

May 27, 2015

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
215 North Grant Street
Wooster, Ohio 44691

SYLLABUS:

2015-018

A board of trustees of a regional airport authority created pursuant to R.C. 308.02-.03 is not a county board for purposes of R.C. 309.09(A) and is not entitled to legal representation by the county prosecuting attorney, regardless of whether the regional airport authority is composed of a single county or multiple counties.



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OPINION NO. 2015-018

The Honorable Daniel R. Lutz
Wayne County Prosecuting Attorney
215 North Grant Street
Wooster, Ohio 44691

Dear Prosecutor Lutz:

You have requested an opinion whether a regional airport authority created under R.C. 308.03 is a county office or board entitled to legal representation by a county prosecuting attorney pursuant to R.C. 309.09(A). For the reasons that follow, we conclude that a regional airport authority is not entitled to legal representation by the county prosecuting attorney.

The creation of a regional airport authority is authorized by R.C. 308.02 “for the purpose of acquiring, constructing, operating, and maintaining airports and airport facilities.” Pursuant to R.C. 308.03, “[a]ny two or more contiguous counties or any single county may create a regional airport authority by the adoption of a resolution by the board of county commissioners of each county to be included in the regional airport authority.” The power and authority granted to a regional airport authority are vested in and exercised by its board of trustees. R.C. 308.05. None of the statutes concerning regional airport authorities designates a county prosecuting attorney or any other person as legal counsel for a regional airport authority.

R.C. 309.09(A) provides, in pertinent part, that “[t]he prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, *all other county officers and boards*, and all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties.” (Emphasis added.) You have asked whether a regional airport authority is within the phrase “all other county officers and boards” for purposes of this statute. To answer your question, we will consider whether a board of trustees of a regional airport authority is a “county board” for purposes of R.C. 309.09(A).

The term “county board” is not defined by statute. Nonetheless, it has been interpreted for purposes of R.C. 309.09(A) by several Attorney General opinions. These opinions have consistently advised that the meaning of the term “county board” is limited to entities that are “essentially a subdivision of the county or a subordinate department of the county.” 1961 Op. Att’y Gen. No. 2383, p. 366, at 369; *see also* 2013 Op. Att’y Gen. No. 2013-014, at 2-133 to 2-134; 1999 Op. Att’y Gen. No. 99-028, at 2-186; 1989 Op. Att’y Gen. No. 89-001, at 2-7. To determine whether an entity meets this qualification, the opinions have considered three factors: (1) whether the boundaries of the entity are coextensive with the boundaries of the county; (2) whether the county is responsible for the organization, operation, or supervision of the entity; and (3) whether the entity is funded by or through the county. 1999 Op. Att’y Gen. No. 99-028, at 2-186.

With respect to the first factor, it is well established that if an entity’s boundaries extend beyond the boundaries of the county, the entity cannot be a “county board” for purposes of R.C. 309.09(A). 2013 Op. Att’y Gen. No. 2013-042, at 2-402; 1999 Op. Att’y Gen. No. 99-028, at 2-186. While, according to the information you have provided us, the current geographic boundaries of the Wayne County Regional Airport Authority are coextensive with Wayne County, those boundaries may be expanded pursuant to R.C. 308.03. R.C. 308.03 permits the resolution creating a regional airport authority to be amended to include additional counties. Accordingly, the Wayne County Regional Airport Authority’s current boundaries are subject to expansion beyond Wayne County’s geographic boundaries. Because the board of trustees of a regional airport authority potentially may exercise authority over an area beyond a single county’s boundaries, consideration of the first factor weighs in favor of the conclusion that the board of trustees of a regional airport authority is not a “county board” for purposes of R.C. 309.09(A). 2013 Op. Att’y Gen. No. 2013-042, at 2-402 to 2-403; *see* 2001 Op. Att’y Gen. No. 2001-028, at 2-163 (“[p]revious opinions of the Attorney General have concluded that a county prosecuting attorney does not serve as legal adviser to entities that may be established by political subdivisions on a multi-county basis”).

We now turn to the second factor and a determination whether the county is responsible for the organization, operation, or supervision of the regional airport authority. In the facts you have provided, only Wayne County participated in the creation of the Wayne County Regional Airport Authority; however, as explained above, other regional airport authorities may be created by more than one county, and additional counties may be added to a regional airport authority after its establishment. R.C. 308.03. Thus, although the Wayne County Regional Airport Authority was created exclusively by Wayne County and is currently a single-county operation, its composition is subject to change at any time.

While a regional airport authority is initially created by the resolution of one or more county boards of commissioners, a regional airport authority is not operated by a county and does not remain subject to control or supervision by one or more counties. Rather, the power of a regional airport authority is vested in its board of trustees, and it is the board of trustees that makes all decisions about the operation of the regional airport authority. *See* R.C. 308.05 (“[a]ll the power and authority granted to a regional airport authority shall be vested in and exercised by

its board of trustees which shall manage and conduct its affairs”); R.C. 308.06 (“[u]pon the creation of a regional airport authority as provided by [R.C. 308.03], and upon the qualifying of its board of trustees and the election of a president and a vice-president, the authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by [R.C. 308.01-.17]”).

Furthermore, prior Attorneys General have concluded that a regional airport authority is itself a political subdivision and thereby separate from a county. 1963 Op. Att’y Gen. No. 19, p. 99, at 100 (“[i]n view of the powers given to a regional airport authority, and in view of the fact that such authority exercises a governmental function in a limited geographical area within the state, and may sue or be sued in its corporate name, I am of the opinion that such an authority is a political subdivision in itself, separate and apart from the county or any other political subdivision” (emphasis omitted)); *see also* 1990 Op. Att’y Gen. No. 90-087, at 2-375 (“a regional airport authority is separate and independent from the county or counties that create it”). Because a regional airport authority is not necessarily organized by a single county and is not operated or supervised by any county, consideration of the second factor in the test for determining whether an entity is a county board supports the conclusion that a board of trustees of a regional airport authority is not a “county board” for purposes of R.C. 309.09(A).

Finally, the third factor is whether the regional airport authority is funded by or through the county. A regional airport authority may receive funding from any county that created it. *See* R.C. 308.03(G) (the resolution adopted by the board of county commissioners of each county to be included in the regional airport authority shall state “[t]he manner and to what extent the expenses of the regional airport authority shall be apportioned among the counties creating it”). But a regional airport authority is not exclusively dependent on county funding and may be funded through various other means. *See, e.g.*, R.C. 308.06(E) (the board of trustees of a regional airport authority “[m]ay fix, alter, and collect rates and rentals and other charges for the use of airports and airport facilities ... for the purpose of providing for the payment of the expenses of the regional airport authority”); R.C. 308.08 (regional airport authority may raise money by issuing revenue bonds).

A regional airport authority has its own fiscal officer who is the custodian of the regional airport authority’s funds and records. R.C. 308.12 “No disbursements shall be made from such funds except in accordance with rules and regulations adopted by the board of trustees of the regional airport authority.” *Id.* Further, a board of trustees of a regional airport authority “[s]hall have jurisdiction, control, possession, and supervision of all property, rights, easements, licenses, moneys, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to it.” R.C. 308.06(F). A regional airport authority’s mechanisms for handling its moneys and expenses are thus separate and distinct from those of the county, and a county is only one potential source of funding for a regional airport authority. In light of this, consideration of the third factor in the test for determining whether an entity is a county board weighs in favor of the conclusion that a board of trustees of a regional airport authority is not a “county board” for purposes of R.C. 309.09(A).

Thus, upon examination of these three factors, we conclude that a board of trustees of a regional airport authority is not a county board for purposes of R.C. 309.09(A) and is not entitled to legal representation by the county prosecuting attorney, regardless of whether the regional airport authority is composed of a single county or multiple counties. *See generally* 1994 Op. Att’y Gen. No. 94-082, at 2-407 (a regional transit authority is not entitled to legal representation by the county prosecutor even where the regional transit authority consists of a single county because single county transit authorities have the same statutory powers that are given to regional transit authorities composed of multiple subdivisions, and “[r]egardless of its size or the number of its participants, a regional transit authority has statutory powers that make it a separate political subdivision, rather than a county board”).

That a board of trustees of a regional airport authority is not entitled to legal representation by the county prosecuting attorney is further evidenced by the fact that the General Assembly has granted such an entitlement to other multi-county entities explicitly. *See, e.g.,* R.C. 309.09(J) and R.C. 353.02 (“[t]he prosecuting attorney shall be the legal advisor of a lake facilities authority as provided in [R.C. 353.02]” and “[t]he county prosecutor of the county with the greatest amount of territory in the impacted watershed shall be the legal advisor of the lake facilities authority”). Had the General Assembly intended for the terms of R.C. 309.09(A) to apply to regional airport authorities, it could have included language similar or identical to that used in R.C. 309.09(J) and R.C. 353.02. *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997), *cert. denied*, 522 U.S. 1091 (1998) (“Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another”); *Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm’n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the General Assembly intended a particular meaning, “it would not have been difficult to find language which would express that purpose” having used that language in other statutes); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that a board of trustees of a regional airport authority created pursuant to R.C. 308.02-.03 is not a county board for purposes of R.C. 309.09(A) and is not entitled to legal representation by the county prosecuting attorney, regardless of whether the regional airport authority is composed of a single county or multiple counties.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General