date of such election.

"Section 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety. The reason for such necessity lies in the urgent

need to permit regional transit authorities to submit the question of tax levies in order to avoid loss of mass transit service. Therefore this act shall go into immediate effect." (Emphasis added.)

There was already provision for augmentation of the number of subdivisions comprising a regional transit authority. Section 306.32, supra. Consequently, the enactment of the new Section 306.54, Revised Code, making provision for "modification in membership", "subject to * * * payment and performance of its obligations", must clearly have been intended to permit the withdrawal of one or more of the original component subdivisions and the continuance of the authority within the boundaries of the subdivision or subdivisions which determine to maintain it in existence. As I read the Ordinances of Youngstown and Canfield, there has been compliance with the requirements of Section 306.54, supra, and the Western Reserve Transit Authority can continue to exist within the boundaries of the City of Youngstown.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that when a regional transit authority has been legally established by two municipalities, the withdrawal of one municipality under the provisions of Section 306.54, Revised Code, will permit the continued existence of the authority within the boundaries of the other municipality.