

OPINION NO. 2013-020**Syllabus:**

2013-020

A judge of a court of common pleas serving as a member of a judicial advisory board for a corrections commission established pursuant to R.C. 307.93 is an employee of a political subdivision acting within the scope of his employment or official duties and is entitled to immunity from liability in a civil action as set forth in R.C. Chapter 2744.

To: Kirk E. Yosick, Williams County Prosecuting Attorney, Bryan, Ohio

By: Michael DeWine, Ohio Attorney General, May 30, 2013

You have requested an opinion concerning immunity from liability in a civil action available to judges who are members of a judicial advisory board of a corrections commission. Specifically, you have asked whether immunity under R.C. Chapter 2744, or any other form of immunity, applies to the activities of the judicial advisory board members.

Background

Multicounty, municipal-county, and multicounty-municipal correctional centers are established pursuant to R.C. 307.93(A) to augment county and municipal jail programs and facilities by providing custody and rehabilitative programs for those persons under the charge of any of the contracting counties' sheriffs or municipalities' officers who, in the opinion of the sentencing court, need programs of custody and rehabilitation not available at the county or municipal jail. R.C. 307.93(A). These correctional centers also accept other persons designated for custody and rehabilitation pursuant to the provisions of R.C. 307.93(C) and R.C. 5120.161 (local housing of certain state prisoners). *Id.*; R.C. 307.93(C).

The political subdivisions contracting to establish correctional centers pursuant to R.C. 307.93 "shall form a corrections commission to oversee the administration of the center" unless the contracting parties also agree to contract for the private operation and management of the center as provided in R.C. 307.93(G) and R.C. 9.06. R.C. 307.93(A); R.C. 307.93(G). "Members of the commission shall consist of the sheriff of each participating county, a member of the board of county commissioners of each participating county, the chief of police of each participating municipal corporation, and the mayor or city manager of each participating municipal corporation." R.C. 307.93(A). The "standards and procedures" formulated by the commission shall include "designation of the person

in charge of the center, designation of a fiscal agent, the categories of employees to be employed at the center, the appointing authority of the center, and the standards of treatment and security to be maintained at the center.” *Id.*

Upon the establishment of a corrections commission, a judicial advisory board is formed “for the purpose of making recommendations to the corrections commission on issues of bed allocation, expansion of the center that the corrections commission oversees, and other issues concerning the administration of sentences or any other matter determined to be appropriate by the board.” R.C. 307.93(B)(1). A judicial advisory board is composed of the administrative judge of the general division of the court of common pleas of each county participating in the corrections center, the presiding judge of the municipal court of each municipal corporation participating in the corrections center, and the presiding judge of each county court of each county participating in the corrections center. *Id.* If those requirements create an even number of board members, the county auditor (or, if the board serves more than one county, the county auditor of the most populous county) also shall be a member of the board. *Id.*

Judges’ Entitlement to Immunity Under R.C. Chapter 2744 When Acting as Members of a Judicial Advisory Board for a Corrections Commission

R.C. Chapter 2744 addresses political subdivision liability in tort actions and establishes civil immunities for political subdivisions and their officers and employees. R.C. 2744.02(A)(1) provides that “a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.”¹

R.C. 2744.03(A)(6) generally establishes individual employees’ immunity from liability in a civil action unless one of the following situations applies: (a) the employee’s acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities; (b) the employee’s acts or omissions were performed with malicious purpose, in bad faith, or in a wanton or reckless manner; or (c) civil liability is expressly imposed by a section of the Revised Code. R.C. 2744.03(A)(6)(a)-(c); 2004 Op. Att’y Gen. No. 2004-032, at 2-299. Thus, we must first determine whether a judge is an “employee” of a political subdivision for purposes of R.C. Chapter 2744.03(A)(6) immunity.

For purposes of R.C. Chapter 2744, “employee” means “an officer, agent,

¹ R.C. 2744.02(B) sets forth exceptions to R.C. 2744.02(A)(1) permitting a political subdivision to be found liable for acts or omissions related to the operation of motor vehicles, the performance of proprietary functions, the repair and maintenance of roads and bridges, negligence in maintaining certain public buildings and grounds, and statutes expressly imposing civil liability. R.C. 2744.02(B)(1)-(5); 2004 Op. Att’y Gen. No. 2004-032, at 2-298 n.11; see *Ziegler v. Mahoning Cnty. Sheriff’s Dep’t*, 137 Ohio App. 3d 831, 836, 739 N.E.2d 1237 (Mahoning County 2000).

employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision." R.C. 2744.01(B). "'Employee' includes any elected or appointed official of a political subdivision." *Id.* The General Assembly has explicitly extended the immunities of R.C. Chapter 2744 to judges who are "employees." R.C. 2744.03(A)(7) provides:

[t]he political subdivision, and an employee who is a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or *a judge of a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.* (Emphasis added.)

The term "employee," as defined in R.C. 2744.01(B) and used in R.C. 2744.03(A)(7), includes the qualification "acting within the scope" of the person's "employment for a political subdivision." R.C. 2744.01(B). Similarly, the individual immunity set forth in R.C. 2744.03(A)(6) includes an exception when the employee's actions are "manifestly outside the scope of the employee's employment or official responsibilities." R.C. 2744.03(A)(6)(a). We must consider the meanings of these phrases in order to determine whether a judge acting as a member of a judicial advisory board for a corrections commission satisfies the definition of "employee" for purposes of R.C. Chapter 2744.

R.C. 2744.01(F) provides that "political subdivision" means "a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state." Thus, a county is a political subdivision for purposes of R.C. Chapter 2744. Next, we must consider whether the actions a judge takes as a member of a judicial advisory board for a corrections commission are "within the scope" of the judge's employment for a political subdivision or a component of his "official responsibilities."

A political subdivision is not required by the General Assembly to contract for the establishment of correctional centers pursuant to R.C. 307.93; however, once a political subdivision exercises the authority granted by R.C. 307.93 to establish a correctional center, it must comply with the specific process set forth by the General Assembly therein. This process includes the mandatory formation of (1) a corrections commission to oversee the administration of the correctional center, R.C. 307.93(A), and (2) a judicial advisory board for the purpose of making recommendations to the corrections commission, R.C. 307.93(B)(1). In other words, pursuant to the enactment of R.C. 307.93(B)(1), the formation of a judicial advisory board to make recommendations to a corrections commission is a function that the General Assembly has mandated a political subdivision to perform in certain circumstances, *i.e.*, when the political subdivision contracts with other political subdivisions to establish a correctional center.

The membership of a judicial advisory board for a corrections commission also is prescribed by the statute. A judicial advisory board is composed of the

administrative judge of the general division of the court of common pleas of each county participating in the corrections center, the presiding judge of the municipal court of each municipal corporation participating in the corrections center, and the presiding judge of each county court of each county participating in the corrections center.² The circumstances you describe, wherein Williams County has collaborated with four other counties to establish a corrections center, require the administrative judge of the general division of the Williams County Court of Common Pleas to serve as a member of the judicial advisory board for the Corrections Commission of Northwest Ohio. *See* R.C. 307.93(B)(1); note 2, *supra*.

Because judges of a court of common pleas are elected or appointed officials of a political subdivision, they meet the definition of “employee” for purposes of R.C. Chapter 2744 when they act within the scope of their employment or in furtherance of their official responsibilities. *See* 1988 Op. Att’y Gen. No. 88-055, at 2-252 (a common pleas court judge is an employee of the county in which he serves for purposes of R.C. 2744.01(B)). Service as a member of a judicial advisory board for a corrections commission is a function required by statute for certain judges, and such membership thus constitutes an official responsibility of those judges’ employments. *See* 2004 Op. Att’y Gen. No. 2004-003 (syllabus, paragraph 2) (“[u]nless a court finds to the contrary, it is presumed that a judge who serves upon a judicial corrections board under R.C. 2301.51 is performing functions of his or her office as judge”).

We are duly satisfied of the General Assembly’s intent to provide the immunities of R.C. Chapter 2744 to judges who serve as members of a judicial advisory board established under R.C. 307.93(B)(1).³ As set forth in the above analysis, judges of a court of common pleas plainly satisfy the definition of “employee” set forth in R.C. 2744.01(B), and they therefore are entitled to the protections set forth

² “Any of the foregoing judges may appoint a designee to serve in the judge’s place on the judicial advisory board, provided that the designee shall be a judge of the same court as the judge who makes the appointment.” R.C. 307.93(B)(1). This allowance does not affect our analysis.

³ A determination of whether the political subdivision that employs the judges is afforded immunity for the actions of the judges as members of a judicial advisory board for a corrections commission requires a different analysis. In that analysis, it must be determined whether a judge’s actions on a judicial advisory board constitute “governmental functions” for purposes of R.C. Chapter 2744. The purpose of the judicial advisory board is to make recommendations to the corrections commission concerning issues including, but not limited to, bed allocation, expansion of the corrections center, and the administration of sentences. R.C. 307.93(B)(1). Several provisions of R.C. 2744.01 support the conclusion that a judge’s work on a judicial advisory board is a governmental function.

For purposes of R.C. Chapter 2744, a “governmental function” means a function of a political subdivision that is specified in R.C. 2744.01(C)(2) or that generally satisfies any of the following:

in R.C. 2744.03(A)(6). Because service on a judicial advisory board for a corrections commission is required by statute for certain judges, this service constitutes a component of a judge's official responsibilities within the scope of his employment.

In sum, it is my opinion, and you are hereby advised that a judge of a court of common pleas serving as a member of a judicial advisory board for a corrections commission established pursuant to R.C. 307.93 is an employee of a political subdivision acting within the scope of his employment or official duties and is entitled to immunity from liability in a civil action as set forth in R.C. Chapter 2744.