

OPINION NO. 92-033

Syllabus:

1. Pursuant to R.C. 308.03, a county participating in an existing multi-county regional airport authority may withdraw or be removed from such authority by a resolution of all the affected

boards of county commissioners that amends the resolution creating that authority.

2. A county that withdraws or is removed from a multi-county regional airport authority established pursuant to R.C. 308.03 may subsequently create a single county regional airport authority in the manner provided in R.C. 308.03.

To: John E. Meyers, Sandusky County Prosecuting Attorney, Fremont, Ohio
By: Lee Fisher, Attorney General, July 29, 1992

You have requested an opinion regarding the withdrawal of Sandusky County from the Erie-Ottawa-Sandusky Regional Airport Authority for purposes of creating a single county regional airport of its own. You have indicated that, following withdrawal, the two remaining counties intend to continue the existing regional airport authority as a two county authority. The existing regional airport authority was originally established by Erie and Ottawa counties, pursuant to R.C. 308.03, as the Erie-Ottawa Regional Airport Authority. Sandusky County was subsequently included in the authority in 1971, by amendment of the resolution establishing the original authority, again pursuant to R.C. 308.03. Specifically you ask:

If all the affected Boards of County Commissioners agree, can the resolution creating the existing authority be amended under R.C. 308.03 to eliminate Sandusky County from the territory of the existing authority, and can Sandusky County subsequently create an authority for Sandusky County? If so, what are the steps to be taken procedurally?

If the answer to the foregoing was no, what steps, statutorily, by litigation or otherwise, are available to achieve this result?

If withdrawal from Erie-Ottawa-Sandusky Regional Airport Authority is not possible, can Sandusky County acquire and operate an airport in Sandusky County not under the jurisdiction of the tri-county authority?

R.C. 308.03 Allows A County to Withdraw from a Regional Airport Authority by Amendment of the Resolution Creating the Authority

Regional airport authorities are governed by the provisions of R.C. Chapter 308. R.C. 308.03 provides that: "[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 resolution creating the authority must include, *inter alia*, a statement of "[t]he counties to be included within the regional airport authority," R.C. 308.03(B), the manner of selection of the board of trustees, R.C. 308.03(E)-(F), and the manner and extent to which expenses are to be apportioned among the member counties, R.C. 308.03(G).

There is no express statutory provision governing the withdrawal of a county from a regional airport authority. R.C. 308.03 additionally provides, however, that

The resolution creating a regional airport authority may be amended to include additional counties or *for any other purpose*, by the adoption of such amendment by the board of county commissioners of each county included or to be included in the regional airport authority.

The territorial boundaries of a regional airport authority shall be coextensive with the territorial boundaries of the counties included within the regional airport authority. (Emphasis added.)

Based upon the express statutory language, just as Sandusky County was added to the original authority by amendment, Sandusky County should be permitted to withdraw or be removed from the authority by an additional amendment adopted by resolution of the boards of county commissioners of all affected counties. The language "for any other purpose," would literally include the removal or withdrawal of a county from an existing regional airport authority. However, 1970 Op. Att'y Gen. No. 70-056 interpreted the language "for any other purpose" as not encompassing "all possible purposes," but rather, as being limited to those purposes, in addition to the inclusion of new counties, that are specified in the provisions of R.C. 308.03(A)-(G). *Id.* at 2-94. Even assuming that interpretation of "any other purpose" is accurate, R.C. 308.03(B) expressly authorizes the boards of county commissioners of member counties to determine by resolution "the counties to be included within the regional airport authority." Thus, in addition to including additional counties, such an amending resolution could alter the territorial boundaries of a regional airport authority by eliminating a member county and its territory. Therefore, it is clear that a county may withdraw from a regional airport authority by the adoption of an amendment of the resolution creating the authority by the board of county commissioners of each of its members.¹

A County that has Withdrawn from a Regional Airport Authority may Establish a New Authority under R.C. 308.03

R.C. 308.03 allows a single county to create a regional airport authority by adoption of a resolution by the board of county commissioners. Thus, once Sandusky County has withdrawn from the original regional airport authority, there is no bar to the formation of a single county Sandusky County Regional Airport Authority.

Procedure for Withdrawal

Any resolution providing for the withdrawal of a county should be in the form of an amendment to the resolution establishing the authority as it currently

¹ It should be noted that R.C. 308.03 requires that a multi-county authority be composed of contiguous counties. Thus, the authority to amend the original resolution "for any other purpose" can include the authority to eliminate a county from the territory of an existing regional airport authority only as long as the remaining counties are contiguous. If withdrawal of a county would destroy the contiguity of the territory remaining in a regional airport authority, the authority would have to be dissolved in order to accomplish the separation of the county. The dissolution of a regional airport authority, or the disposition of its assets, not having been provided for by statute, is a judicial matter which may be resolved only by a court of competent jurisdiction." 1970 Op. Att'y Gen. No. 70-056 (syllabus, paragraph three).

It should also be noted that the withdrawal of a county will generally require the member counties of a regional airport authority to make an adjustment to the manner of selecting the board of trustees, R.C. 308.03(E)-(F), and the manner of apportioning and extent to which expenses are apportioned under R.C. 308.03(G). These matters should also be accomplished by amendment of the original resolution.

exists.² Thus, the boards of county commissioners of Erie, Ottawa, and Sandusky Counties should approve a resolution to amend the resolution creating the Erie-Ottawa-Sandusky Regional Airport Authority. The amending resolution should designate Erie and Ottawa Counties and their combined territories as the counties included in the authority and alter the territorial boundaries to exclude Sandusky County. The amendment should further adjust the provisions regarding the board of trustees to remove Sandusky County from the appointment process and make other appropriate administrative adjustments. Similarly, adjustments should be made in the financial responsibility provisions required by R.C. 308.03(G). When the three boards of county commissioners have approved such an amending resolution, the Erie-Ottawa-Sandusky Regional Airport Authority will become the Erie-Ottawa Regional Airport Authority. The board of county commissioners of Sandusky County subsequently may adopt a resolution creating a Sandusky County Regional Airport Authority.

Since your first question has been answered in the affirmative, it is unnecessary to answer your second and third questions.

It is therefore my opinion, and you are hereby advised that:

1. Pursuant to R.C. 308.03, a county participating in an existing multi-county regional airport authority may withdraw or be removed from such authority by a resolution of all the affected boards of county commissioners that amends the resolution creating that authority.
2. A county that withdraws or is removed from a multi-county regional airport authority established pursuant to R.C. 308.03 may subsequently create a single county regional airport authority in the manner provided in R.C. 308.03.

² This opinion does not purport to examine the extent to which existing contractual or other obligations of a regional authority may affect the ability of a member to withdraw, including whether a withdrawing member may have continuing liability for existing obligations of the regional airport authority. Although this opinion concludes that withdrawal is permitted under R.C. 308.03, the existing obligations of the authority and its individual members should be examined to determine the feasibility of withdrawal.