

OPINION NO. 83-021**Syllabus:**

A regional planning commission is not subject to the requirements of R.C. 5705.41(D).

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 20, 1983

I have before me your request for an opinion on the question whether the Stark County Regional Planning Commission constitutes a subdivision or taxing unit which must comply with the requirements set forth in R.C. 5705.41(D). R.C. 5705.41 provides, in part, as follows:

No subdivision or taxing unit shall:

. . .

(D) Except as otherwise provided in section 5705.413 of the Revised Code,¹ make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same, or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made, has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. (Footnote added.)

The terms "subdivision" and "taxing unit" are defined, respectively, in R.C. 5705.01(A) and (H), as follows:

As used in Chapter 5705. of the Revised Code:

(A) "Subdivision" means any county, municipal corporation,

¹R.C. 5705.413 pertains to expenditures by townships.

township, township police district, township fire district, joint fire district, joint ambulance district, joint recreation district, township waste disposal district, township road district, community college district, technical college district, detention home district, a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.65 of the Revised Code, a joint-county mental health service district, a drainage improvement district created under section 6131.52 of the Revised Code, or school district, except the county school district.

(H) "Taxing unit" means any subdivision or other governmental district having authority to levy taxes on the property in the district or issue bonds that constitute a charge against the property of the district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

The language of R.C. 5705.01(A) is clear. The definition of "subdivision" encompasses only the entities specifically mentioned therein. As you noted in your letter of request, a regional planning commission is not included within the terms of R.C. 5705.01(A). I conclude, therefore, that a regional planning commission is not a subdivision for purposes of R.C. 5705.41. See, e.g., Swetland v. Miles, 101 Ohio St. 501, 130 N.E.2d 1920 (syllabus, paragraph 1) ("[w]here there is no real room for doubt as to the meaning of a statute, there is no right to construe such statute").

The definition of "taxing unit" set forth in R.C. 5705.01(H) includes only entities having authority to levy taxes or issue bonds. Statutory provisions governing regional planning commissions appear in R.C. Chapter 713. E.g., R.C. 713.21, 713.23, 713.24. They authorize regional planning commissions to carry out various functions involving the making of studies, maps, plans, recommendations, and reports and the provision of planning assistance to other governmental bodies. R.C. 713.23. Regional planning commissions are, however, not granted authority to levy taxes or issue bonds. Rather, pursuant to R.C. 713.21, the costs of such a commission are to be borne by the participating governmental bodies. See, e.g., R.C. 5705.19(M) (authorizing the taxing authority of any subdivision to submit to the electorate a tax levy for purposes of regional planning). It is clear, therefore, that a regional planning commission is not a "taxing unit" for purposes of R.C. 5705.01(H).

Based on the foregoing, I conclude that a regional planning commission is not a subdivision or taxing unit for purposes of R.C. 5705.41. I note, however, that the final paragraph of R.C. 5705.41 makes the requirements of that section applicable also to district authorities. It states:

No district authority shall, in transacting its own affairs, do any of the things prohibited to a subdivision by this section; but appropriation referred to shall become the appropriation by the district authority, and the fiscal officer referred to shall mean the fiscal officer of the district authority.

I consider it appropriate, therefore, to examine the question whether a regional planning commission is a district authority which is subject to the requirements of R.C. 5705.41(D).

The term "district authority" is defined by R.C. 5705.01(I) as follows:

"District authority" means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity that derives its income or funds from two or more subdivisions, such as the county school board, the trustees of district tuberculosis hospitals and district children's homes, the district board of health, a joint-county community mental health district's mental health board, detention home districts, a joint recreation district board of trustees, districts organized under section 2151.65 of the Revised Code [for the establishment and support of facilities for the

treatment, training, and rehabilitation of delinquent, dependent, abused, unruly, or neglected children, or juvenile traffic offenders], combined districts organized under sections 2151.34 [for the establishment and support of juvenile detention homes] and 2151.65 of the Revised Code, and other such boards.

A regional planning commission is not one of the bodies specifically mentioned in this definition. There remains the question whether it is included as one of "other such boards."

There are several elements to the definition of a "district authority" appearing in R.C. 5705.01(I). The authority must be a board (of directors, trustees, commissioners, or other officers), it must control a "district institution or activity," and it must derive its income or funds from two or more subdivisions. It is my opinion, for the reasons set forth below, that a regional planning commission cannot come within this definition because it lacks the characteristics of controlling a district institution or activity. Hence, I do not consider whether a regional planning authority would satisfy the definition in other respects.

The term "district institution or activity" is not defined by statute. Intrinsic to the term, however, is the concept of a "district." Each of the examples mentioned in R.C. 5705.01(I) is a board which governs an area defined by statute as a district. R.C. 339.21 (joint district to construct, equip, and maintain a hospital for the care and treatment of persons having tuberculosis); R.C. 340.01 (joint-county community mental health service district); R.C. 755.14(C) (joint recreation district); R.C. 2151.34 ("district for the establishment and support of a detention home for the use of the juvenile courts"); R.C. 2151.65 ("district for the establishment and support of a school, forestry camp, or other facility or facilities for the use of the juvenile courts"); R.C. 3311.05 (county school district); R.C. 3709.01, 3709.07, 3709.071, 3709.10 (general health districts); R.C. 5153.36 ("district for the establishment and support of a children's home").

A regional planning commission established by R.C. 713.21 has no statutorily defined "district." Rather, it has a "region," which is "defined as agreed upon by the planning commissions and boards, exclusive of any territory within the limits of a municipal corporation not having a planning commission." R.C. 713.21.

The word "district" is not defined by statute, and the characteristics and powers of the various district authorities mentioned in R.C. 5705.01(I) vary. For example, a joint tuberculosis hospital district consists of a number of contiguous counties, R.C. 339.21, whereas a joint recreation district consists of the territory of the various participating municipal corporations, townships, township park districts, counties, or school districts, R.C. 755.14, 755.16. Members of a board of trustees of a joint tuberculosis hospital district are appointed by the joint board of county commissioners, R.C. 339.23; members of a joint-county community mental health board are appointed either by the Director of Mental Health or the county commissioners of a participating county, R.C. 340.02; members of a board of trustees of a district detention home are appointed by the joint board of county commissioners from persons recommended and approved by the juvenile court judge or judges of the counties in which such persons reside, R.C. 2151.343; and members of a county board of education are elected, R.C. 3311.052, 3313.01. A joint recreation district may issue bonds, R.C. 755.17, or levy a tax, R.C. 755.18, 5705.19(H); expenses of a district tuberculosis hospital are to be paid by the counties in the district, which may individually issue bonds or levy taxes for that purpose, R.C. 339.25, 339.26, 5705.20. Some, but not all, of the districts mentioned in R.C. 5705.01(I) come within the definition of "subdivision" set forth in R.C. 5705.01(A) (includes joint recreation district, detention home district, district organized under R.C. 2151.65, combined district organized under R.C. 2151.34 and 2151.65, and joint-county mental health and retardation service district). It appears, however, that despite the differences among the districts included within the definition set forth in R.C. 5705.01(I), the General Assembly has used the word "district" as a term of art, and that it cannot be expanded to include all geographical areas which may be described as "regions." E.g., 1956 Op. Att'y Gen. No. 6907, p. 590 at 591 ("statutory district").

In 1955 Op. Att'y Gen. No. 5678, p. 418, one of my predecessors considered whether the provisions of R.C. 5705.41(D) would apply to a regional planning commission so as to make the certificate of a local subdivision fiscal officer necessary for the expenditure of funds by a regional planning commission. That opinion notes that, since R.C. 713.21 provides for a regional planning commission to be created by two or more political subdivisions, it must be concluded that such a commission is a semi-autonomous entity, having an existence apart from the bodies which created it. It concludes that, in view of the express provision in R.C. 713.21 authorizing the paying out of appropriated funds "on the certificate of the regional planning commission," no approval by state, county, or municipal officers is required in the creation of contractual obligations by a regional planning commission. Essentially the same conclusion was reached in 1964 Op. Att'y Gen. No. 1207, p. 2-259 (syllabus, paragraph 4) ("[n]o concurrence or approval by either state, county, or municipal officers is required on receipt of a 'proper certificate' from the regional planning commission pursuant to [R.C. 713.21]"). See 1954 Op. Att'y Gen. No. 4224, p. 460 (applying a similar analysis to a regional organization for civil defense and concluding that such an organization was not a "subdivision" as defined in R.C. 5705.01 and was not subject to R.C. 5705.41).

The language of R.C. 5705.41(D) dates back to G.C. 5625-34. I find it significant that none of the opinions referenced above considered the question whether a regional planning commission (or other regional entity without a statutorily defined district) is a "district authority" for purposes of R.C. 5705.41(D).² Both the word "district" and the words "region" or "regional" appear with some frequency in the Revised Code. E.g., R.C. Chapter 167 (regional council of governments); R.C. 306.80 (regional transit commission); R.C. Chapter 308 (regional airport authority); R.C. 5705.01(I) (various district authorities). That the General Assembly has used these words deliberately is evidenced by the fact that some entities are designated both as "regional" and as "districts." E.g., R.C. 3375.28 (regional library district); R.C. Chapter 3381 (regional arts and cultural district); R.C. Chapter 6119 (regional water and sewer district). See Inglis v. Pontius, 102 Ohio St. 140, 149, 131 N.E. 509, 511-12 (1921) (construing term

²In 1982 Op. Att'y Gen. No. 82-056, my predecessor concluded that a board of public library trustees which derives its funds from two or more subdivisions is a district authority, but did not specify just which types of library boards may fit this description. It is clear that a board of library trustees of a municipal library district, R.C. 3375.121, a school district free public library, R.C. 3375.15, a county library district, R.C. 3375.19-.22, or a regional library district, R.C. 3375.28-.30, controls a district institution or activity for purposes of R.C. 5705.01(I). See, e.g., 1975 Op. Att'y Gen. No. 75-026 at 2-104 ("[a] school district board of library trustees is, after all, an agency of the district which appoints it and the services which it extends are for the benefit of those persons residing within the district"). Other boards of public library trustees—of county free public libraries, R.C. 3375.06, township free public libraries, R.C. 3375.10, and municipal free public libraries, R.C. 3375.12—act within political subdivisions which have definite boundaries but which are not designated as "districts." See, e.g., R.C. 3375.01 (authority of state library board to amend, define and adjust the boundaries of library districts); R.C. 3375.05 ("territorial boundaries of the subdivision or district over which said board has jurisdiction of free public library service"); R.C. 5705.23 ("the question of such additional tax levy shall be submitted by the taxing authority of the political subdivision to whose jurisdiction the board is subject, to the electors of the subdivision or . . . to the electors residing within boundaries of the library district as defined by the state library board pursuant to [R.C.] 3375.01"). See generally R.C. 5705.28 (the board of trustees of a public library desiring to participate in the proceeds of classified property taxes collected in the county must extend the benefits of its library service to all inhabitants of the county). Since Op. No. 82-056 does not specifically discuss the question whether any of the latter boards, which have no designated districts, may derive funds from two or more subdivisions, it is not clear whether any such boards could be considered to be district authorities under that opinion.

"designation or name" and concluding that the words are not synonymous: "It will be presumed that the general assembly had some purpose in mind in using both words instead of only one, and unless the words are inconsistent or contradictory it is the duty of the courts to give effect to both words").

R.C. 1.42 sets forth the following rule of statutory construction:

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

It is true that, for some purposes, the word "district" may be synonymous with "region." Webster's New World Dictionary 410 (2d college ed. 1976) (second definition) ("district" means "any region"). It appears, however, that the General Assembly has used it in a more specialized sense. E.g., 1956 Op. No. 6907; Webster's New World Dictionary 410 (2d college ed. 1976) (first definition) ("district" means "a geographical or political division made for a specific purpose").

That the General Assembly used the word "district" in a special sense and did not intend to include areas not so designated is evident also from the language of R.C. 5705.01(I). When the drafters of that language intended that more than one term be applicable, they put more than one term into the statute—as in the inclusive listing of "any board of directors, trustees, commissioners or other officers," the pairing of "institution or activity" and "income or funds," and the reference to "other such boards." The word "district" appears without any synonym or expansive language. I conclude that it cannot be expanded to include a region defined by a regional planning commission pursuant to R.C. 713.21. See, e.g., Wachendorf v. Shaver, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"). It follows that a regional planning commission is not a district authority subject to R.C. 5705.41.

For the reasons set forth above, I have concluded that a regional planning commission is not a subdivision, taxing unit, or district authority, as those terms are defined in R.C. 5705.01. It is, therefore, my opinion, and you are hereby advised, that a regional planning commission is not subject to the requirements of R.C. 5705.41(D).