

OPINION NO. 97-017**Syllabus:**

1. Pursuant to R.C. 5705.28(A), the board of trustees of a joint recreation district must adopt an annual tax budget, which it must submit to the county auditor as required by R.C. 5705.30. (1977 Op. Att'y Gen. No. 77-068, syllabus, paragraph two, questioned.)
2. Because a joint recreation district is not included in the definition of "subdivision," as that term is used in R.C. 5747.50-.55 and in R.C. 5747.62-.63, a joint recreation district is not entitled to participate in a county's distribution of either the undivided local government fund or the undivided local government revenue assistance fund.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Betty D. Montgomery, Attorney General, April 15, 1997

You have requested my opinion on two questions which I have restated as follows:

1. Does R.C. 5705.28 require a joint recreation district to file budget documents with the county budget commission as do townships, municipal corporations, park districts and counties?
2. Is a joint recreation district entitled to participate in the distribution of local government revenue assistance funds apportioned under R.C. 5747.51 or R.C. 5747.62?

Because your questions relate to the duties of a joint recreation district, let us begin with a discussion of the establishment and nature of such districts. R.C. 755.16 authorizes any municipal corporation, township, township park district, county, or school district, in conjunction with any one or more of such subdivisions, to enter into a joint venture to establish and operate common parks and recreational facilities. Pursuant to R.C. 755.14(C), any subdivisions that have joined together under R.C. 755.16 may, "by resolution, establish a joint recreation district,

consisting of all the territory of the subdivisions so joined." Each such district is governed by a board of trustees, which "shall possess all the powers of a legislative authority of an individual subdivision under [R.C. 755.12-.18]." R.C. 755.14(C).¹ In accordance with R.C. 755.15, a joint recreation district board of trustees "shall appoint one of its members or employ another as fiscal officer of the district."

Pursuant to R.C. 755.18, the expenses incurred in the operation of the activities provided for under R.C. 755.12-.17 are payable from the treasury of a participating subdivision, or in the case of a joint recreation district, from its general fund. In addition, a joint recreation district may levy a tax under R.C. Chapter 5705 "to acquire, maintain, and operate recreational facilities and community centers." R.C. 755.18. See R.C. 5705.198 (authorizing the board of trustees of a joint recreation district, as the district's taxing authority, R.C. 5705.01(C), to submit to the voters of the district a levy for "recreational purposes," R.C. 5705.19(H), and, if the levy is approved, to issue anticipation notes in accordance with R.C. 133.24).

In order to determine whether R.C. 5705.28 requires a joint recreation district to file budget documents with the county budget commission, it is necessary to examine the statutory scheme setting forth the duties of local governmental entities in the annual budget process. The general rule established by R.C. 5705.28(A)(2) requires the taxing authority of each subdivision or other taxing unit, other than a school district, to adopt a tax budget for the next fiscal year by the fifteenth day of July.² One exception to this duty is set forth in R.C. 5705.28(B) for certain school library districts. The other exception to the duty imposed by R.C. 5705.28(A) is set forth in R.C. 5705.281, which will be addressed below.

The information that must be contained in each tax budget is prescribed by R.C. 5705.29 and R.C. 5705.30. After the tax budget is prepared, at least two copies must be filed "in the office of the fiscal officer of the subdivision for public inspection." R.C. 5705.30. The taxing authority must give proper notice and conduct at least one public hearing on the budget. *Id.* Once the tax budget is adopted, it "shall be submitted to the county auditor on or before the twentieth day of July." *Id.* It is then the county auditor who submits to the county budget commission all the tax budgets that the auditor has received. R.C. 5705.31.

Applying the foregoing statutory budget scheme to the question you ask, I note first that, as used in R.C. Chapter 5705, the term "subdivision" includes a joint recreation district. R.C. 5705.01(A). Pursuant to R.C. 5705.01(C), the "taxing authority" of a joint recreation district is the district's board of trustees. Because the exception set forth in R.C. 5705.28(B) for school library districts has no application to a joint recreation district, R.C. 5705.28(A) requires the

¹ 1981 Op. Att'y Gen. No. 81-059 concluded in the first paragraph of the syllabus that a prosecuting attorney has no statutory duty to act as legal advisor of a joint recreation district established under R.C. 755.14(C), or of the board of trustees, officers, or employees of the district. Your questions, however, concern the authority of the county budget commission, of which you are a member, R.C. 5705.27, with respect to a joint recreation district. I will, therefore, address the nature of a joint recreation district as it relates to the activities of the county budget commission.

² Pursuant to R.C. 5705.28(A)(1), a school district must file its tax budget for the next fiscal year by the fifteenth day of January.

board of trustees of a joint recreation district to adopt a tax budget, unless the provisions of R.C. 5705.281 except a joint recreation district from that duty.

Let us now turn to a consideration of the operation of R.C. 5705.281. Pursuant to R.C. 5705.281, if a county budget commission has adopted an alternate method or formula for the distribution of funds under R.C. 5747.53 (undivided local government fund) and under R.C. 5747.63 (undivided local government revenue assistance fund), the commission may waive the requirement that a taxing authority that is entitled to participate in the distribution of such moneys adopt a tax budget, or may permit such a taxing authority to adopt a tax budget containing only such information as is necessary to apportion the funds under the alternate method or formula. Pursuant to R.C. 5705.281, however, the budget commission may relieve only a subdivision or taxing unit that is entitled to participate in the distribution of such moneys of its duty to adopt a tax budget as required by R.C. 5705.28(A). Thus, only if a joint recreation district is entitled to participate in the distribution of funds under R.C. 5747.53 or R.C. 5747.63 may the county budget commission, acting under R.C. 5705.281, relieve the district of its duty to adopt a tax budget as required by R.C. 5705.28(A)(2). In order to determine whether a joint recreation district is entitled to participate in the distribution of the undivided local government fund or the undivided local government revenue assistance fund, it is necessary to examine the statutory schemes governing the apportionment of those moneys.

Looking first at the scheme for the establishment of the undivided local government fund in each county, I note that, pursuant to R.C. 5747.50(B), the Tax Commissioner distributes to each county a share of local government fund moneys. The distribution by each county of its share of the undivided local government fund is governed by R.C. 5747.51. Pursuant to R.C. 5747.51(B), the county budget commission:

shall determine the amount of the undivided local government fund needed by and to be apportioned to each *subdivision* for current operating expenses, as shown in the tax budget of the *subdivision*. This determination shall be made pursuant to divisions (C) to (I) of this section, unless the commission has provided for a formula pursuant to section 5747.53 of the Revised Code. (Emphasis added.)

Thus, R.C. 5747.51(B) requires the county budget commission to apportion the undivided local government fund among "subdivision[s]." Pursuant to R.C. 5747.53, however, a county budget commission may adopt an alternate method or formula for the distribution of the undivided local government fund, in which case, "[o]n the basis of any alternative apportionment adopted and approved as authorized by this section, ... the county treasurer shall make distribution of the money in the undivided local government fund to *each subdivision eligible to participate in such fund*." R.C. 5747.53(D) (emphasis added).

As used in R.C. 5747.50-.55, the word "subdivision" means "any county, municipal corporation, park district, or township." R.C. 5747.01(Q)(1). Because a joint recreation district is not included in the definition of "subdivision," as that term is used specifically in R.C. 5747.51(B) and R.C. 5747.53, a joint recreation district is not entitled to participate in the distribution of the county's share of the undivided local government fund under any method of

apportionment.³ See *Warren County Park Dist. v. Warren County Budget Comm'n*, 37 Ohio St. 3d 68, 523 N.E.2d 843(1988).⁴

The other fund referred to in R.C. 5705.281 is the undivided local government revenue assistance fund, which is apportioned in accordance with R.C. 5747.62(B) among various "subdivisions." R.C. 5747.63 allows for the adoption of an alternative method or formula for the distribution of this fund. As stated in R.C. 5747.63(D), "[o]n the basis of any alternative apportionment adopted and approved as authorized by this section..., the county treasurer shall make distribution of the money in the undivided local government revenue assistance fund to *each subdivision eligible to participate in such fund*." (Emphasis added.) For purposes of R.C. 5747.62-.63, the term "subdivision" means "a municipal corporation, township, park district, or county." R.C. 5747.62(A). Again, a joint recreation district is not included as a subdivision for purposes of R.C. 5747.62-.63, and is not, therefore, entitled to participate in the distribution of the undivided local government revenue assistance fund under R.C. 5747.62 or under an alternative method of distribution permitted by R.C. 5747.63.

Because a joint recreation district is not entitled to participate in the distribution of either the undivided local government fund or the undivided local government revenue assistance fund, a joint recreation district is not a subdivision that the county budget commission, acting under R.C. 5705.281, may relieve of its duty to file a tax budget as required by R.C. 5705.28(A). Accordingly, R.C. 5705.281 does not except a joint recreation district from the duty imposed by R.C. 5705.28(A) upon "subdivisions," as that term is defined in R.C. 5705.01(A), to file a tax budget. I conclude, therefore, that, pursuant to R.C. 5705.28(A)(2), a joint recreation district must adopt an annual tax budget⁵ and, pursuant to R.C. 5705.30, must submit that budget to the

³ While R.C. 5747.53 authorizes a county budget commission to adopt an alternative method of distributing the undivided local government fund, it does not authorize a budget commission to distribute the fund to entities other than those entities included within the definition of "subdivision," as defined in R.C. 5747.01(Q)(1). Thus, even if a county budget commission adopted an alternative method of distributing the undivided local government fund under R.C. 5747.53, a joint recreation district would not be entitled to participate in the distribution of that fund.

⁴ See generally *Montgomery County Bd. of Comm'rs v. PUCO*, 28 Ohio St.3d 171, 175, 503 N.E.2d 167, 170 (1986) (finding the rule of statutory construction that the specific mention of one thing implies the exclusion of another to be especially pertinent where the statute being interpreted is a definitional provision, and stating: "[d]efinitions provided by the General Assembly are to be given great deference in deciding the scope of particular terms"); see also *Good Samaritan Hospital v. Porterfield*, 29 Ohio St. 2d 25, 30, 278 N.E.2d 26, 29 (1972) ("[w]here a statute defines terms used therein, such definition controls in the application of the statute, even though such definition may vary from that employed as to similar words in other statutes").

⁵ 1977 Op. Att'y Gen. No. 77-068, syllabus, paragraph two, concluded that a regional water and sewer district that does not exercise its authority to levy taxes on the real property in the district need not adopt a tax budget as required by R.C. 5705.28. At the time Op. No. 77-068 was issued, R.C. 5705.28 stated in pertinent part:

On or before the fifteenth day of July in each year, the *taxing authority* of each *subdivision* or other *taxing unit* shall adopt a *tax budget* for the next succeeding fiscal year. To assist in its preparation, the head of each department, board,

county auditor. Having addressed your second question in the course of answering your first question, I will not separately address your second question.

Based on the foregoing, it is my opinion, and you are advised that:

1. Pursuant to R.C. 5705.28(A), the board of trustees of a joint recreation district must adopt an annual tax budget, which it must submit to the county auditor as required by R.C. 5705.30. (1977 Op. Att'y Gen. No. 77-068, syllabus, paragraph two, questioned.)
2. Because a joint recreation district is not included in the definition of "subdivision," as that term is used in R.C. 5747.50-.55 and in R.C. 5747.62-.63, a joint recreation district is not entitled to participate in a

commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority ... an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices. (Emphasis added.)

1969-1970 Ohio Laws, Part II, 1515, 1704 (Am. H.B. 1, eff. March 18, 1969). The opinion reasoned that the term "tax budget" was not defined as used in R.C. 5705.28, but that the term "would necessarily imply that tax revenues would be included therein. A budget which does not include a provision for revenues derived from taxes would not be a tax budget." Op. No. 77-068 at 2-244. Further, the opinion reasoned that "R.C. 5705.27 through R.C. 5705.412 are intended to insure that tax levies comply with the ten mill limit and to allocate funds derived from property taxes. Neither purpose would be served if a subdivision not exercising its taxing powers or sharing in the proceeds of general property tax levies followed the procedures outlined in those sections." *Id.* at 2-245. On that basis, the opinion concluded that a regional water and sewer district that derived no revenues from taxes need not prepare a tax budget.

At the time Op. No. 77-068 was issued, R.C. 5705.01(H), as amended in 1975-1976 Ohio Laws, Part I, 1547 (Am. Sub. H.B. 111, eff. Aug. 31, 1976), defined the term "taxing unit," as meaning, "any subdivision or other governmental district having authority to levy taxes on the property in such district, or issue bonds which constitute a charge against the property of such district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts." Because a regional water and sewer district was authorized to levy taxes on property within the district, *see, e.g.*, former R.C. 6119.06 and former R.C. 6119.18 (1971-1972 Ohio Laws, Part I, 291 (Am. S.B. 166, eff. Nov. 19, 1971)), it was a taxing unit for purposes of R.C. 5705.28. The definition of "taxing authority" in former R.C. 5705.01(C), as amended by Am. Sub. H.B. 111, did not, however, include any entity with respect to a regional water and sewer district. It is unclear, therefore, whether R.C. 5705.28 imposed upon such a district a duty to adopt a tax budget. Outside of the exceptions provided in R.C. 5705.28(B) and R.C. 5705.281, discussed above, I am not aware, however, of any exception that relieves an entity that is a "taxing authority" of a "subdivision," or "taxing unit," as defined in R.C. 5705.01, from the duty imposed by R.C. 5705.28(A)(2) to adopt an annual tax budget. I, therefore, question the conclusion in 1977 Op. Att'y Gen. No. 77-068, syllabus, paragraph two.

county's distribution of either the undivided local government fund or the undivided local government revenue assistance fund.