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1. CIVIL DEFENSE—CITY JOINED IN CREATION OF REGIONAL ORGANIZATION FOR DEFENSE—APPROPRIATED FUNDS FOR SUPPORT OF ORGANIZATION—MAY LAWFULLY PAY OVER THE FUNDS TO THE ORGANIZATION FOR OFFICERS TO DISBURSE—PAYMENT COMPLETES “EXPENDITURE OF MONEY”—SECTION 5705.41 RC.
2. FUNDS OF REGIONAL ORGANIZATIONS FOR CIVIL DEFENSE MAY BE USED AND CONTROLLED BY ORGANIZATIONS WITHIN LIMITATIONS—A. REGULATIONS PROMULGATED BY GOVERNOR—CHAPTER 5915., RC—B. LIMITATIONS SET OUT IN AGREEMENT UNDER WHICH ORGANIZATION CREATED—SECTION 5915.07 RC.
3. REGIONAL ORGANIZATION FOR CIVIL DEFENSE—NOT A “SUBDIVISION” AS TERM EMPLOYED IN SECTION 5705.41 RC—IT DOES CONSTITUTE “PUBLIC OFFICE”—SECTION 117.09 RC—ACCOUNTS AND RECORDS SUBJECT TO EXAMINATION AND AUDIT BY BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES.

## SYLLABUS:

1. Under the provisions of Chapter 5915, Revised Code, a city which has joined in the creation of a regional organization for civil defense and which has appropriated funds for the support of such organization in conformity with such agreement may lawfully pay over such funds to such organization for disbursement by the officers of the organization, and such payment, as to such city, completes the “expenditure of money” within the meaning of Section 5705.41, Revised Code.

2. Funds of regional organizations for civil defense may be used and controlled by such organizations within the limitations provided (1) in regulations promulgated by the governor under authority of Chapter 5915., Revised Code, and (2) within the limitations set out in the agreement under which such organization is created as provided in Section 5915.07, Revised Code.

3. A regional organization for civil defense constitutes an entity separate from the several political subdivisions which have joined in its creation, and such political subdivisions may not be charged with the obligations created by such organization except to the extent to which they have been committed by such agreement to meet a proportionate share of the organization’s operating expense.

4. The regional organization for civil defense is not a “subdivision” as such term is employed in Section 5705.41, Revised Code, but it does constitute a “public

office" within the meaning of Section 117.09, Revised Code, and its accounts and records are subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices.

Columbus, Ohio, August 12, 1954

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen :

Your request for my opinion reads as follows :

"I am enclosing a letter received from Mr. E. E. Hagerman, Director of Finance, City of Dayton, in which he expresses some concern as to what is going to happen to any money which might be appropriated by the City of Dayton in support of the Miami Valley Defense Authority, which is the regional civil defense authority recently organized, which I think includes both Greene and Montgomery Counties.

"It appears that Mr. Hagerman is worried about the following things :

"(1) Under the provisions of the Civil Defense Statutes, after appropriations are made by the Dayton city council for the the proportionate share of the expense allocated to the City of Dayton, and agreed upon, can the Director of Finance legally pay over to the Miami Valley Defense Authority, from the treasury of the City of Dayton, the amount so agreed upon and so appropriated?

"(2) If the City of Dayton does pay over its agreed amount of money, and other political subdivisions do not meet their agreed obligation and pay over their proportionate share, and the Miami Valley Defense Authority ends up with a deficit, can the City of Dayton be charged with any portion of such a deficit?

"(3) Is the Miami Valley Defense Authority a 'subdivision' as defined in Section 5705.01 of the Revised Code (5262-1 G. C.) and is such authority amenable to the provisions of Section 5705.41, Revised Code (5625-33) (5625-34 G.C.) requiring (a) appropriation of money, (b) payment by warrant of proper fiscal officer, (c) previous certification of funds by fiscal officer before obligations are incurred?

"(4) Are the accounts and records of a duly constituted Regional Civil Defense Authority subject to examination by the Bureau of Inspection and Supervision of Public Offices?

“Mr. Hagerman is wondering where the responsibility of the city of Dayton begins and where it ends, in connection with the operation of the newly established Miami Valley Defense Authority.”

The statutory authority for the expenditure of funds of political subdivisions for the support of civil defense organizations is found in Section 5915.11, Revised Code, which reads as follows:

“Each political subdivision may make appropriations for the payment of the expenses of its local organization for civil defense and for the payment of the expenses chargeable to such political subdivision by agreement or under regulations promulgated by the governor in any county wherein a county-wide civil defense organization has been established pursuant to section 5915.07 of the Revised Code.”

In my opinion No. 3683, dated March 31, 1954, my conclusions with reference to the import of this section were stated in the syllabus, as follows:

“Under the provisions of Section 5915.11, Revised Code, a board of county commissioners is authorized to make appropriations for the support of a regional organization for civil defense where such organization has been created under the provisions of Section 5915.07, Revised Code, through participation of the county concerned.”

Since the term “political subdivision,” as used in this chapter is defined by statute to include cities, the conclusion stated above would be equally applicable to cities. The precise question here presented is not, however, merely whether a city may appropriate funds for the support of a regional defense organization, but is concerned with the responsibility of the city authorities in observing the statutory limitations on the expenditure of municipal funds, as for example the certification of availability prior to incurring obligations as provided in Section 5705.41, Revised Code. This section provides in part:

“No subdivision or taxing unit shall: \* \* \*

“(B) Make any expenditures of money unless it has been appropriated as provided in such section;

“(C) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn;

(D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. \* \* \*

We are thus presented with the question of the precise point at which the "expenditure of money" is made or an obligation incurred, by a city as to funds appropriated for the support of a regional organization, i.e., whether such expenditure, for example, is "made" upon payment over to the organization of the city's agreed portion or upon the expenditure by such organization, and whether the city's obligation is incurred upon entering the agreement, or upon the making of contracts or placement of orders by the organization.

This brings us to a consideration of the nature of the organization itself. The creation of regional organizations for civil defense is provided for in Section 5915.07, Revised Code, as follows:

"\* \* \* Two or more counties that have established county-wide local organizations for civil defense pursuant to this section may, with the consent of the legislative authorities of all or a majority of the political subdivisions of each county involved, including the largest municipal corporation in each county, enter into an agreement in writing establishing a regional local organization or authority for civil defense *in accordance with such regulations as are promulgated by the governor*. A director of civil defense who shall have the direct responsibility for the organization, administration, and operation of such regional local organization for civil defense shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor." (Emphasis added.)

The authority of the governor to promulgate "such regulations" is found in Section 5915.05, Revised Code, as follows:

"The governor shall promulgate and enforce, and when necessary he may amend or rescind the regulations with respect to the establishment of a civil defense organization for the state for the purpose of providing a defense for its people against enemy action, or other disaster. Such regulations shall become effective upon being filed in the office of the secretary of state and *thereupon shall have the effect of law until amended or rescinded*. They

shall be made available for public inspection at the headquarters of the state and at each local organization for civil defense, and at such other places and during such reasonable hours as fixed by the governor.” (Emphasis added.)

In certain regulations promulgated by the Governor under date of December 7, 1953, we find the following provisions:

“e. Each regional local civil defense organization or authority, established by an agreement in writing by and between two or more counties having county-wide local civil defense organizations, with the consent of the legislative authorities of all or a majority of the political subdivisions of each county involved, including the largest municipal corporation in each county, pursuant to the provisions of the second paragraph of Section 5915.07, of the Revised Code, shall have a Director of Civil Defense for such regional local civil defense organization or authority, who shall be appointed in accordance with the terms and conditions set forth in such agreement in writing.

“f. Each duly established county-wide or regional civil defense organization or authority, having a duly appointed Director of Civil Defense, shall have the power and authority to:

“(1) Receive and disburse funds.

“(2) Acquire, own, hold, use, and control funds and property, pursuant to the terms and conditions set forth in the agreement in writing establishing the same, or pursuant to the provisions of Section 5915.12 of the Revised Code, or both.”

From these provisions it would seem that a regional organization 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. In this respect it is somewhat similar in nature to other agencies formed by joint action of two or more political subdivisions, as for example a district tuberculosis hospital created under the provisions of Section 339.21, Revised Code. Some notion of the “separate entity” of such a district hospital as to fiscal affairs may be noted from the following language in Opinion No. 5584, Opinions of the Attorney General for 1942, p. 783, 790:

“The reason for such provision in Section 3139-6 as to the custody of the funds of the district does not apply to funds made available for the operation of the county hospital. *The trustees of the district constitute a body not representing any one county, and there would be no one county treasurer who would properly or naturally be the custodian of their funds;* therefore the statute

provides that as to such district trustees, the funds provided by the several counties are to be paid over to them, and they are then required, rather than empowered, to deposit the same in banks or trust companies, taking a bond to secure such deposit, and are given the right to disburse the funds so committed to them. In the case of a hospital belonging to a county, the county treasurer is the natural and proper custodian of the funds provided by that county.” (Emphasis added.)

In the case of regional civil defense organizations, it is true that the Legislature has not seen fit to provide in plain and definite language, and in some detail, for the conduct of their fiscal affairs, but this has been provided for to some extent by the exercise of the governor’s rule-making power.

In such regulations it is provided, as indicated above, that the funds and property of the organization shall be used and controlled “pursuant to the terms and conditions set forth in the agreement” by which the organization is established. Thus it is possible for the several cooperating subdivisions to provide initially for such safeguards in the organization’s fiscal affairs as they deem proper. In any event the nature of a regional organization, like a district hospital, is such that it could scarcely function otherwise than as a semi-independent agency in fiscal affairs. 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. For these reasons, and because statutes designed to alleviate disaster, public calamity, and to provide for national defense are to be liberally interpreted to aid in the attainment of the obvious legislative purpose, I conclude that a political subdivision which has entered into an agreement whereby a regional organization for civil defense is created, and has thereby become obligated to provide funds therefor in determinable amounts, may lawfully pay such funds over to such organization; and such payment, as to such subdivision, completes the “expenditure of money” within the meaning of Section 5705.41, Revised Code.

Your question as to the liability of a city for the obligations of a regional organization which it has joined in creating is evidently based on the notion that such organization is to some extent a subordinate agency of the city. Having already concluded that a regional organization is not such a subordinate agency, it follows that the city’s liability in connection with such organization is created solely by the agreement under

which the organization was created and is limited to the amounts which the city is required to contribute thereunder. I perceive no basis for the assertion of a further liability on the part of a city which has paid over such agreed amount.

As to your third question, it is sufficient to note that the term "subdivision," as used in Section 5705.41, Revised Code, is defined in Section 5705.01, Revised Code, as follows:

"'Subdivision' means any county, municipal corporation, township, township fire district, township waste disposal district, or school district, except the county school district."

Applying the rule of "expressio unius," we must necessarily conclude that such term does not include a regional organization for civil defense.

This does not mean, of course, that in fiscal affairs such organizations will not be subject to any limitations of the sort provided in Section 5705.41, Revised Code. It has already been pointed out that under the regulations promulgated by the governor such organizations may use and control funds only in accordance with the terms of the agreement by which they were created. Moreover, limitations on the expenditure of funds by regional organizations may, in my opinion, quite properly be made the subject of regulations by the governor, although it does not appear that this has been done except to the extent hereinbefore pointed out.

As to your final question, we may observe the following provisions in Section 117.09, Revised Code:

"The bureau of inspection and supervision of public offices shall examine each public office." \* \* \*

I do not believe that it could seriously be contended that a regional organization for civil defense is not a public agency, nor that its officers are not public officers, nor that its funds are not "public moneys" as such term is defined in Section 117.10, Revised Code. The purpose and function of such an organization, the method of its creation, the means by which it is supported, and the powers given it under the provisions of Chapter 5915, Revised Code, all clearly indicate that it has been clothed with some part of the sovereignty of the state, and this is the chief and controlling test of what constitutes a public office. I have no difficulty, therefore, in concluding that the accounts and records of such organizations are

subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices.

Accordingly, and in specific answer to your inquiry, it is my opinion that:

1. Under the provisions of Chapter 5915., Revised Code, a city which has joined in the creation of a regional organization for civil defense and which has appropriated funds for the support of such organization in conformity with such agreement, may lawfully pay over such funds to such organization for disbursement by the officers of the organization, and such payment, as to such city, completes the "expenditure of money" within the meaning of Section 5705.41, Revised Code.

2. Funds of regional organizations for civil defense may be used and controlled by such organizations within the limitations provided (1) in regulations promulgated by the governor under authority of Chapter 5915., Revised Code, and (2) within the limitations set out in the agreement under which such organization is created as provided in Section 5915.07, Revised Code.

3. A regional organization for civil defense constitutes an entity separate from the several political subdivisions which have joined in its creation, and such political subdivision may not be charged with the obligations created by such organization except to the extent to which they have been committed by such agreement to meet a proportionate share of the organization's operating expense.

4. The regional organization for civil defense is not a "subdivision" as such term is employed in Section 5705.41, Revised Code, but it does constitute a "public office" within the meaning of Section 117.09, Revised Code, and its accounts and records are subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General