

OPINION NO. 96-052**Syllabus:**

A soil and water conservation district created pursuant to R.C. 1515.03 is not a county office for purposes of R.C. 307.84.

To: Gary A. Nasal, Miami County Prosecuting Attorney, Troy, Ohio
By: Betty D. Montgomery, Attorney General, October 15, 1996

You have requested an opinion concerning the meaning of the term "county office," as used in R.C. 307.84. According to information provided by your office, the Miami County Automatic Data Processing Board believes that the soil and water conservation district in Miami County is a county office for purposes of R.C. 307.84. The soil and water conservation district maintains, however, that it is not a county office. In light of these conflicting views, you wish to know whether a soil and water conservation district created pursuant to R.C. 1515.03 is a county office for purposes of R.C. 307.84.

Pursuant to R.C. 307.84, a board of county commissioners is authorized to create a county automatic data processing board. "After the initial meeting of the county automatic data processing board, no *county office* shall purchase, lease, operate, or contract for the use of any automatic data processing equipment without prior approval of the board." R.C. 307.84 (emphasis added). For purposes of R.C. 307.84, "county office" means any officer, department, board, commission, agency, court, or other office of the county, other than a board of county hospital trustees." *Id.*

A county office, as defined in R.C. 307.84, thus is an entity that is a subordinate unit of the county, rather than an entity separate and distinct from the county. *See* 1968 Op. Att'y Gen. No. 68-105 (a county board of education is not a county office within the meaning of R.C. 307.84). Resolution of your specific inquiry, therefore, requires that I determine whether a soil and water conservation district created pursuant to R.C. 1515.03 is a subordinate unit of the county or an entity separate from the county.

1993 Op. Att'y Gen. No. 93-050 set forth the following criteria for determining whether an entity is a subordinate unit of the county: "(1) whether the territory that comprises the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county." *Id.* at 2-243. As noted in 1993 Op. Att'y Gen. No. 93-050, none of the criteria mentioned is critical in determining whether an entity is a subordinate unit of the county, rather, if an examination of these criteria reveals, on balance, that the entity is a subordinate unit of the county, then it is likely that the entity is a part of county government. *Id.* at 2-244.

An examination of a soil and water conservation district with respect to the criteria set forth above reveals that it is an entity separate from the county. Pursuant to R.C. 1515.03, "[e]ach county shall have a soil and water conservation district coextensive with the geographic area of the county, and *each district shall constitute a political subdivision of this state.*" (Emphasis added.) In addition, R.C. 1515.081(B) states that, except as provided in divisions (C) and (D) of R.C. 1515.081,¹ the provisions of R.C. Chapter 2744, concerning political subdivision tort liability, "apply to soil and water conservation districts *as political subdivisions of the state* and to their supervisors and other officers, employees, and agents as employees of *political subdivisions of the state.*" (Emphasis added.) *See generally* R.C. 2744.01(F) (as used in R.C. Chapter 2744, the term "political subdivision" or "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" (emphasis added)). Thus, although the boundaries of each soil and water conservation district are coextensive with the geographic boundaries of a county, the plain language of R.C. 1515.03 and R.C. 1515.081 indicates that the General Assembly intended for each soil and water conservation district to be a separate and distinct political subdivision from the county. *See* 1979 Op. Att'y Gen. No. 79-053 at 2-167 ("[a] soil and water conservation district is a political subdivision, like a township, which exercises limited powers of local self-government within a limited geographical area"). *See*

¹ R.C. 1515.081(C) sets forth the circumstances under which the Attorney General is required to defend a soil and water conservation district and the supervisors and other officers, employees, and agents of the district. R.C. 1515.081(D) requires the state of Ohio to indemnify and hold harmless a soil and water conservation district and the supervisors and other officers, employees, and agents of the district in certain enumerated situations.

generally 1989 Op. Att'y Gen. No. 89-001 at 2-7 ("[t]he fact that geographic boundaries of an entity ... are coextensive with a county is not, in itself, sufficient to justify the conclusion that the entity is a county board").

Moreover, a county is not responsible for the organization and supervision of a soil and water conservation district. Each district is administered by a board of supervisors who are elected in elections conducted by the Ohio Soil and Water Conservation Commission. R.C. 1515.05; accord 4 Ohio Admin. Code 1515-3-04(A); see also R.C. 1515.07. After the election of the supervisors of the soil and water conservation district, the secretary of the Ohio Soil and Water Conservation Commission shall transmit to the Secretary of State a copy of the finding and the decree of the commission incorporating the district and a list of the supervisors of the district. R.C. 1515.06. "The copy and list shall be filed and recorded in the office of the [S]ecretary of [S]tate in the same manner as articles of incorporation are required to be filed and recorded under the general law concerning corporations." *Id.*

As stated in 1989 Op. Att'y Gen. No. 89-001 at 2-7:

If an entity is established other than by a county, such as by a governor's executive order or by a state commission's resolution, it is unlikely the entity is a county board. Op. No. 84-099; Op. No. 81-059. A most important consideration is whether the entity is subject to the supervision of the county; if it is not subject to supervision by the county, it is not a county board. Op. No. 84-099; Op. No. 75-014; 1950 Op. No. 1970; 1927 Op. No. 593.

... I conclude, accordingly, that a local emergency planning district, under state law then in effect, was not a county board, but an entity separate from the county.... I also consider as persuasive support for my conclusion the designation of local emergency planning districts and the appointment of the members of the corresponding local emergency planning committees *by the State of Ohio Emergency Response Commission* rather than by individual county officials.... I am strongly convinced that the local planning districts were not county boards because the duty of supervising the local districts squarely vested in the State of Ohio Emergency Response Commission by Executive Order 87-16 and the Act.

Since a soil and water conservation district is not organized by the county and is not supervised by the county, these facts tend to reinforce the clear import of the language used by the General Assembly, which is that a soil and water conservation district is a separate and distinct political subdivision from the county. See 1968 Op. Att'y Gen. No. 68-105.

Finally, the funding for a soil and water conservation district is not entirely derived from or through the county. While it is true that a board of county commissioners may appropriate moneys from the proceeds of a tax levy within the ten-mill limitation or from the general fund of the county to a soil and water conservation district, see R.C. 1515.10, the district also receives funding from the state of Ohio, see R.C. 1515.02(A); R.C. 1515.14; R.C. 1515.16, and the federal government, see R.C. 1515.02(A). Thus, funding for soil and water conservation districts comes from the county, state, and federal government.

A review of the forgoing, thus, leads to the conclusion that a soil and water conservation district created pursuant to R.C. 1515.03 is not a subordinate unit of the county. Instead, the district is a separate and autonomous governmental entity. Accordingly, a soil and water conservation district is not a county office for purposes of R.C. 307.84.²

In conclusion, it is my opinion, and you are hereby advised, that a soil and water conservation district created pursuant to R.C. 1515.03 is not a county office for purposes of R.C. 307.84.

² In your request letter, you state that the county prosecuting attorney is the legal adviser to the soil and water conservation district, R.C. 1515.11, and that the county auditor and county treasurer may serve as the fiscal agents for the district, *see* R.C. 1515.23. The fact that the prosecuting attorney, auditor, and treasurer of a county may provide services to the soil and water conservation district does not affect my conclusion that the district is not a county office, however, since such county officers are, in other instances, statutorily required to provide services to entities that are not a part of county government. *See, e.g.*, R.C. 343.01(B)(1) (the board of directors of a joint solid waste management district shall "[d]esignate the county auditor ... of a county participating in the joint district as the fiscal officer of the district, and the county treasurer ... of that county as the treasurer of the district"); R.C. 3313.35 ("the prosecuting attorney of the county shall be the legal adviser of all boards of education and the governing board of an educational service center in the county in which the prosecuting attorney is serving"); R.C. 3709.33 ("[i]n general health districts the prosecuting attorney of the county constituting all or a major part of such district shall act as the legal advisor of the board of health").