

OPINION NO. 90-060**Syllabus:**

1. A port authority created under R.C. 4582.22(A) is a political subdivision for purposes of R.C. Chapter 2744.
2. A township that participates in a port authority created under R.C. 4582.22(A) does not incur any liability in damages for judgments rendered against the port authority in civil actions to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad.
3. Pursuant to R.C. 4582.30, a township in which railroad lines owned by a port authority are located does not need to be a member of the port authority that operates such railroad.

To: R. David Picken, Madison County Prosecuting Attorney, London, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, September 7, 1990

I have before me your request for my opinion regarding the operation of a railroad by a port authority. According to information provided, Stokes Township is a member of a port authority that operates a railroad, a portion of which lies within the geographic territory of the township. The township, while desirous of having the port authority operate the railroad through its territory, has expressed certain concerns to you about its membership in the port authority. Accordingly, you ask that I address the following:¹

1. If a port authority should have a judgment rendered against it in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad, does a township that participates in that port authority incur any liability?
2. Does a township in which railroad lines owned by a port authority are located need to be a member of that port authority which operates such railroad?

I note at the onset that port authorities are created and operated under the provisions contained in R.C. Chapter 4582. Said chapter contains two sets of provisions governing the operation of port authorities.² R.C. 4582.01 through R.C.

¹ Pursuant to discussions between members of our respective staffs, I have rephrased your specific questions for ease of discussion.

² Prior to July 9, 1982, the effective date of 1981-1982 Ohio Laws, Part II, 2742 (Am. Sub. H.B. 439, eff. July 9, 1982), R.C. Chapter 4582 only authorized the creation and operation of port authorities under R.C. 4582.01

4582.20 apply to a port authority in existence on July 9, 1982, unless the subdivision or subdivisions creating the port authority have adopted a resolution or ordinance, pursuant to R.C. 4582.201(B), authorizing the port authority to operate under R.C. 4582.21 through R.C. 4582.59. R.C. 4582.201(A); *see also* R.C. 4582.02 (authorizing port authorities created under R.C. 4582.02 to exercise the powers and jurisdiction enumerated in R.C. 4582.01 through R.C. 4582.20). Correspondingly, R.C. 4582.21 through R.C. 4582.59 apply to a port authority created after July 9, 1982, or to a port authority in existence on that date which, by action of the subdivisions creating it, is permitted to operate under these sections. R.C. 4582.202; *see also* R.C. 4582.201 (authorizing port authorities in existence on July 9, 1982 to operate under R.C. 4582.21 through R.C. 4582.59). Since information provided indicates that the port authority was created in 1989, I shall assume that the port authority was created in accordance with R.C. 4582.22(A) and operates under the provisions set forth in R.C. 4582.21 through R.C. 4582.59.

I turn now to your first question which asks whether a township that participates in a port authority will incur any liability, should the port authority have a judgment rendered against it in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad.³ A resolution of this question requires an examination of R.C. Chapter 2744, which creates statutory tort immunity for those entities defined in R.C. 2744.01(F) as "political subdivisions."

Said chapter, in general, sets forth provisions related to the classification of functions of, liability imposed upon, defenses and immunities of, and payment of judgments by, "political subdivisions" involved in civil actions to recover damages for injury, death, or loss to persons or property caused by an act or omission of the "political subdivision" or its employees in connection with a governmental or proprietary function. More specifically, R.C. 2744.02(A)(1) provides, in part:

Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons 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.

It is necessary, therefore, to determine whether a port authority created pursuant to R.C. 4582.22(A) is a "political subdivision" for purposes of R.C. 2744.02. As used in R.C. Chapter 2744, "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. "Political subdivision"

through R.C. 4582.20. *See generally* 1964 Ohio Laws, Special Session, 220, 363 (Am. H.B. 22, eff. Dec. 16, 1964) (authorizing port authorities created under R.C. 4582.02 to exercise the powers and jurisdiction enumerated in R.C. 4582.01 through R.C. 4582.20); 1955-1956 Ohio Laws 142 (Am. Sub. S.B. 193, eff. June 30, 1955) (enacting R.C. 4582.01 through R.C. 4582.16, for the purpose of providing statutory authority for the creation of port authorities by political subdivisions). Pursuant to the provisions of Am. Sub. H.B. 439, R.C. Chapter 4582 now contains sections concerning the operation of port authorities in existence on July 9, 1982, *see* R.C. 4582.201, and for those created after July 9, 1982, *see* R.C. 4582.202.

³ I will assume that your question does not include the situation in which a court has specifically ordered a township to pay a portion of a judgment, since a township must obey an order issued by a court within its jurisdiction and power. *See generally* *Zakany v. Zakany*, 9 Ohio St. 3d 192, 459 N.E.2d 870 (1984) (syllabus) ("[a] court has authority both under R.C. 2705.02(A) and on the basis of its inherent powers to punish the disobedience of its orders with contempt proceedings").

includes, but is not limited to, a...port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964....

R.C. 2744.01(F). In regard to the import of this definition, I stated in 1988 Op. Att'y Gen. No. 88-034 at 2-153:⁴

R.C. 2744.01(F) thus provides a list of governmental entities which are expressly included under the heading of "political subdivision." If the entity is not specifically listed in R.C. 2744.01(F), then in order to qualify as a "political subdivision" the entity must be: (1) a "body corporate and politic"; (2) "responsible for [a] governmental activit[y]"; (3) "in a geographic area smaller than that of the state."

Accord 1988 Op. Att'y Gen. No. 88-098 at 2-478 and 2-479. Since a port authority created pursuant to R.C. 4582.22(A) is not expressly listed in R.C. 2744.01(F) as a governmental entity qualifying as a political subdivision,⁵ I must determine whether such a port authority satisfies the three requirements of a political subdivision set out in R.C. 2744.01(F) and thereby falls within the purview of that section. *See generally* Op. No. 88-098 at 2-483 (concluding "that since a county bridge commission establishing and operating under R.C. Chapter 5593 is, for purposes of R.C. 2744.01(F), a body politic and corporate responsible for governmental activities in a geographic area smaller than that of the state, it is a political subdivision for purposes of R.C. Chapter 2744").

With respect to the first requirement, namely that the entity must be a body corporate and politic, R.C. 4582.22(A) specifically provides that "[a] port authority created pursuant to this section is a body corporate and politic." *See also* R.C. 4582.21(A) ("'[p]ort authority' means a body corporate and politic created pursuant to authority of section 4582.22 of the Revised Code"). The General Assembly, thus, has declared, by statute, that port authorities created under R.C. 4582.22(A) are bodies corporate and politic. Hence, the first requirement of R.C. 2744.01(F) is satisfied.

⁴ R.C. 2744.01(F) has been amended since the writing of 1988 Op. Att'y Gen. No. 88-034. *See* Am. Sub. H.B. 656, 118th Gen. A. (1990) (eff. April 18, 1990); 1987-1988 Ohio Laws, Part I, 1321 (Sub. S.B. 367, eff. Dec. 14, 1988); 1987-1988 Ohio Laws, Part III, 5479 (Am. Sub. H.B. 815, eff. Dec. 12, 1988). None of the amendments, however, effects the interpretation of R.C. 2744.01(F) set out in Op. No. 88-034 at 2-153.

⁵ R.C. 2744.01(F), in relevant part, reads "'[p]olitical subdivision' includes, but is not limited to, a...port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964...." I note that port authorities are not created under R.C. 4582.26. Said section authorizes certain municipal corporations, townships, or counties to join existing port authorities and specifically states that "[f]or all purposes of sections 4582.21 to 4582.59 of the Revised Code, such political subdivision or subdivisions shall be considered to have participated in the creation of such port authority."

As indicated in footnote two, *supra*, subject to the exception in R.C. 4582.201, a port authority created prior to July 9, 1982 operates pursuant to R.C. 4582.01 through R.C. 4582.20, and a port authority created after that date is required to operate under R.C. 4582.21 through R.C. 4582.59. *See* R.C. 4582.201; R.C. 4582.202. The only section providing for the creation of port authorities in R.C. 4582.21 through R.C. 4582.59 is R.C. 4582.22(A). Additionally, R.C. 4582.21(A) states: as used in R.C. 4582.22 through R.C. 4582.59, "'[p]ort authority' means a body corporate and politic created pursuant to authority of section 4582.22 of the Revised Code."

The second requirement which must be met in order for an entity to qualify as a political subdivision, as defined in R.C. 2744.01(F), is that the entity must be responsible for a governmental activity. The powers and responsibilities of a port authority created under R.C. 4582.22(A) are delineated in R.C. 4582.21 through R.C. 4582.59. R.C. 4582.22(A). The exercise of the powers conferred in R.C. 4582.22 through R.C. 4582.59, however, must

be for the benefit of the people of the state, for the improvement of their health, safety, convenience, and welfare, and for the enhancement of their residential, agricultural, recreational, economic, commercial, distributional, research, and industrial opportunities and is a public purpose. As the operation and maintenance of port authority facilities will constitute the performance of *essential governmental functions*,⁶ a port authority shall not be required to pay any taxes or assessments upon any port authority facility, upon any property acquired or used by the port authority under sections 4582.22 to 4582.59 of the Revised Code, or upon the income therefrom, nor shall the transfer to or from a port authority of title or possession of any port authority facility, part thereof, or item included or to be included in any such facility, be subject to the taxes levied pursuant to Chapters 5739. and 5741. of the Revised Code, provided, such exemption does not apply to any property belonging to any port authority while a person is a lessee of such property under written lease providing for a tenancy longer than one year.

R.C. 4582.46 (emphasis and footnote added). Since the exercise of powers conferred by R.C. 4582.22 through R.C. 4582.59 upon a port authority created pursuant to R.C. 4582.22(A), is required to be for the benefit and welfare of the people of this state, is characterized as constituting "essential governmental functions," and is a public purpose, *see* R.C. 4582.46, I conclude that the exercise of the powers granted to such a port authority is the performance of governmental activities for purposes of R.C. 2744.01(F).⁷

⁶ I note that the term "governmental activity" is not defined by R.C. 2744.0., however, division (C)(1) of that section does define the term "governmental function." Said division provides, in relevant part:

"Governmental function" means a function of a *political subdivision* that is specified in division (C)(2) of this section or that satisfies any of the following:

....

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by non-governmental persons; and that is not specified in division (G)(2) of this section as a proprietary function. (Emphasis added.)

Past opinions of the Attorney General, however, have concluded that the term "governmental function" is not synonymous with the term "governmental activity," "because the definition provided for by R.C. 2744.01(C)(1) requires that the reader already know whether an entity is a 'political subdivision.'" Op. No. 88-034 at 2-153 n.1; *accord* 1988 Op. Att'y Gen. No. 88-098 at 2-482 n.3.

⁷ My conclusion that the activities of a port authority created under R.C. 4582.22(A) constitute "governmental activities" is buttressed by the fact that the definition of "political subdivision" set out in R.C. 2744.01(F) includes port authorities created under R.C. 4582.02. The powers and responsibilities of a port authority created under R.C. 4582.02 are analogous to those of a port authority created under R.C. 4582.22(A). *Compare* R.C. 4582.01 through R.C. 4582.20 *with* R.C. 4582.21 through R.C. 4582.59. The fact that the activities of a port authority created under R.C.

The final requirement which must be met in order to qualify as a political subdivision, for purposes of R.C. Chapter 2744, is that the area in which the entity performs a governmental activity must be "a geographic area smaller than that of the state." Pursuant to R.C. 4582.22(A), "[a]ny municipal corporation, township, county, or any combination of a municipal corporation, municipal corporations, township, townships, county, or counties, no one of which has been included in a port authority in existence on December 16, 1964, may create a port authority." The jurisdiction of any port authority created under R.C. 4582.22(A) is limited to "the territory of the political subdivision or subdivisions creating it."⁸ R.C. 4582.30. It is, thus, clear that the geographic area served by a port authority created under R.C. 4582.22(A) is intended to be smaller than the entire state. I find, accordingly, that a port authority created under R.C. 4582.22(A) is a political subdivision for purposes of R.C. Chapter 2744.

Since you have indicated for purposes of your question that a judgment was rendered against a port authority, I will assume that an exception exists to the general immunity granted political subdivisions by R.C. 2744.02(A)(1). *See* R.C. 2744.02(B). Cognizant of liability in damages in tort actions being imposed against political subdivisions, the General Assembly included within R.C. Chapter 2744 provisions concerning the satisfaction of judgments rendered against political subdivisions in such actions. Specifically, R.C. 2744.06(A) provides:

Real or personal property, and moneys, accounts, deposits, or investments of a political subdivision are not subject to execution, judicial sale, garnishment, or attachment to satisfy a judgment rendered against a political subdivision in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the political subdivision or any of its employees in connection with a governmental or proprietary function. Such judgments shall be paid from funds of the political subdivisions that have been appropriated for that purpose, but, if sufficient funds are not currently appropriated for the payment of judgments, the fiscal officer of a political subdivision shall certify the amount of any unpaid judgments to the taxing authority of the political subdivision for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year as provided by section 5705.08 of the Revised Code, unless any such judgment is to be paid from the proceeds of bonds issued pursuant to section 133.14 of the Revised Code⁹ or pursuant to annual installments authorized by division (B) or (C) of this section. (Footnote added.)

For purposes of this opinion I have assumed that a judgment has been rendered against the port authority in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port

4582.22(A) are essentially the same as those engaged in by an entity which is specifically included within the purview of the definition of "political subdivision" set out in R.C. 2744.01(F), thus, suggests that such activities are properly characterized as "governmental activities."

⁸ I note that, pursuant to R.C. 4582.30, a port authority that is created under R.C. 4582.22(A) and that owns or leases a railroad would also have jurisdiction over the territory on which the railroad's line, terminals, and related facilities are located when such territory is located outside the political subdivision or subdivisions creating the port authority.

⁹ I note that R.C. 133.14 was repealed by Sub. H.B. 230, 118th Gen. A. (1989) (eff. Oct. 30, 1989). In its stead, the General Assembly renumbered R.C. 133.27 as R.C. 133.14. In addition, the new language of R.C. 133.14 authorizes a taxing authority of a subdivision to "issue securities for the purpose of providing funds with which to pay one or more final judgments rendered against the subdivision." *See generally* Sub. H.B. 230.

authority or its employees in connection with the operation of a railroad, and the port authority, therefore, must satisfy such judgment in accordance with R.C. 2744.06. See generally *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted"). The language of R.C. 2744.06 clearly indicates that a port authority must pay any judgment rendered against it in a tort action from monies that have been appropriated for that purpose by the port authority. Further, if the port authority does not have sufficient monies currently appropriated to satisfy the judgment, the fiscal officer of the port authority must certify the amount of the unpaid judgment to the taxing authority of the port authority for inclusion in the next succeeding budget and annual appropriation measure and payment in the next succeeding fiscal year, unless the judgment is to be satisfied from the proceeds of securities issued under R.C. 133.14 or pursuant to annual installments authorized by division (B) of R.C. 2744.06. See R.C. 2744.06(A); R.C. 5705.08. R.C. 2744.06, thus, provides the sole statutory method whereby a port authority created under R.C. 4582.22(A) satisfies a judgment which has been rendered against it in a civil action to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad. See generally *Akron Transp. Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951) ("[i]t is one of the well recognized canons of statutory construction that when a statute directs a thing may be done by a specified means or in a particular manner it may not be done by other means or in a different manner" (quoting *Utah Rapid Transit Co. v. Ogden City*, 89 Utah 546, 551, 58 P.2d 1, 3 (1936), *overruled on other grounds sub nom. Rich v. Salt Lake City Corp.*, 20 Utah 2d 339, 437 P.2d 690 (1968))).

Since R.C. 2744.06 requires a port authority created under R.C. 4582.22(A) to satisfy a judgment rendered against it in a tort action from its own monies and no other section in the Revised Code requires a township to assume the liabilities of the port authority, a township is not required to satisfy such judgment. I find, accordingly, that a township that participates in a port authority created under R.C. 4582.22(A) does not incur any liability in damages for judgments rendered against the port authority in civil actions to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad.

Your second question asks whether a township in which railroad lines owned by a port authority are located needs to be a member of that port authority. The jurisdiction of a port authority created under R.C. 4582.22(A) is provided for in R.C. 4582.30. Said section reads:

The area of jurisdiction of a port authority created in accordance with section 4582.22 of the Revised Code shall include all of the territory of the political subdivision or subdivisions creating it and, if the port authority owns or leases a railroad line, the territory on which the railroad's line, terminals, and related facilities are located, *regardless of whether the territory is located in the political subdivision or subdivisions creating the port authority*, provided that in no case shall the same political subdivision that created or joined an existing port authority be included in more than one port authority. (Emphasis added.)

The plain language of R.C. 4582.30, thus, bestows upon a port authority created under R.C. 4582.22(A) jurisdiction over all the territory of a railroad line which it owns, regardless of whether such territory is located in the political subdivision or subdivisions creating the port authority. See generally *Sears v. Weimer*. Consequently, pursuant to R.C. 4582.30, a township in which railroad lines owned by a port authority are located does not need to be a member of the port authority that operates such railroad.

Therefore, it is my opinion and you are hereby advised that:

1. A port authority created under R.C. 4582.22(A) is a political subdivision for purposes of R.C. Chapter 2744.
2. A township that participates in a port authority created under R.C. 4582.22(A), does not incur any liability in damages for judgments rendered against the port authority in civil actions to recover damages for injury, death, or loss to persons or property caused by an act or omission of the port authority or its employees in connection with the operation of a railroad.
3. Pursuant to R.C. 4582.30, a township in which railroad lines owned by a port authority are located does not need to be a member of the port authority that operates such railroad.