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REGIONAL PLANNING COMMISSION — STATUTORY POWERS CREATED UNDER SECTION 713.21 ET SEQ., RC—DISCUSSION—HOUSING AND HOME FINANCE AGENCY—FEDERAL GOVERNMENT — FEDERAL HOUSING ACT — MATCHING FUNDS—METROPOLITAN AREA—REGIONAL AREA.

SYLLABUS :

Statutory powers of Regional Planning Commission created under authority of Section 713.21 et seq., Revised Code, discussed.

Columbus, Ohio, August 30, 1955

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have for consideration your request for my opinion as follows:

"The Regional Planning Commission of Clark County, Ohio is planning to file an application with the Housing and Home Finance Agency of the Federal Government for matching funds under Section 701 of the Housing Act of 1954. In support of such application, they are advised by that agency that the Regional Planning Commission must furnish an opinion from your office on the questions hereinafter set forth. In order to comply with this request, I request your opinion in answer to the following questions:

"1. Does Section 713.21 et seq. of the Revised Code contain provisions which meet the five basic requirements of Section 701 of the Housing Act of 1954, namely: (a) authorize the creation of an official state metropolitan or regional planning agency; (b) empower such agency to perform planning work in metropolitan or regional areas; (c) define such planning work in metropolitan or regional areas so that it will be within the purview of 'surveys, land use studies, urban renewal plans, technical services and other planning work' exclusive of plans for specific public works; (d) empower such planning agency to fulfill the obligations imposed under the grant contract with the Federal Government which are in substantial accord with Section 2 of the enclosed Guide; (e) make appropriate provision for such planning agency to provide or cause to be provided as needed the portion of the cost of the planning work not covered by the Federal grant.

"2. Is a regional planning commission organized under provisions of Section 713.21 of the Revised Code authorized to contract in its own name with the Federal Government for planning grants under Section 701 of the Housing Act of 1954?

"3. Is such a commission authorized to expend such grants and donations from the Federal Government as well as funds appropriated and received from local sources.

"4. Does the statute sufficiently define the area over which a planning body may exercise planning powers, or does it provide adequate standards or tests for delineating such an area?

“5. The Agreement creating the Clark County-Springfield Regional Planning Commission describes its area of jurisdiction as ‘the City of Springfield, Ohio, and all of the remaining parts of the County, exclusive of any other municipal corporation’. Is the area as described a regional area within the meaning of the Ohio State Statutes?”

“6. What, if any, concurrences or approval of either State, County or Municipal officials or bodies are prerequisite to a regional planning commission creating contractual obligations?”

“7. Does a metropolitan or regional area have to be a contiguous area?”

Section 701, of the Federal Housing Act of 1954, Public Law 560, 83rd Congress, reads as follows :

“Sec. 701. To facilitate urban planning for smaller communities lacking adequate planning resources, the Administrator is authorized to make planning grants to State planning agencies for the provision of planning assistance (including surveys, land use studies, urban renewal plans, technical services and other planning work, but excluding plans for specific public works) to cities and other municipalities having a population of less than 25,000 according to the latest decennial census. The Administrator is further authorized to make planning grants for similar planning work in metropolitan and regional areas to official State, metropolitan, or regional planning agencies empowered under State or local laws to perform such planning. Any grant made under this section shall not exceed 50 per centum of the estimated cost of the work for which the grant is made and shall be subject to terms and conditions prescribed by the Administrator to carry out this section. The Administrator is authorized, notwithstanding the provisions of section 3648 of the Revised Statutes, as amended, to make advance or progress payments on account of any planning grant made under this section. There is hereby authorized to be appropriated not exceeding \$5,000,000 to carry out the purposes of this section, and any amounts so appropriated shall remain available until expended.”

As pointed out in my Opinion No. 5020, dated March 29, 1955, a determination of whether a particular state or local agency enjoys such powers and is under such duties under state law, as to qualify for a grant of funds by an agency of the national government operating within the limits of a federal law is necessarily one which must be made ultimately by the federal authorities concerned. Thus your initial question, of whether Section 713.21 et seq. Revised Code, contains “provisions which meet the

five basic requirements of Section 701 of the Housing Act of 1954" primarily involves an interpretation of the federal statute and so might more properly be addressed to the Attorney General of the United States by the federal agency concerned.

It is recognized, however, that the federal authorities will necessarily interpret the federal statute here involved in the light of the provisions of the state law as construed by the state courts or as interpreted by the chief legal officer of the state. Accordingly, while I must refrain from the expression of an opinion which amounts to an interpretation of the federal statute, I deem it proper to supply such comment on the powers and duties of regional planning commissions as will facilitate the ultimate decision by the federal agency concerned regarding the grant here sought.

As to the creation of regional planning commissions and certain of their powers, Section 713.21, Revised Code, as amended in Amended Substitute House Bill No. 635, 101st General Assembly, provides :

"The planning commission of any municipal corporation or group of municipal corporations, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commission and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission.

"The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations and counties in the region shall be such as is determined by the planning commissions and boards. Such boards and the legislative authorities of such municipal corporations may appropriate their respective shares of such costs. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by sections 713.21 to 713.27, inclusive, of the Revised Code. The regional planning commission may accept, receive and expend funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government, or from civic sources, and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid. Within the amounts thus agreed upon and appropriated or otherwise received, the regional planning commission may employ such

engineers, accountants, and other employes as are necessary and may rent such space and make such purchases as it deems necessary to its use."

As above indicated this is a very recent enactment and will become effective on the ninety-first day following the date of filing with the Secretary of State, July 8, 1955, as provided in Section 1c, Article I, Ohio Constitution, unless a referendum petition should be filed with respect to it as provided in such section.

It is understood that your inquiry seeks an interpretation of the provisions of Section 713.21, Revised Code, as thus amended, upon the assumption that the recent enactment will not be subjected to a referendum and that it will become effective on October 7, 1955; and my response will be made, therefore, on that assumption.

Coming now to consider your specific questions seriatim, it will be seen as to question 1(a) that Section 713.21 supra, plainly and expressly authorizes the creation of "an official * * * regional planning agency."

As to question 1(b), it will be seen that such agencies may expend funds for "the purposes authorized by Sections 713.21 to 713.27, inclusive;" and these sections quite clearly authorize such agencies "to perform planning work in metropolitan or regional areas."

As to question 1(c), Section 713.23, Revised Code, provides:

"The regional or county planning commission shall make plans and maps of the region or county respectively, showing the commission's recommendation for systems of transportation, highways, park and recreational facilities, the water supply, sewerage and sewage disposal, garbage disposal, civic centers, and other public improvements which affect the development of the region or county respectively, as a whole or as more than one political unit within the region or county, and which do not begin and terminate within the boundaries of any single municipal corporation."

It seems obvious that the activities thus authorized do not relate to specific public works, and that they may well encompass "surveys, land use studies, urban renewal plans, technical services, and other planning works" within the ordinary meaning of this language.

As to question 1(d) we may note the following provision in Section 713.21 supra:

“The regional planning commission may accept, receive and expend funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state or local government, or from civic sources, and contract with respect thereto, and provide such information and reports as may be necessary to secure such financial aid.”

I have examined “Section 2 of the enclosed guide,” a pamphlet issued by the Federal Housing and Home Finance Agency, and perceive nothing therein indicative of the requirement of a condition of a grant of funds which could not properly be agreed to under the statutory authorization noted above. This question may, therefore, be answered affirmatively.

As to question 1 (e), it will be seen that Section 713.21 *supra*, provides for the appropriation of funds by the several local government agencies concerned for expenditure by a regional agency which such local government agencies have created by their cooperative action. The funds so provided may clearly be used in any planning project financed in part by federal grants. Thus it is clear that the statute makes “provision” for the use of funds raised by taxation at local levels to meet that portion of planning projects not covered by federal grants. Whether such provision is “appropriate” is a matter for determination by the federal agency concerned.

Your second question must clearly be answered in the affirmative in view of the express authorization set out in the language quoted above, from Section 713.21, Revised Code.

Your third question may properly be considered in conjunction with the sixth question presented. In this connection we may again note the following provision in Section 713.21, Revised Code, as amended:

“Within the amounts thus agreed upon and appropriated or otherwise received, the regional planning commission may employ such engineers, accountants, and other employees as are necessary and may rent such space and make such purchases as it deems necessary to its use.”

Although this language is hardly suggestive of a *carte blanche* authorization, I regard it as sufficient to authorize the expenditure of funds appropriated for or otherwise received by the commission in the exercise of any of the powers or the discharge of any of the duties of the commission as set out in Section 713.21 *et seq.*, Revised Code. In this connection it

would seem that the express provisions of the statute as to such powers and duties and the absence of any other mention of expenditures are indicative of a legislative intent that such expenditures might properly be made in the advancement of any planning project which the commission is authorized or required to undertake.

It is assumed that your sixth question relates primarily to procedures involving the expenditure of funds appropriated by local political subdivisions, and more specifically whether the certificate of a local subdivision fiscal officer would be required under the provisions of Section 5705.41, Revised Code. That section provides in part:

“No subdivision or taxing unit shall: (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 the 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.”

The question here presented is virtually identical with that under study in my opinion No. 4224, dated August 12, 1954, regarding the application of Section 5705.41 *supra*, to the operations of a regional civil defense organization. My conclusion therein reached on the point here pertinent was as follows:

“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.”

In that opinion it was pointed out 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 view of the provisions in Section 713.21 *supra*, regarding the “creation” of a regional planning commission by two or more political subdivisions it is clear that in this instance also a semi-autonomous

entity is brought into existence; and that a similar conclusion must be reached as to what completes an "expenditure of money" where a local political subdivision has appropriated funds for the use of a regional planning commission. Especially is this true in view of the express provision in Section 713.21 supra, authorizing the paying out of appropriated funds "on the certificate of the regional planning commission." I conclude, therefore, that no concurrences or approval by either state, county or municipal officers are required in the creation of contractual obligations by a regional planning commission.

For the sake of convenience, your fourth question is here again quoted :

"Does the statute sufficiently define the area over which a planning body may exercise planning powers, or does it provide adequate standards or tests for delineating such an area?"

The territorial area with respect to which a regional commission is authorized to plan is determined as provided in Section 713.21, Revised Code, which reads in pertinent part as follows :

"The planning commission of any municipal corporation or group of municipal corporations, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission."

This section clearly provides a means whereby the "region" concerned is to be definitely determined, i.e., by description in the instrument by the terms of which the commission is created. The statute does not itself define such area, of course, and this question thus becomes one of whether the statute provides "adequate standards or tests for delineating such an area."

I find nothing in the federal statute, Section 701, supra, which purports to provide a criterion by which to determine whether a state statute provides such "adequate standards or tests," but even if such criterion were provided such determination would necessarily be made by the federal authorities concerned. I can express the opinion in this connection only that the state statute makes definite provision for delineating the region with respect to which a regional organization is authorized to carry on planning projects.

Your fifth question is as follows:

“The Agreement creating the Clark County-Springfield Regional Planning Commission describes its area of jurisdiction as ‘the City of Springfield, Ohio, and all of the remaining parts of the County, exclusive of any other municipal corporation.’ Is the area as described a regional area within the meaning of the Ohio State Statutes?”

This question must obviously be answered in the affirmative in view of the plain provisions of the initial paragraph of Section 713.21, Revised Code.

Your seventh question reads:

“Does a metropolitan or regional area have to be a contiguous area?”

Here again the initial paragraph in Section 713.21, Revised Code, is dispositive of the matter, there being no requirement therein of contiguity of the area to be included within a region.

Respectfully,

C. WILLIAM O'NEILL
Attorney General