

Note from the Attorney General's Office:

The syllabus paragraph 7 of 1989 Op. Att'y Gen. No. 89-063 was overruled by 2015 Op. Att'y Gen. No. 2015-004.

OPINION NO. 89-063**Syllabus:**

1. Pursuant to R.C. 167.01, single and joint-county community mental health service districts may enter into an agreement with each other to establish a regional council of governments for the purpose of planning, organizing and funding an inpatient adolescent mental health center, provided that the agreement is consistent with any applicable regulations issued by the department of mental health pursuant to R.C. 340.03 and R.C. 5119.61(A); the department of mental health has approved the center as a part of each district's plan pursuant to R.C. 340.03(A)(3) and R.C. 5119.61(L); and the authority granted the regional council does not violate R.C. 167.03(D) by displacing the individual boards in the exercise of their duties as planning agencies pursuant to R.C. 340.03(A).
2. Pursuant to R.C. 167.03(C) and R.C. 167.08, a regional council of governments may directly operate an inpatient adolescent mental health center on behalf of its member community mental health boards, if each board has received approval pursuant to R.C. 340.03(G) to directly operate such a facility and if the provision of services in a

consolidated setting is an approved part of each member board's plan pursuant to R.C. 340.03(A)(3) and R.C. 5119.61(L).

3. Employees of a regional council of governments established pursuant to R.C. 167.01 by community mental health service districts established pursuant to R.C. 340.01 are not in the "civil service" as defined in R.C. 124.01(A).
4. The question of whether employees of a regional council of governments which is composed of community mental health service districts established pursuant to R.C. 340.01 are "public employees" as defined in R.C. 145.01(A) must be determined in the first instance by the public employees retirement board.
5. Pursuant to R.C. 167.02, an executive director employed by a community mental health board pursuant to R.C. 340.03(B) may serve as the board's representative on a regional council of governments only if such representation is expressly provided for in the agreement which establishes the regional council.
6. Pursuant to R.C. 167.07, an executive director employed by a community mental health board does not violate R.C. 340.02 by representing the board on a regional council of governments which provides services to the board.
7. A county auditor may not be appointed to the position of fiscal officer of a regional council of governments, pursuant to R.C. 167.04, when the regional council of governments is composed of community mental health service districts established pursuant to R.C. 340.01.

To: Stephen M. Stern, Jefferson County Prosecuting Attorney, Steubenville, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, August 4, 1989

I have before me your request for my opinion regarding the ability of the Jefferson County Mental Health Board to join with two joint-county mental health boards for the planning, organizing, and funding of an inpatient adolescent mental health facility to be located in Jefferson County. Specifically, you ask the following questions:

- I. May two joint and one single county Mental Health Boards organized pursuant to R.C. Chapter 340 O.R.C. enter into an agreement to establish a Regional Council of Governments pursuant to R.C. Chapter 167 ("COG") for the purpose of planning, organizing, and funding the operation of an inpatient adolescent Mental Health Center primarily for residents of the community Mental Health Service districts?
- II. If yes to the first question, may the COG directly operate the facility if all of its members are boards from districts having a population of less than 500,000?
- III. If yes to the first question, would its employees be "civil servants", under R.C. Chapter 124 and "employees" within P.E.R.S. pursuant to R.C. Chapter 145?
- IV. If yes to the first question, may the Executive Directors of the member Mental Health Boards serve as representatives of the members on the COG Board?
- V. If yes to the first question, may the Auditor of the county in which the facility is to be located serve as the fiscal officer of the COG?

I note first that a county prosecuting attorney is under no duty to advise a regional council of governments, *see* R.C. 309.09; 1986 Op. Att'y Gen. No. 86-068; 1986 Op. Att'y Gen. No. 86-084, or a joint-county community mental health board, *see* 1975 Op. Att'y Gen. No. 75-014. It follows that I am not generally able to render advice to a county prosecutor with respect to the powers of either a regional council of governments or a joint-county community mental health board. *See* R.C. 109.14.

In this instance, however, your single county community mental health board is in need of advice regarding whether establishing a regional council of governments in affiliation with two joint-county boards will accomplish its purpose of establishing an inpatient adolescent mental health center. I find that I may properly issue a formal legal opinion to you on this matter. *See* R.C. 109.14; Op. No. 86-084 (opinion proper on whether county could establish multi-county correctional facility by formation of a regional council of governments); 1983 Op. Att'y Gen. No. 83-064 (prosecutor retains responsibility of advising board of county commissioners with respect to county functions in relation to activities of a joint board).

Before considering your specific questions, it will be helpful to provide an overview of the statutes governing community mental health service districts and regional councils of government. R.C. Chapter 340 governs community mental health service districts. R.C. 340.01 states, in part:

A community mental health service district shall be established in any county or combination of counties having a population of at least fifty thousand to provide community services for mentally ill and emotionally disturbed persons. The director of mental health may authorize any county or combination of counties having a population of less than fifty thousand to establish such a district. Districts comprising more than one county shall be known as joint-county districts.

R.C. 340.01 also provides that the board of county commissioners may request withdrawal of a county from a joint-county board. Withdrawal is conditioned upon consent of the director of the Department of Mental Health and compliance with the terms of R.C. 340.01 and rules adopted by the director, insuring continuity of services and equitable division of property and responsibilities. *See* 9 Ohio Admin. Code 5122:2-1-03. Both single and joint-county community mental health service districts are governed by a community mental health board, whose members are appointed by the board(s) of county commissioners and the director of the Department of Mental Health. R.C. 340.02. Employees of the boards are included in the civil service. *See* R.C. 124.11(A)(18) (executive, deputy, and program directors of community mental health boards and their secretaries are in the unclassified service); R.C. 340.04(E) (executive director may employ and remove employees in the classified service). *See also* 1981 Op. Att'y Gen. No. 81-100 at 2-379; 1967 Op. Att'y Gen. No. 67-104.

County mental health boards are responsible for the general planning and coordination of community mental health services in their designated area through performance of the duties set out in R.C. 340.03. The boards are subject to the rules of the director of the Department of Mental Health in performing these duties.¹ R.C. 340.03(A) sets forth five duties which the community mental health board is to perform in its capacity as a planning agency. The board is to evaluate the need for mental health programs and facilities, R.C. 340.03(A)(1), assess and prioritize community mental health needs and develop plans in cooperation with other planning and funding agencies, R.C. 340.03(A)(2), develop a comprehensive plan for submission

¹ *See* 9 Ohio Admin. Code Chapters 5122:2-1, 5122:2-3, 5122:2-5 (rules governing community mental health services and facilities); 9 Ohio Admin. Code 5122:3-1 (standards for distribution of state construction assistance funds for comprehensive community mental health centers); 9 Ohio Admin. Code 5122:3-7 (certification for hospitals or community mental health facilities); *see also* R.C. 5119.61(A) (director of mental health shall make rules necessary for R.C. Chapter 340).

to the Department of Mental Health,² R.C. 340.03(A)(3), transmit applications for state reimbursement to the Department of Mental Health, R.C. 340.03(A)(4), and arrange working agreements with social and judicial agencies, R.C. 340.03(A)(5). In addition to serving as the community mental health planning agency, the community mental health board is authorized to enter into contracts for mental health services, and in certain circumstances, to provide such services directly, R.C. 340.03(G). The board is further required to establish a community support system for the recipients of mental health services, R.C. 340.03(J), and to perform specific duties with respect to the involuntary commitment system, R.C. 340.03(K) and (L). The community mental health board also has certain administrative and supervisory obligations. The board must employ and prescribe the duties of an executive director, R.C. 340.03(B), investigate allegations of abuse and neglect, 340.03(C), ensure that certain types of housing provided meet minimum safety standards, 340.03(M), establish a mechanism for consumer involvement in service matters, 340.03(N), approve fee schedules for contract services, R.C. 340.03(H), conduct program and financial audits and review licensure applications, R.C. 340.03(D) and (E), submit an annual program and fiscal report, R.C. 340.03(I), seek local financial support for programs, R.C. 340.03(F), and establish rules and operating procedures as needed, R.C. 340.03(O). In addition to the preceding duties, a community mental health board has the authority to receive money, land or property by gift, grant, devise or bequest, R.C. 340.03(P), to lease, purchase, or sell property, R.C. 340.031(B),³ to inspect licensed residential care facilities pursuant to a contract with the department of mental health, R.C. 340.031(A), and to procure liability insurance for or provide indemnification of board members and employees, R.C. 340.11. *See also* R.C. 340.03(Q) (providing limited immunity to board members and employees).

There is no distinction between single and joint-county mental health boards in regard to their general operational powers and duties and neither type is under the direct supervisory control of the board or boards of county commissioners. 1975 Op. Att'y Gen. No. 75-084 (syllabus, paragraph two). However, some distinctions exist with regard to financial matters. A community mental health board is supported by the appropriations from the board of county commissioners, R.C. 340.07; R.C. 5705.05(E); R.C. 5705.221, and by state reimbursement funds distributed by the department of mental health. R.C. 340.09; R.C. 5119.62. *See also* R.C. 5119.63 (state reimbursement of community mental health construction programs). Pursuant to R.C. 340.10, monies received for community mental health purposes are held in the county treasury and the county auditor serves as the auditor and fiscal officer of the community mental health service district. R.C. 340.10 provides that in joint-county districts, the members designate one county treasury to hold the district funds and that the auditor of that county serves as fiscal officer for the entire district. *See generally* 1969 Op. Att'y Gen. No. 69-015. A joint-county mental health service district is also a subdivision for tax purposes, R.C. 5705.01(A), and is a taxing authority in its own right, R.C. 5705.01(C). A joint-county board,

² The amendments to R.C. 340.03, which became effective July 1, 1989, describe the required plan in much greater detail than the previous legislation and provide a process for resolving disputes between the community mental health board and the director of the Department of Mental Health. *See* Sub. S.B. 156, 117th Gen. A. (1988) (eff. March 28, 1988) (delayed effective dates for numerous sections pursuant to sections 3 and 6, uncodified).

³ R.C. 340.031 was amended in 1980 to provide express authority for community mental health boards to purchase property. *See* 1979-1980 Ohio Laws, Part I, 518 (S.B. 160, eff. Oct. 31, 1980). This legislative change has effectively overruled 1977 Op. Att'y Gen. No. 77-057 (syllabus) (community boards mental health and mental retardation have no authority to purchase real property) and modified the reasoning of 1978 Op. Att'y Gen. No. 78-046 (joint-county community mental health and mental retardation boards may purchase real property, based on their powers as taxing authorities pursuant to R.C. 5705.01 and R.C. 5705.03). Pursuant to R.C. 340.031, both joint and single county boards now have such authority in their own right.

therefore, has power to levy a district-wide tax independent of the authority of the boards of county commissioners. *See* 1975 Op. Att'y Gen. No. 75-089.⁴

R.C. Chapter 167 authorizes the formation of regional councils of governments for a variety of purposes. R.C. 167.01 states:

That governing 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...for establishment of a regional council consisting of *such political subdivisions*. (Emphasis added.)

R.C. 167.03 delineates the powers conferred upon a regional council of governments. In general, a regional council of governments is given the power to study area governmental problems, R.C. 167.03(A)(1), promote cooperative arrangements and coordinate action among its members, R.C. 167.03(A)(2), make recommendations for review and action to its members, R.C. 167.03(A)(3), promote cooperative agreements and contracts among its members or other governmental agencies and private parties, R.C. 167.03(A)(4), and perform planning directly by personnel of the council or under contracts between the council and other public or private planning agencies, R.C. 167.03(A)(5). A regional council of governments may also review, evaluate, comment upon, and make recommendations relative to the planning and programming, and the location, financing, and scheduling of public facility projects within the region, R.C. 167.03(B)(1), act as an areawide agency to perform comprehensive planning for public facility projects, R.C. 167.03(B)(2), and act as an agency for coordinating local public policies, R.C. 167.03(B)(3). A regional council of governments may also perform such other functions and duties as are performed or capable of performance by its member political subdivisions. R.C. 167.03(C). *See also* R.C. 167.08 (a regional council of governments may contract with other political subdivisions to provide those subdivisions with any service the council may offer or to perform on behalf of the political subdivision any function or render any service which a contracting political subdivision may perform). The authority granted to a regional council of governments by R.C. 167.03, however, does not displace any existing municipal, county, regional, or other planning commission or planning agency in the exercise of such body's statutory powers. R.C. 167.03(D).

A regional council of governments is governed by its by-laws, appoints its own fiscal officer, and maintains its own funds. R.C. 167.04. Funding for a regional council is provided by appropriations from its members, who may also provide real and personal property or services to the council. R.C. 167.06. *See also* 1971 Op. Att'y Gen. No. 71-010 at 2-22 (a regional council of governments has no power to tax or raise revenue). A regional council also is authorized to employ its own staff and purchase or contract for goods and services. R.C. 167.05. R.C. 167.07 provides that membership in or holding an office on a regional council is not a public office or employment and does not constitute an interest in a contract.

I turn now to your first question. You ask:

May two joint and one single county Mental Health Boards organized pursuant to R.C. Chapter 340 O.R.C. enter into an agreement to establish a Regional Council of Governments pursuant to R.C. Chapter 167 ("COG") for the purpose of planning, organizing, and funding the operation of an inpatient adolescent Mental Health Center primarily for residents of the community Mental Health Service districts?

The threshold question presented by your inquiry is whether single and joint-county community mental health service districts constitute "political subdivisions"

⁴ *See also* 1981 Op. Att'y Gen. No. 81-044 (tax levied by a county for a joint-county community mental health board may vary from that levied by other participating counties; tax levied by the joint-county board itself, pursuant to R.C. 5705.19, must be uniform throughout the district).

authorized under R.C. 167.01 to form a regional council of governments. Political subdivision is not defined in R.C. Chapter 167. As I have noted in an earlier opinion, the term political subdivision may have a wide variety of meanings. See 1983 Op. Att'y Gen. No. 83-059 at 2-247 (listing numerous different statutory usages). In 1972 Op. Att'y Gen. No. 72-039 at 2-149, my predecessor held that for purposes of R.C. Chapter 167, a political subdivision is "a limited geographical area wherein a public agency is authorized to exercise some governmental function," noting also that inclusion of the term "special district" in R.C. 167.01 indicates that "political subdivision" is to be used in its most general sense.⁵ See also 1979 Op. Att'y Gen. No. 79-018 at 2-59 ("political subdivision" is used [in R.C. 167.01] in its general sense, to encompass all types of public agencies authorized to exercise governmental functions"). Both single and joint-county community mental health service districts fall within the scope of this broad definition. As characterized in *Greene County Guidance Center, Inc. v. Greene-Clinton Community Mental Health Board*, 19 Ohio App. 3d 1, 4, 482 N.E.2d 982, 986 (Greene County 1984), a community mental health board "is a public authority created by law to carry out a public purpose in a limited area of sovereign responsibility for a public purpose with public funds.... The [board] has the primary responsibility for the mental health program in its county or district." I conclude accordingly that single and joint-county community mental health service districts are "political subdivisions" for purposes of R.C. Chapter 167.

I am aware that opinions of my immediate predecessor have suggested that single county community mental health service districts are not independent subdivisions since they lack the traditional governmental powers of eminent domain, taxation, and assessment. See Op. No. 81-100, at 2-379 n. 4 (summarizing the differing treatment of single and joint-county community mental health service districts). I see no reason, however, to distinguish between single and joint-county districts for purposes of R.C. Chapter 167. Limitations on the authority of the member subdivisions are also imposed upon the regional council. See 1982 Op. Att'y Gen. No. 82-103. Lack of certain kinds of authority and differences between the member subdivisions will, as a practical matter, impair the effectiveness of a regional council. See, e.g., Op. No. 82-103 (effect of differing subdivision requirements on regional council's ability to handle subdivision funds); Op. No. 79-018 (discussing how limitations on member subdivisions affect ability of a regional council to serve as a waste treatment management agency). Therefore, it is not necessary that a public agency's governmental functions include any or all of the "traditional" governmental powers in order to form a regional council, unless those powers are needed to achieve the purpose of the regional council.

Opinions of my predecessors have consistently held that a regional council of governments is permitted to perform only those governmental functions that might otherwise be performed by the council's individual members. See Op. No. 82-103 at 2-283 ("[u]nder R.C. 167.03(C) and 167.08 a regional council of governments may perform functions and duties on behalf of a member political subdivision only within the statutory constraints which define the manner in which that subdivision could perform the same functions and duties"); Op. No. 79-018 at 2-57 ("[a] political subdivision may authorize a [regional council of governments] to perform only such functions and duties as the political subdivision is capable of performing"); Op. No. 71-010 at 2-22 (a regional council of governments "is given no 'governmental powers' that are not provided to its members"); 1969 Op. Att'y Gen. No. 69-013 at 2-16 (a regional council of governments "is limited to performing on behalf of its contracting subdivisions just those functions which the subdivision itself is able to perform"). Thus, the authority of a regional council of governments to act on behalf

⁵ In adopting this definition, my predecessor was guided by two rules of statutory construction. First, absent statutory definition, words are to be interpreted according to their common meaning. See, e.g., *Baker v. Powhatan Mining Co.*, 146 Ohio St. 600, 67 N.E.2d 714 (1946). Second, the maxim of *ejusdem generis* provides that whenever words of general meaning follow the enumeration of a particular class, the general words are limited in meaning to items of the same kind as those in the enumerated class. See, e.g., *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St. 3d 107, 109, 495 N.E.2d 417, 420 (1986).

of its members under R.C. 167.03(C) "is derived from its members and cannot exceed the authority which the members have," and "[i]f a member political subdivision is restricted in carrying out a particular activity by requirements imposed by statute, the council's ability to act on behalf of the subdivision must be similarly restricted." Op. No. 82-103 at 2-283. Therefore, I must examine whether there are any limitations which would prevent a regional council of governments composed of community mental health boards from carrying out the purpose of "planning, organizing, and funding the operation of an inpatient adolescent mental health center."

I note initially that R.C. 340.03 authorizes the director of the department of mental health to adopt rules governing the activities of community mental health boards. *See also* R.C. 5119.61(A) (duty of the director of mental health to make rules). In addition to this general rule-making authority over the boards, the director has specific statutory authority to approve or disapprove a board's comprehensive plan and to develop criteria governing such plans. R.C. 5119.61, as amended by Sub. S.R. 156 (eff. July 1, 1988), states, in pertinent part:

The director of mental health with respect to *all facilities and programs* established and operated under Chapter 340. of the Revised Code for mentally ill and emotionally disturbed persons, shall:

....
(L) Review each board's plan submitted pursuant to section 340.03 of the Revised Code and *approve or disapprove it in whole or in part*. Periodically, in consultation with community mental health board representatives and after considering the recommendations of the medical director, *the director shall issue criteria* for determining when a plan is complete, criteria for plan approval or disapproval, and provisions for conditional approval. (Emphasis added.)

See also R.C. 5119.06(A)(9) (enacted in Sub. S.B. 156 (eff. July 1, 1988)) (duty of department of mental health to develop guidelines for R.C. 340.03 plans and their approval or disapproval).⁶ Under the general rulemaking authority of R.C. 340.03 and R.C. 5119.61(A), the director has the authority to promulgate rules governing the manner and extent to which community mental health boards may form regional councils for the purpose of performing any of the boards' activities. Pursuant to R.C. 5119.06(A)(9), the director has additional authority to disapprove a comprehensive plan which includes regional council involvement in a mental health facility or provision of services in a facility with a consolidated service area. I am not aware of any specific department of mental health rules or criteria limiting the capacity of community mental health boards to form regional councils of government. Therefore, for purposes of this opinion, I assume that community mental health boards may form regional councils to the full extent allowed by statute and I turn now to an examination of such statutory authority. At the same time, I note that due to Sub. S.B. 156, the regulatory aspect of community mental health care may be in flux. I caution you, therefore, to bear in mind that the statutory authority of the boards remains subject to regulation by the director of mental health.

I now examine whether the statutory powers and authority vested in a community mental health board by R.C. Chapter 340 are sufficient to achieve your stated purpose of "planning, organizing, and funding an inpatient adolescent mental health center." R.C. 340.01 establishes community mental health service districts for the purpose of providing "community services." I am satisfied that an inpatient adolescent mental health center qualifies as a "community service" for purposes of

⁶ I note that the amendment of R.C. 5119.61 by Sub. S.B. 156 gives the director of the department of mental health significantly greater authority over the formulation of the comprehensive plan than existed prior to the bill's enactment. This authority is further enhanced by the amendments to R.C. 340.03 which took effect on July 1, 1989. *See n. 2, supra.*

R.C. 340.01.⁷ R.C. 340.03 provides planning, coordinating and funding powers, which are supplemented by authority to acquire property, R.C. 340.031(B), to receive and disburse local and state funds, *see e.g.*, R.C. 340.04(I); R.C. 340.07; R.C. 340.09, and, in the case of a joint-county board, to levy taxes, R.C. 5705.01(A), (C). Even though community mental health boards are creatures of statute with limited authority, *see, e.g.*, 1988 Op. Att'y Gen. No. 88-045 (discussing limitations on board's authority to fund facility expansions), they appear to have sufficient authority to accomplish the purpose you describe.⁸

The authority of an individual community mental health board is not conclusive, however, with regard to the regional council's authority. While it is true that a regional council may perform such functions as its members may perform, it does not follow that the member subdivisions are free to delegate every authorized function to a regional council. I must also consider whether there are restrictions on the authority of a community mental health board to act in concert with other boards or subdivisions. Such limitations then must also be applied to a regional

⁷ Neither inpatient adolescent mental health center nor community service are terms defined by statute. Related statutes and regulations suggest that an inpatient adolescent mental health center is a type of hospital. *See* 9 Ohio Admin. Code 5122:2-1-01(D)(2) ("[i]npatient service'...refers to residence and treatment provided in a psychiatric hospital or unit licensed or operated by the state of Ohio in accordance with section 5119.20"); 9 Ohio Admin. Code 5122:2-5-01(D)(2) ("[i]npatient service' means twenty-four hour care provided by any hospital [sic] or residential facility licensed by the State of Ohio in accordance with section 5123.16 [now 5119.20, *see* 1979-1980 Ohio Laws, Part I, 3946 (H.B. 900, eff. July 1, 1980)]"); *see also* Am. Sub. H.B. 499, 117th Gen. A. (1987) (eff. June 30, 1987) (section 12(A), uncodified) ("[a]s used in this section, a 'child and adolescent psychiatric facility' means a freestanding psychiatric hospital...or, in the case of an existing medical facility, means a bed or group of beds dedicated to the psychiatric treatment of children and adolescents").

Information obtained by a member of my staff indicates, however, that you may be using the term "inpatient adolescent mental health center" in a broader sense, to mean a type of residential facility rather than a hospital. While psychiatric hospitals are licensed under R.C. 5119.20, residential facilities are licensed under R.C. 5119.22. Pursuant to R.C. 5119.22(A)(5), hospitals subject to licensure under section 5119.20 of the Revised Code are expressly excluded from the definition of residential facilities. *See also* 9 Ohio Admin. Code 5122:2-5-01(A)(6) ("[r]esidential services' means twenty-four-hour care provided by any facility licensed by the State of Ohio in accordance with section 5119.22 of the Revised Code").

Although the term "community service" is not statutorily defined, R.C. 340.09 lists services for which the department of mental health is required to provide assistance to the county, which demonstrates a clear legislative intent that such services are within the scope of the county's authority. These services include "inpatient", R.C. 340.09(B), and "residential", R.C. 340.09(K). The definitions at 9 Ohio Admin. Code 5122:2-5-01 were developed expressly to "[d]efine community mental health client-care services as specified in divisions...(B)...and (K) of section 340.09 of the Revised Code." 9 Ohio Admin. Code 5122:2-5-01(A)(1). Thus an adolescent mental health center falls within the scope of R.C. 340.09 whether it is categorized as a hospital or a residential care facility.

⁸ I note that you have not described what specific activities are contemplated as part of "planning, organizing, and funding." I do not mean to imply that every activity which might be so characterized is authorized by R.C. Chapter 340. Whether a board has authority to engage in a particular means of planning, organizing, or funding must be determined in reference to the powers granted in R.C. Chapter 340.

council of governments. *See, e.g.*, Op. No. 86-084 at 2-474 ("pursuant to R.C. 307.93...[boards of county commissioners] may not establish a multicounty correctional center in conjunction with political subdivisions other than counties. Pursuant to R.C. 167.03(C), this restriction...also applies in the case of a regional council of governments that is formed for such purpose");⁹ *see generally City of Parma Heights v. Schroeder*, 26 Ohio Op. 2d 119, 122, 196 N.E.2d 813, 816 (C.P. Cuyahoga County 1963) (one cannot lawfully do indirectly what one cannot do directly). I find no express or implied prohibition of multi-district facilities in R.C. Chapter 340. Nor do I find any restrictions elsewhere in the Revised Code, which would apply to the regional council you have described.¹⁰

The authority of a regional council of governments may also be limited because certain functions are within the exclusive authority of the member subdivisions and cannot be delegated to the council. *See, e.g.*, Op. No. 79-018 at 2-62 ("[w]hile a [council of governments] might, if properly authorized, carry out the ministerial duty of collecting user charges on behalf of a political subdivision, it cannot be empowered to make the decision to charge such fees"); 1974 Op. Att'y Gen. No. 74-080 (a regional council has no power to levy a tax and may not receive school foundation payments under R.C. Chapter 3317); Op. No. 71-010 at 2-22 ("a council is given *no power to tax to raise revenue*, but must rely on appropriation of funds from its member political subdivisions, or the acceptance of funds from other sources"); *see generally Bell v. Board of Trustees*, 34 Ohio St. 2d 70, 74, 296 N.E.2d 276, 278 (1973) ("[i]n the operation of any public administrative body, subdelegation of authority, impliedly or expressly, exists—and must exist to some degree. The real issue for decision is at what point delegation must stop and the [public body] itself must act") (citations omitted).

R.C. 167.03(D) states that "[t]he authority granted to the council by this section or in any agreement by the members thereof *shall not displace any existing municipal, county, regional, or other planning commission or planning agency* in the exercise of its statutory powers." (Emphasis added). In R.C. 340.03(A), the General Assembly has expressly designated each community mental health board as the "planning agency for the county or counties under its jurisdiction" and named specific duties which the board must perform in that capacity. A community mental health board cannot increase the number of counties under its jurisdiction by forming a regional council of governments. *See* Op. No. 86-068 at 2-377 ("[w]hile R.C. Chapter 167 permits a member subdivision to authorize the regional council to perform a particular function on its behalf, R.C. 167 does not provide that the council may aggregate the powers of various subdivisions and thereby become a multi-jurisdictional entity..."). Rather, the number of counties under the jurisdiction of any particular community mental health board is controlled by the decision of the board of county commissioners to enter into or withdraw from a joint-county community mental health service district, subject to the approval of the director of mental health, as provided in R.C. 340.01.¹¹ Therefore, community mental health boards cannot authorize a regional council to consolidate the performance of the

⁹ R.C. 307.93 was amended in 1987 to include municipalities. Am. H.B. 455, 117th Gen. A. (1987) (eff. July 20, 1987). Thus the holding in 1986 Op. Att'y Gen. No. 86-084 is no longer valid, although the analysis is still sound.

¹⁰ I note that, pursuant to R.C. 140.03, a community mental health board may join with agencies recognized as a "hospital agency" in R.C. 140.01 for purposes of establishing and funding joint "hospital facilities", as defined in R.C. 140.01(E). Although R.C. 140.03 provides no authority for the boards to join with each other, a review of Am. Sub. 343, which enacted R.C. Chapter 140 in 1971, shows that the inclusion of community mental health boards in R.C. 140.03 was intended to expand the spending authority of the subdivisions recognized as hospital agencies rather than to define and restrict the combining authority of community mental health boards. *See* 1971-1972 Ohio Laws, Part I, 562 (Am. S.B. 343 eff. 9-24-71).

¹¹ The jurisdictional area of a board, while geographically defined by county boundaries, is primarily determined by population. As my

duties named in R.C. 340.03(A) as if their combined jurisdictions were only one community mental health service district. Such authority would violate R.C. 167.03(D) by displacing the statutory obligation of each board to act as the planning agency for its own jurisdiction. As you have not described what specific tasks the regional council proposed in your question would be expected to perform as a part of "planning, organizing, and funding" the operation of an adolescent facility, I cannot ascertain whether R.C. 167.03(D) would preclude any of the activities of your regional council. Pursuant to R.C. 167.03(D), however, such activities cannot include multi-district comprehensive planning for adolescent mental health care if such planning is intended to replace each district's individual performance of any duties prescribed in R.C. 340.03(A).

In response to your first question I conclude, therefore, that, with certain limitations, two joint and one single-county community mental health boards may establish a regional council of governments pursuant to R.C. Chapter 167 and authorize it to carry out, on behalf of each district, certain activities relating to the establishment of an inpatient adolescent mental health center primarily for residents of the member districts. The planning, organizing and funding authority granted to the regional council may not displace any of the member boards in the exercise of their duties under R.C. 340.03(A). Such a center may be established only with the approval of the Department of Mental Health, pursuant to R.C. 5119.61(L), and in a manner not inconsistent with any regulations of the Department of Mental Health, promulgated pursuant to R.C. 340.03 and R.C. 5119.61(A).

As the answer to your first question is a qualified yes, I shall assume for purposes of considering your remaining questions that the regional council and the facility you have described can be formed within the limitations I have set forth above. I turn now to your second question. You ask "may the COG directly operate the facility if all of its members are boards from districts having a population of less than 500,000?"

Community mental health boards are empowered to operate programs directly only under limited circumstances. R.C. 340.03(G) states, in pertinent part:

A board in a district having a population of less than five hundred thousand may operate a mental health service, program, or facility for no longer than one year with the prior approval of the director of mental health if there is no other qualified private or public agency that is immediately available and willing to operate such service, program, or facility. The director shall approve such operation of a mental health service, program, or facility by a board, only if the director determines it is not feasible to have the department operate the service, program, or facility. In an emergency situation and with the prior approval of the director, any board may operate a mental health service, program, or facility in order to provide essential services. A board in a district having a population of less than one hundred thousand may operate a mental health service, program, or facility for more than one year with the approval of the director and of the board of county commissioners in a single-county district or of the majority of boards of county commissioners in a joint-county district. The approval of the director may not be given unless he has determined that continued board operation will provide greater administrative efficiency and more or better services or programs than would contract operation. (Emphasis added.)

predecessor stated in Op. No. 75-084 at p. 2-330:

According to R.C. 340.01, community mental health...service districts must be established by any county or combination of counties having a population of at least fifty thousand. Thus where a county has a fifty thousand population base a single county board arises, and a joint county board arises where the fifty thousand base is comprised of the population in more than one county.

The statutory language of R.C. 340.03(G) clearly disfavors direct operation of facilities by a community mental health board. Pursuant to R.C. Chapter 340, the duties of a community mental health board are primarily of a planning, coordination, and supervisory nature. Although, from a historical perspective, R.C. 340.03(G) has expanded a community mental health board's authority to operate facilities directly,¹² the statute clearly limits this authority to the exceptions described therein. Therefore, I must construe R.C. 340.03(G) strictly. *See generally State ex rel. Menning v. Zangerle*, 95 Ohio St. 1, 115 N.E. 498 (1916) (syllabus, paragraph one) (exemptions from general policy established by legislation to be strictly construed).

Pursuant to R.C. 340.03(G), a community mental health board has no independent authority to operate a mental health facility. The board's authority is conditioned upon approval from the state department of mental health. The director's discretion to grant such approval is limited by the conditions set forth in R.C. 340.03(G), pertaining to the size of the district and the time-span for which approval may be granted. 1986 Op. Att'y Gen. No. 86-049, at 2-261 ("the approval of the board operation by the chief of the division of mental health facilities and services, is, within the standards set forth in R.C. 340.03(G), a matter of discretion"). I find no authority in R.C. 340.03(G) for the director of mental health to approve two or more community mental health boards to jointly operate a single facility, regardless of the size of the districts involved. Clearly there is no express authority in R.C. 340.03(G) for the director of mental health to grant such approval directly to a regional council of governments. *See, e.g.*, Op. No. 74-080 (state board of education has no authority to make school foundation payments directly to a regional council of governments).

I note, however, that pursuant to R.C. 167.03(C), a regional council may be given authority "to perform such other functions and duties as are performed or capable of performance by the members." *See also* R.C. 167.08. Therefore I must determine whether, if the director of mental health grants approval for an individual community mental health board to operate a facility directly, the board may delegate that authority to the regional council.¹³ R.C. 167.03(D) does not prevent such a delegation, as it applies only to the board's planning agency duties set out in R.C. 340.03(A). Previous opinions have held that absent some other statutory bar, a regional council of governments may consolidate on behalf of its members the performance of functions which have been properly delegated to the regional council. *See, e.g.*, Op. No. 74-080 at 2-329 (regional council of school boards can be delegated the authority to operate classes for the handicapped, which the school boards are authorized to operate with the permission of the state board of education); 1973 Op. Att'y Gen. No. 73-119 (regional council could establish a

¹² See 1986 Op. No. 86-049 at 2-261 for a review of the legislative history of R.C. 340.03(G) and constraints on the authority of community mental health boards to operate services or facilities directly under previous legislation.

¹³ I note that the powers of a regional council pursuant to R.C. 167.03(A) and (B) are limited to planning and coordinating functions. Thus the only source of regional council authority to directly operate a facility would be by the delegation of such authority by members pursuant to R.C. 167.03(C) and/or R.C. 167.08. Pursuant to R.C. 340.03(G), a community mental health board may contract with other agencies for the operation of services and facilities or, in specified circumstances, operate them directly. Assuming no other limitations, the boards could then delegate either the authority to contract with other agencies or the authority to operate directly to a regional council. It might be questioned whether, if a board delegates its authority for direct operation to a regional council, such action should be considered as the board contracting with another agency (the regional council) and therefore free of the limitations on direct operation. While the question is philosophically intriguing, the fact that the General Assembly has expressly limited direct operation by community mental health boards militates against an interpretation which would allow the boards to create their own dependent public agency with which to contract.

central collection facility for purpose of administering income tax laws of member municipalities); Op. No. 69-013 (regional council could perform joint purchasing on behalf of its members, subject to the members' competitive bidding requirements).

In answer to your second question, I conclude, therefore, that pursuant to R.C. 167.03(C) and R.C. 167.08, a regional council of governments may directly operate an inpatient adolescent mental health center on behalf of its member community mental health boards, if each board has received approval pursuant to R.C. 340.03(G) to directly operate such a facility and if the provision of services in a consolidated setting is an approved part of each member board's plan pursuant to R.C. 340.03(A)(3) and R.C. 5119.61(L).

Your third question is whether employees of a regional council of governments composed of several community mental health service districts are members of the civil service pursuant to R.C. Chapter 124 and members of the public employees retirement system (PERS) pursuant to R.C. Chapter 145.

R.C. 124.01(A) states that "[c]ivil service' includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof." Thus, employment positions which are not in the service of the state or county or one of the other named political subdivisions are not included in the civil service. *In Re Appeal of Ford*, 3 Ohio App. 3d 416, 419, 446 N.E.2d 214, 217 (Franklin County 1982); accord 1985 Op. Att'y Gen. No. 85-012 at 2-247. Review of case law and prior opinions of the Attorney General presents several analytical approaches to determining the status of employees of public entities which are not specifically listed in R.C. 124.01. One approach is to apply the exclusion of unlisted political subdivisions from the coverage of R.C. 124.01. See e.g., *Spitaleri v. Metro Regional Transit Authority*, 67 Ohio App. 2d 57, 426 N.E.2d 183 (Summit County 1980). It is not clear, however, whether or under what circumstances a regional council of governments constitutes a political subdivision in its own right, rather than an agent of one or more of its member subdivisions. See, e.g., Op. No. 74-080 at 2-330 (regional council cannot be given taxing authority pursuant to R.C. 167.03(C) as such authority would make it, in effect, a governmental subdivision rather than a council of subdivisions). But see R.C. 2744.01(F) (regional council is political subdivision for purposes of tort liability provisions under R.C. Chapter 2744); Op. No. 71-010 (noting that regional councils have no power to tax, but finding that regional councils are a subdivision for purposes of the sales tax exemption in R.C. 5739.02(B)(1)).

As the exclusion analysis of *Spitaleri* is not helpful, I turn to the analysis utilized in *In Re Appeal of Ford* and Op. No. 85-012 and I will examine whether employees of a regional council composed of community mental health districts can be considered to be "in the service of" the state or county.¹⁴ The court in *In Re Appeal of Ford*, 3 Ohio App. 3d at 420, 446 N.E.2d at 218, concluded that, "service of the state" as used in R.C. 124.01 requires both employment by a state agency and compensation in whole or in part by state funds. The court concluded that the State Teachers Retirement Board qualifies as a state agency because it is "a public agency created by statute to exercise a certain portion of the sovereignty of the state as authorized by statute....Clearly the State Teachers Retirement Board exercises its powers throughout the state." *In re Ford*, 3 Ohio App. 3d at 418, 496 N.E.2d at 216; accord 1972 Op. Att'y Gen. No. 72-035 (syllabus) (instrumentality of the state is a public agency with state-wide authority). The regional council of governments you wish to form obviously does not have state-wide authority. In this respect, it is similar to a regional organization for civil defense. See Op. No. 85-012 at 2-47 (describing a regional organization for civil defense as follows: "its functions are related to these subdivisions [which create it] and its responsibilities are focused on the geographical area in which those subdivisions are located"). As the regional council is not a state agency, its employees, like those of the regional council for

¹⁴ Obviously such employees are not "in the service of" a city, city health district, general health district, or city school district; therefore, I will not include these entities in my discussion.

civil defense, can not be "in the service" of the state and I need not proceed further to examine the source of their compensation.

Next, by applying the same analysis, I can examine whether employees of such a regional council may be considered to be "in the service" of the county. The regional council is created by community mental health service districts. Although the employees of community mental health service districts are in the service of the county for purposes of R.C. 124.01,¹⁵ I have already determined that for purposes of forming a regional council of governments, pursuant to R.C. 167.01, community mental health service districts act as political subdivisions in their own right and not as county agencies. Even if I were to assume *arguendo*, that for purposes of determining the status of regional council employees under R.C. Chapter 124 I should treat community mental health service districts as county agencies, it does not follow that a regional council formed by such districts would also be a county agency.

Again, I find the comparison of a regional council of governments with a regional civil defense organization to be helpful. One of my predecessors in characterizing a regional civil defense organization, formed pursuant to R.C. 5915.07, concluded:

[I]t would seem that a regional organization [for civil defense] is established as a semi-autonomous entity having an existence apart from and in a sense independent of the several subdivisions which joined in its creation.

.....

It requires little imagination to envision the utter futility of attempting to operate such an organization as though it constituted a subordinate administrative agency of each of the several subdivisions concerned.

1954 Op. Att'y Gen. No. 4224, p. 460 at 464-465; *accord* Op. No. 85-012; 1983 Op. Att'y Gen. No. 83-057. I am aware that the purpose and functions of a regional civil defense organization are defined by statute, *see* R.C. 5915.07, as is the case with numerous other regional agencies formed by the voluntary joint action of political subdivisions. *See, e.g.*, R.C. Chapter 4582 (port authorities); R.C. Chapter 308 (regional airport authorities); R.C. 339.21 (district tuberculosis hospital). To the extent that the purpose and functions of a regional council of governments are defined primarily by the member subdivisions themselves, a regional council has less autonomy from its members than do these other types of regional organizations. Nonetheless, the provisions of R.C. Chapter 167 do create an entity distinct from, rather than subordinate to, its members by providing organizational characteristics similar to the characteristics which were relied on in 1954 Op. No. 4224 to analyze the regional defense organization. Pursuant to R.C. 167.04, a regional council is governed by its own by-laws and governing body. R.C. 167.04(B) provides that a regional council shall have its own fiscal officer, "who shall receive, deposit, invest and disburse the funds of the council in the manner authorized by the by-laws or action by the council."

I note further that, pursuant to R.C. 167.05, the council by-laws may authorize the council to employ its own staff or that, pursuant to R.C. 167.06,

¹⁵ Op. No. 81-100 at 2-379 n. 4 states:

Although it appears to be far from clear whether single and joint community health service districts are independent subdivisions, or part of a county, the General Assembly has evidently determined that such districts are not independent, but rather part of one of the subdivisions listed in R.C. 124.01 and R.C. 124.11. R.C. 124.11, as amended by Am. Sub. S.B. 160, now includes executive directors, deputy directors, and program directors employed by mental health boards, and their secretaries, in the unclassified service, under division (A)(19).

member subdivisions may provide their own personnel to perform services for the council. I conclude that if the by-laws of your regional council authorize the council to employ its own staff and to pay such staff from council funds, such employees are in the service of the council and not in the service of the community mental health service districts.¹⁶ Therefore, the employees of the regional council are not in the service of the state or county for purposes of R.C. Chapter 124 and are not members of the civil service.

PERS is established and governed by R.C. Chapter 145. R.C. 145.03 states in part: "A public employees retirement system is hereby created for the employees of the state and of the several local authorities mentioned in section 145.01 of the Revised Code. Membership in the system is compulsory upon being employed...."

R.C. 145.01 defines public employees as follows:

As used in this chapter:

(A) "Public employee" means:

(1) Any person holding an office, not elective, under the state or any county, municipal corporation, park district, conservancy district, sanitary district, health district, township, metropolitan housing authority, state retirement board, Ohio historical society, public library, county law library, union cemetery, joint hospital, institutional commissary, state university, or board, bureau, commission, council, committee, authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or *employed and paid in whole or in part by the state or any of the authorities named in this division....* (Emphasis added).

As I noted in my discussion of the civil service status of regional council employees, a regional council may hire its own employees and pay them from regional council funds. See R.C. 167.04(B); R.C. 167.05. Since, for purposes of R.C. Chapter 145, employees are included within the definition of "public employee" by virtue of being employed and paid by "any of the authorities named" in R.C. 145.01(A), the relevant inquiry is whether a regional council of governments is one of the authorities named in R.C. 145.01(A). Clearly, a regional council is not one of the authorities specifically listed by title. Nor is a regional council created by the general assembly. Pursuant to R.C. 167.01, a regional council is created by the voluntary agreement of its member subdivisions. Thus the relevant inquiry is further narrowed to whether a regional council created by the agreement of several community mental health boards is a "council...created...by the legislative authority of any of the units of local government named" in R.C. 145.01(A). The employees of a community mental health board are included in PERS because the community mental health board is itself a board created by the general assembly, R.C.340.02,¹⁷ but a community mental health service district is not a unit of local government listed by name in R.C. 145.01(A). It is not clear from the language of R.C.145.01(A) whether the General Assembly intended to include in the PERS system a council created by a board which is itself created by the General Assembly. The question becomes whether the scope of R.C.145.01(A) is broad enough to include

¹⁶ Conversely, if the member community mental health service districts choose to provide the services of their own personnel to the regional council, pursuant to R.C. 167.06, those individuals would remain employees of their respective community mental health boards and, therefore, would be members of the civil service.

¹⁷ Pursuant to R.C.340.02, county commissioners and the director of mental health have authority to appoint the board members. Neither the commissioners nor the director, however, control the existence of the board. Thus, they cannot be said to create the board for purposes of R.C. 145.01.

such a "third generation" political entity.¹⁸ R.C.145.01(A) states that "[i]n all cases of doubt, the public employees retirement board shall determine whether any person is a public employee, and its decision is final." See also 1975 Op. Att'y Gen. No. 75-075, at 2-301 ("[i]n those cases in which an individual does not fit squarely within one of the several classes described therein, R.C.145.01 expressly provides that the public employees retirement board shall determine..."). I conclude, therefore, that the determination of whether an employee of a regional council of governments created by community mental health boards is a public employee for purposes of R.C. Chapter 145 lies within the sound discretion of the public employees retirement board and I decline to infringe upon the board's authority in this matter.

Your fourth question asks whether the executive directors of the member community mental health boards may serve as representatives of their respective boards on the regional council board. Representation on the council is governed by R.C. 167.02, which states, in pertinent part:

(A)Representation on the council may be in the manner as provided in the agreement establishing the council.

(B) *If the agreement establishing the council does not set forth the manner for determining representation on the council such representation shall consist of one representative from each...political subdivision entering into the agreement, or subsequently admitted to membership in the council. The representative from each member...political subdivision shall be elected chief executive thereof, or, if such...political subdivision does not have an elected chief executive, a member of its governing body chosen by such body to be its representative.* (Emphasis added).

Pursuant to R.C. 167.02, unless the agreement creating the regional council provides otherwise, a member subdivision must be represented either by its elected chief executive or a member of its governing body elected by that body. The executive director of a community mental health board is an employee of the board, see R.C. 340.03(B) (the community mental health board is required to employ a professional to serve as executive director); R.C. 340.04(B) (duty of the executive director to serve as executive officer of the board); thus the executive director is neither elected nor a member of the board. See also R.C. 340.02 (establishing board membership). I conclude, therefore, that the executive director may represent a community mental health board on the regional council only if such representation is expressly provided for in the agreement which establishes the regional council.

I understand that your question also reflects a concern that allowing the executive director of a community mental health board to represent that board on the regional council would violate the conflict of interest provisions of R.C. 340.02. R.C. 340.02 states, in pertinent part, that "[no] member or *employee* of a community mental health board shall serve as a member of the board of any agency with which the mental health board has entered into a contract for the provision of services or facilities." (Emphasis added.) However, R.C. 167.07 states:

Membership on the [regional] council [of governments] and holding an office of the council does not constitute the holding of a public office or employment within the meaning of any section of the Revised Code. Membership on the council and holding an office of the

¹⁸ I am aware that the definitions in R.C. 145.01 have been construed broadly. See, e.g., *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 105 N.E.2d 643 (1952). In 1985 Op. Att'y Gen. No. 85-012, I concluded that a regional organization for civil defense, which is formed by two or more counties, is within the language used by R.C. 145.01(A). Counties, however, are specifically named in R.C. 145.01(A). I am not aware of any opinions in which the creation of an authority raised any issue as to whether it was properly included within the definitions.

council shall not constitute an interest, either direct or indirect, in a contract or expenditure of money by any municipal corporation, township, special district, school district, county, or other political subdivision. No member or officer of the council shall be disqualified from holding any public office or employment, nor shall such member or officer forfeit any such office or employment, by reason of his position as an officer or member of the council, notwithstanding any law to the contrary.

In determining whether the provisions of R.C. 167.07 create an exception to the conflict of interest provisions of R.C. 340.02,¹⁹ I am guided by the rule of statutory construction set out in R.C. 1.51, which states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

See Leach v. Collins, 123 Ohio St. 530, 533, 176 N.E. 77, 78 (1931) (adopting the definition in *Rodgers v. United States*, 185 U.S. 83 (1902) that a general statute is one whose terms are "broad enough to include the matter provided for in the special").

It is clear under the facts you have presented that the community mental health boards intend to contract with the regional council for services and facilities. Pursuant to R.C. 167.07, a community mental health board representative on the council would not be considered to have any interest in that contract. However, R.C. 340.02 prohibits community mental health board members or employees from serving on the board of a contract agency, regardless of whether the individual has any actual interest in the contract, 1981 Op. Att'y Gen. No. 81-101 at 2-386, and would still require an executive director to forfeit his public employment with the community mental health board because of his position on the regional council. Thus there is an irreconcilable conflict between R.C. 167.07 and the forfeiture provision of R.C. 340.02. I find that R.C. 340.02 is a general provision in that it prohibits the service of members and employees of a community mental health board on the boards of all contract agencies. R.C. 167.07 is a special provision, in that it affects members and employees of community mental health boards only with regard to regional councils, which would otherwise be included within the terms of R.C. 340.02. The conflict provisions of R.C. 340.02, 1979-1980 Ohio Laws, Part I, 512 (Am. Sub. S.B. 160, eff. Oct. 31, 1980), were enacted subsequent to R.C. 167.07, 1967-1968 Ohio Laws, Part I, 213 (Am. Sub. S.B. 266, eff. Nov. 17, 1967). The language of R.C. 340.02 is clear and demonstrates a legislative intent to hold community mental health board members and employees to a higher standard than the common law rule of conflict of interest. Op. No. 81-101 at 2-385 n.1. However, I find no manifest intent to override the exception created in R.C. 167.07 for service on a regional council of governments. On the contrary, the language in R.C. 167.07 is much more emphatic, giving the terms of R.C. 167.07 precedence over "any section of the Revised Code" and "any law to the contrary." It is an established principle of statutory construction that "it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation." *State v. Frost*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979). The language of R.C. 167.07 also clearly meets the standard set by the court in the case of *State*

¹⁹ I note that conflict of interest analysis is applicable to a public officer or employee who holds a concurrent private position, as well as to a public officer or employee who holds another public office or employment, *see e.g.*, 1979 Op. Att'y Gen. No. 79-055. When both positions are public, the seven-step compatibility analysis set forth in 1979 Op. Att'y Gen. No. 79-111 is also applicable. R.C. 167.07 clearly states that membership or holding an office on a regional council does not constitute a public position. Thus a compatibility analysis is not necessary to the consideration of your question.

ex rel. Stanton v. Andrews, 105 Ohio St. 489, 138 N.E. 873 (1922) (syllabus, paragraph two):²⁰

A statute in order to be held an exception to the general provisions of another conferring power and limitation of power on an administrative board, must be couched in language so clear and unambiguous as to be free from doubt as to the intent of the legislature in declaring it to be an exception.

This conclusion is further supported by the purpose reflected in the statutory scheme governing regional councils. A regional council, by definition, is composed of political subdivisions and a council performs services for its members either by virtue of the originating agreement or subsequent contracts. It is equally obvious that a political subdivision can be present and act as a member of the regional council only through the agency of a properly designated individual. Because of the contractual nature of the relationship between a regional council and its member subdivisions, it would be extremely difficult for the members to represent themselves on the council without violating compatibility and conflict of interest standards, without the exceptions provided by R.C. 167.07. To interpret R.C. 340.02 as preventing board members or employees of a community mental health district from representing the district on the regional council would, as a practical matter, prevent the formation of the council. I find nothing in the language of R.C. 340.02 to indicate that the General Assembly intended such a result. On the contrary, R.C. 167.02(B) provides that the chief executive or a member of the governing body of a member shall automatically be the member's representative unless alternative provisions are made. It is reasonable, therefore, to assume, in light of the purposes of R.C. Chapter 167 and absent manifest intent to the contrary, that the General Assembly did not intend that the conflict of interest provisions of R.C. 340.02 would prevent community mental health board members or employees from representing the board on a regional council of governments.

I note that my consideration of the question of conflict of interest does not constitute an opinion on the applicability of the provisions of R.C. Chapter 102, R.C. 2921.42, or R.C. 2921.43 governing ethics, conflict of interest or financial disclosure with regard to public employees. Pursuant to R.C. 102.08, the authority to render advisory opinions on these sections of the Revised Code is vested in the Ohio Ethics Commission. See, e.g., 1987 Op. Att'y Gen. No. 87-025 (syllabus, paragraph three) ("[b]ecause R.C. 102.08 grants the Ohio Ethics Commission authority to render advisory opinions interpreting R.C. 2921.42, the Attorney General will not also render opinions construing R.C. 2921.42").

I turn now to your final question which asks whether the auditor of the county in which the facility is to be located may serve as the fiscal officer of the regional council. R.C. 167.04(B) states that:

The by-laws of the council shall provide for the appointment of a fiscal officer who may hold any other office or employment with the council, and who shall receive, deposit, invest, and disburse the funds of the council in the manner authorized by the by-laws or action by the council.

The regional council may, pursuant to R.C. 167.05, employ necessary staff or, pursuant to R.C. 167.06, accept the services of personnel of the members. As I have just discussed in your previous question, R.C. 167.07 permits a public officer to hold an office of the regional council. Thus R.C. Chapter 167 neither requires nor precludes appointment of a county auditor as the council fiscal officer.

²⁰ I note that *Stanton* has been overruled in part by *State ex rel. Corrigan v. Voinovich*, 41 Ohio St. 2d 157, 160, 324 N.E.2d 285, 287 (1975). The effect of *Corrigan* is limited to paragraph four of the syllabus in *Stanton* and has no bearing on the rule of statutory construction stated in paragraph two.

The county auditor, however, is a creature of statute and may exercise only such powers as are expressly delegated by statute or necessarily implied therefrom. *State ex rel. Kuntz*, 130 Ohio St. 84, 197 N.E. 112 (1935) (syllabus, paragraph one). Thus, pursuant to R.C. Chapter 317, the auditor serves as the fiscal officer of the county, *State ex rel. Morgenthaler v. Crites*, 48 Ohio St. 142, 172, 26 N.E. 1052, 1059 (1891), and also is designated by other statutes to serve as the fiscal officer of certain multi-county districts. *See, e.g.*, R.C. 343.01(B) (joint solid waste management district); R.C. 2151.3414 (juvenile detention home district); R.C. 3709.10 (combined general health district). R.C. 340.10 states:

The county auditor or, in a joint-county community mental health service district, the auditor of the county, the treasurer of which has been designated in the agreement between the counties of the district as custodian of the community mental health funds, is hereby designated as the auditor and fiscal officer of a community mental health district or joint-county district.

I find no authority in R.C. 340.10 for a community mental health board to assign additional tasks to the auditor. As my discussions of your previous questions have shown, a regional council of governments composed of community mental health service districts is not itself a community mental health service district. A regional council, therefore, is not entitled to the services of the auditor in his capacity as fiscal officer of a community mental health service district pursuant to R.C. 340.10. Such a regional council is not a county agency nor is it required to place its funds in the custody of the county treasurer. Therefore the regional council is not entitled to the services of the auditor in his capacity as the fiscal officer of the county treasury. I thus conclude in response to your last question that a county auditor may not be appointed as the fiscal officer of a regional council of governments composed of community mental health service districts.

Based on the foregoing it is my opinion, and you are hereby advised, that:

1. Pursuant to R.C. 167.01, single and joint-county community mental health service districts may enter into an agreement with each other to establish a regional council of governments for the purpose of planning, organizing and funding an inpatient adolescent mental health center, provided that the agreement is consistent with any applicable regulations issued by the department of mental health pursuant to R.C. 340.03 and R.C. 5119.61(A); the department of mental health has approved the center as a part of each district's plan pursuant to R.C. 340.03(A)(3) and R.C. 5119.61(L); and the authority granted the regional council does not violate R.C. 167.03(D) by displacing the individual boards in the exercise of their duties as planning agencies pursuant to R.C. 340.03(A).
2. Pursuant to R.C. 167.03(C) and R.C. 167.08, a regional council of governments may directly operate an inpatient adolescent mental health center on behalf of its member community mental health boards, if each board has received approval pursuant to R.C. 340.03(G) to directly operate such a facility and if the provision of services in a consolidated setting is an approved part of each member board's plan pursuant to R.C. 340.03(A)(3) and R.C. 5119.61(L).
3. Employees of a regional council of governments established pursuant to R.C. 167.01 by community mental health service districts established pursuant to R.C. 340.01 are not in the "civil service" as defined in R.C. 124.01(A).
4. The question of whether employees of a regional council of governments which is composed of community mental health service districts established pursuant to R.C. 340.01 are "public employees" as defined in R.C. 145.01(A) must be determined in the first instance by the public employees retirement board.

5. Pursuant to R.C. 167.02, an executive director employed by a community mental health board pursuant to R.C. 340.03(B) may serve as the board's representative on a regional council of governments only if such representation is expressly provided for in the agreement which establishes the regional council.
6. Pursuant to R.C. 167.07, an executive director employed by a community mental health board does not violate R.C. 340.02 by representing the board on a regional council of governments which provides services to the board.
7. A county auditor may not be appointed to the position of fiscal officer of a regional council of governments, pursuant to R.C. 167.04, when the regional council of governments is composed of community mental health service districts established pursuant to R.C. 340.01.