

OPINION NO. 90-087**Syllabus:**

A county engineer, who has elected, pursuant to R.C. 325.14(B), to engage in the private practice of engineering, may contract, in his private capacity, with a regional airport authority, which is organized under R.C. Chapter 308 and is operating an airport located within his county, to write specifications for repairs and for obstruction removal related to the airport's runways, provided that he is not in violation of any local departmental regulations, charter provisions or ordinances, or statutory provisions subject to interpretation by the Ohio Ethics Commission pursuant to R.C. 102.08.

To: Robert D. Rinfret, Holmes County Prosecuting Attorney, Millersburg, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 14, 1990

I have before me your request for my opinion as to whether a county engineer, in his private capacity, can enter into a contract with a county airport authority to perform certain engineering services. Information provided indicates that the Holmes County Engineer, in addition to serving the public as county engineer, has elected, pursuant to R.C. 325.14(B), to engage in the private practice of engineering.¹ As a result, a situation has arisen where a county airport authority, which operates an airport located within Holmes County, desires to enter into a contract with the Holmes County Engineer, in his private capacity, for the writing of specifications for repairs and for obstruction removal related to the airport's runways.²

I note initially that the term "county airport authority" does not appear in the Revised Code. I have been informed, however, that the "county airport authority" in question is organized and operated pursuant to the provisions of R.C. Chapter 308. Said chapter authorizes the creation of a "regional airport authority" by "[a]ny two or more contiguous counties or any single county." R.C. 308.03; see also *City of Heath v. Licking County Regional Airport Auth.*, 16 Ohio Misc. 69, 76, 237 N.E.2d 173, 178 (C.P. Licking County 1967) (R.C. Chapter 308 "provides for the method of creating a regional airport authority and sets forth the prescribed organization thereof, together with the duties and powers of its board of trustees"). I shall therefore use the term "regional airport authority" throughout this opinion to refer to the "county airport authority."

I turn now to your specific question. In order to ascertain whether the county engineer, in his private capacity, may enter into the contract in question, one must determine whether an applicable statute, local ordinance or regulation, or conflict of interest prohibits him from entering into such a contract. I assume for purposes of this opinion that there are no local departmental regulations, charter

¹ R.C. 325.14(B), which sets forth the salary to be paid to a county engineer, provides, in relevant part: "A county engineer may elect to engage or not to engage in the private practice of engineering or surveying before the commencement of each new term of office...."

² I note that supplemental information provided indicates that the relationship of the county engineer to the county airport authority will be that of an independent contractor to an employer, rather than that of an employee to an employer. I assume, therefore, for purposes of this opinion that the county engineer will not be an employee of the county airport authority.

provisions, or ordinances which prohibit the county engineer, in his private capacity, from entering into the contract in question. Additionally, I am not aware of any state or federal regulations precluding such a contract.

With regard to the existence of a conflict of interest, one of my predecessors has stated:

Any public officer owes an undivided duty to the public. It is contrary to public policy for a public officer to be in a position which would subject him to conflicting duties or expose him to the temptation of acting in any manner other than the best interest of the public.

1970 Op. Att'y Gen. No. 70-168 at 2-336, *overruled on other grounds*, 1981 Op. Att'y Gen. No. 81-100; accord 1990 Op. Att'y Gen. No. 90-040 at 2-162; see also *State ex rel. Taylor v. Pimney*, 13 Ohio Dec. 210, 212 (C.P. Franklin County 1902) ("[t]he self interest of the public official and the public interests which he represents, must not be brought into conflict"); cf. 1956 Op. Att'y Gen. No. 6776, p. 494 at 496 (a county engineer may accept additional employment, provided "that the usual rules of conflict of interest would apply, and that no additional employment, either public or private, could be accepted where its nature is such that it is subordinate to or a check upon the office of county engineer, or where some contrariety or antagonism is involved"). I must now examine the powers and duties of the county engineer to determine whether a county engineer would be subject to conflicting interests or divided loyalties if he were to contract, in his private capacity, with a regional airport authority, which operates an airport located within his county, to write specifications for repairs and for obstruction removal related to the airport's runways.

The duties, powers, and responsibilities conferred upon the county engineer are described and enumerated throughout R.C. Chapter 315 and R.C. Title 55. In general, however, the county engineer is charged with the construction, repair, improvement, and maintenance of roads, highways, and bridges within the county and its townships, and the lands and public improvements of the county. See, e.g., R.C. 315.13 (making emergency repairs on roads, bridges, and culverts in the county); R.C. 315.14 (inspecting public improvements made under the authority of the board of county commissioners); R.C. 5543.01 (supervising the construction, reconstruction, improvement, maintenance, and repair of bridges and highways under the jurisdiction of the board of county commissioners, and supervising the construction, reconstruction, resurfacing, or improvement of roads by boards of township trustees or by road districts); R.C. 5543.20 (furnishing boards of township trustees with an annual report of the condition of bridges on the township road system); R.C. 5555.07 (preparing and filing with the board of county commissioners copies of the surveys, plans, profiles, cross sections, estimates of costs, and specifications for a county road improvement undertaken pursuant to R.C. 5555.02 and R.C. 5555.06); R.C. 5571.05 (supervising and directing the maintenance and repair of roads); R.C. 5573.01 (preparing of surveys, plans, profiles, cross sections, estimates, and specifications as are required for a township road improvement).

A review of the county engineer's statutorily imposed responsibilities reveals only one potential conflict of interest. Pursuant to R.C. 315.08,

[t]he county engineer shall perform for the county all duties authorized or declared by law to be done by a registered professional engineer or registered surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of all bridges, culverts, roads, drains, ditches, roads on county fairgrounds, and other public improvements, except buildings, constructed under the authority of any board within and for the county.

Thus, under R.C. 315.08, the county engineer is required to prepare all the specifications concerning the construction, maintenance, and repair of all public improvements, except buildings, constructed under the authority of any board within and for the county.

In 1990 Op. Att'y Gen. No. 90-024, which concerned the authority of the county engineer to assist a private corporation in the development of a tract of land owned by the corporation, I examined the scope of the county engineer's responsibilities under R.C. 315.08. In finding that R.C. 315.08 imposes no duty upon the county engineer with regard to the proposed access road to be built on property owned by a private corporation, I determined that the county engineer's duties under R.C. 315.08 extend only to county matters and that a private corporation as an entity separate from the county is not entitled to the county engineer's services. Op. No. 90-024 at 2-89. My determination in Op. No. 90-024 was based on the reasoning set forth in 1966 Op. Att'y Gen. No. 66-084 at 2-148, which stated:

Beginning with the general proposition that a county and a township are separate political entities, it must be noted that [R.C. 315.08] devolves upon the county engineer, a county officer, duties concerning *county* matters. Therefore, pursuant to the terms of [R.C. 315.08], the county engineer has no duty to make a survey at the behest of the township trustees.

Hence, Op. No. 90-024 and Op. No. 66-084 have determined that the county engineer's duties under R.C. 315.08 extend only to county matters and that matters to be performed for an entity separate from the county are not county matters. See generally 1954 Op. Att'y Gen. No. 3698, p. 177 at 180 (R.C. 315.08 imposes limited duties upon county engineers with respect to roads on county fairgrounds and that other statutes governing county engineers' duties for county roads in general are inapplicable to county fairground roads since the owner of fairgrounds, a county agricultural society, "although for limited purposes deemed to be a 'public institution designed for public instruction,' is essentially a corporate entity separate and distinct from the county in which it is located and is in no sense a branch of the county government" (citation omitted)).

The relevant inquiry, therefore, becomes whether a regional airport authority is an entity separate from a county. In 1963 Op. Att'y Gen. No. 19, p. 99 at 100, one of my predecessors addressed this issue and concluded:

In 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.

See generally 1972 Op. Att'y Gen. No. 72-035 (syllabus) ("[a] political subdivision of the State is a limited geographical area wherein a public agency is authorized to exercise some governmental function..."). Moreover, the statutory provisions which establish and govern the operation of a regional airport authority clearly buttress the conclusion reached in 1963 Op. No. 19.

A regional airport authority, as indicated above, is created pursuant to R.C. 308.03. Said section, in part, provides "[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." In addition, "[t]he resolution creating a regional airport authority may be amended to include additional counties..." R.C. 308.03. A regional airport authority, thus, will not necessarily have jurisdiction coextensive with a county. Moreover, a regional airport authority is vested with certain corporate powers, e.g., the power to sue and be sued in its own name, R.C. 308.06(A); the power to enter into contracts, R.C. 308.06(B), R.C. 308.14; the authority to adopt an official seal, R.C. 308.06(C). Hence, it is readily apparent that each regional airport authority is an independent regional entity, which may be comprised of any combination of counties. Finally, past opinions of the Attorney General have concluded that "[r]egional entities formed by subdivisions are separate from the participating subdivisions." 1988 Op. Att'y Gen. No. 88-083 at 2-403; see also 1985 Op. Att'y Gen. No. 85-071 (a joint fire district is separate from the participating townships and municipalities); 1985 Op. Att'y Gen. No. 85-012 (a

regional civil defense organization is separate from the subdivisions that established it). Thus, a regional airport authority is separate and independent from the county or counties that create it.

Therefore, a county engineer is not required by R.C. 315.08 to perform engineering services on behalf of the regional airport authority.³ I find, accordingly, that a county engineer is not exposed to a conflict of interest, if he contracts, in his private capacity, with a regional airport authority, which operates an airport located within his county, to write specifications for repairs and for obstruction removal related to the airport's runways.

I note, however, that R.C. Chapter 102 and R.C. 2921.42 prohibit public servants, in general, from using their public positions to secure anything of value which manifests a substantial and improper influence upon them, from having unlawful interests in public contracts, and from authorizing or using their authority or influence to secure authorization of public contracts in which they, family members, or business associates have an interest. These sections may prohibit the county engineer from entering into the contract in question. The Ohio Ethics Commission, pursuant to R.C. 102.08, is empowered to render advisory opinions on the applicability of these sections to particular matters. As such, I will abstain from rendering an opinion as to the application of R.C. Chapter 102 and R.C. 2921.42 to the situation that you have presented me. *See generally* 1987 Op. Att'y Gen. No. 87-033 (syllabus, paragraph three) ("[t]he Attorney General will abstain from rendering an opinion where another governmental entity has been granted the authority to render advisory opinions concerning the relevant subject matter").

Accordingly, it is my opinion, and you are hereby advised, that a county engineer, who has elected, pursuant to R.C. 325.14(B), to engage in the private practice of engineering, may contract, in his private capacity, with a regional airport authority, which is organized under R.C. Chapter 308 and is operating an airport located within his county, to write specifications for repairs and for obstruction removal related to the airport's runways, provided that he is not in violation of any local departmental regulations, charter provisions or ordinances, or statutory provisions subject to interpretation by the Ohio Ethics Commission pursuant to R.C. 102.08.

³ The board of trustees of a regional airport authority may enter into a contract with a board of county commissioners under which the county will assume the maintenance of the airport. *See* R.C. 308.06(B); R.C. 308.14; 1971 Op. Att'y Gen. No. 71-074. Since such a contract may require the county engineer, in his official capacity, to write the specifications for the repairs and for obstruction removal related to the airport runways under the control of the regional airport authority, I assume that no such contract exists between the regional airport authority and the county in question.