

OPINION NO. 90-012**Syllabus:**

The various political subdivisions enumerated in R.C. 167.02 may not, as members of a regional council of governments, form a cooperative agreement under which the police departments of such subdivisions participate in joint activities throughout the entire territory encompassed by the regional council of governments.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 14, 1990

I have before me your request for my opinion regarding the formation of a cooperative agreement under which the police departments of the various political subdivisions enumerated in R.C. 167.02, as members of a regional council of governments, participate in joint activities throughout the entire territory encompassed by the regional council of governments. If the formation of such a cooperative agreement is not prohibited, you have further asked about state and federal participation, financial liability, and the distribution of proceeds from the sale of contraband seized in such joint activities.

R.C. 167.01 authorizes the formation of a regional council of governments. Pursuant to this section, the

governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions. (Emphasis added.)

Membership in a regional council of governments, thus, is limited to counties, municipal corporations, townships, special districts, school districts, and other political subdivisions. *See* R.C. 167.02(A) (restricting membership in a regional council of governments to those "political subdivisions entering into the agreement establishing the council or admitted to membership subsequently pursuant to the agreement establishing the council or the bylaws of the council").

The general powers of a regional council of governments are set forth in R.C. 167.03. This section authorizes a regional council of governments to study area governmental problems, R.C. 167.03(A)(1); "[p]romote cooperative arrangements and coordinate action among its members," R.C. 167.03(A)(2); "[m]ake recommendations for review and action to the members and other public agencies that perform functions within the region," R.C. 167.03(A)(3); "[p]romote cooperative agreements and contracts among its members or other governmental agencies and private" parties, R.C. 167.03(A)(4); and "[p]erform planning directly by personnel of the council, or under contracts between the council and other public or private planning agencies," R.C. 167.03(A)(5). Such a council may also "[r]eview, evaluate, comment upon, and make recommendations, relative to the planning and programming, and the location, financing, and scheduling of public facility projects within the region and affecting the development of the area," R.C. 167.03(B)(1); "[a]ct as an areawide agency to perform comprehensive planning for...public facility projects," R.C. 167.03(B)(2); and "[a]ct as an agency for coordinating...local public policies," R.C. 167.03(B)(3).

Additionally, a regional council of governments may be empowered to perform a variety of functions on behalf of its member subdivisions. *See, e.g.,* 1989 Op. Att'y Gen. No. 89-063 (a regional council of governments may, under certain conditions, directly operate an inpatient adolescent mental health center on behalf of its member community mental health boards); 1969 Op. Att'y Gen. No. 69-013 (a regional council of governments may perform joint purchasing on behalf of

its members, subject to competitive bidding requirements); *see also* R.C. 167.03(C) (a regional council of governments may "perform such other functions and duties as are performed or capable of performance by" its member subdivisions); R.C. 167.08 (a regional council of governments may contract with other political subdivisions to provide those subdivisions with any service the council may offer or to perform on behalf of the political subdivision any function or render any service which a contracting political subdivision may perform).

I turn now to your first question, which asks:

Is it permissible, under a Regional Council of Governments (COG) established in accordance with Chapter 167, Revised Code, for the subdivisions enumerated in Section 167.02, Revised Code, to form a cooperative agreement under which the police departments of the various subdivisions participate in joint activities, such as drug raids and covert operations, throughout the entire territory encompassed by the Regional Council of Governments? Specifically, could a peace officer of a member subdivision arrest for violations of state statute within the territory of the (COG) but without the territory of his parent subdivision?

It is readily apparent from your question that a cooperative agreement, whereby the police departments of the various political subdivisions of a regional council of governments participate in joint activities throughout the entire territory encompassed by such council, entails the exercise of interjurisdictional police power by the peace officers of the participating political subdivisions. A resolution of your first question, thus, requires that I consider the authority of peace officers to exercise their police powers outside the territory of the political subdivision that has appointed, employed, or elected them.

Peace officers are, generally, authorized to exercise their police powers within the territory of the political subdivision that has appointed, employed, or elected them. 1986 Op. Att'y Gen. No. 86-068; *see* R.C. 2935.03(A) (a peace officer "shall arrest and detain until a warrant can be obtained a person found violating, within the limits of the political subdivision...in which the peace officer is appointed, employed, or elected, a law of this state or an ordinance of a municipal corporation"); *City of Fairborn v. Munkus*, 28 Ohio St. 2d 207, 209, 277 N.E.2d 227, 228 (1971) ("[t]he general common-law rule [subject to change by statute] is that the power of a municipal police officer is limited to the boundaries of his municipality"); 1971 Op. Att'y Gen. No. 71-076 at 2-259 ("[a] township policeman naturally has jurisdiction throughout the territory of the township police district which appointed him").

Further, specific statutory provisions govern the situations and manner whereby peace officers exercise their police powers outside the territory of the political subdivision that has appointed, employed, or elected them. *See, e.g.*, R.C. 177.03(A) (granting a member of an organized crime task force the powers of a peace officer throughout the county or counties in which an investigation into organized criminal activity is undertaken);¹ R.C. 311.04 (providing that deputy sheriffs may be assigned to serve in another county during an emergency); R.C. 311.07(B) (authorizing a county sheriff to call upon another sheriff or the appropriate official of a municipal corporation or township to furnish law enforcement assistance in the event of riot, insurrection, or invasion); R.C. 311.29 (authorizing sheriffs to

¹ I note that any superintendent or agent of the bureau of criminal identification and investigation, R.C. 109.54, county prosecuting attorney or assistant county prosecuting attorney, R.C. 309.08, sheriff or deputy sheriff, R.C. 311.07(A), chief of police or patrolman of a township police district, or of a township police department, R.C. 505.49(C), township police constable, R.C. 509.05, chief or officer of a police force of a municipal corporation, R.C. 737.11, marshal, deputy marshal, or police officer of a village, R.C. 737.18, may participate as a member of an organized crime task force established pursuant to R.C. 177.02.

enter into contracts for the provision of police services to various political subdivisions and other bodies); R.C. 505.43, R.C. 505.50 (authorizing contracts for police protection between a township and one or more townships, municipal corporations, or county sheriffs); R.C. 505.431 (authorizing township police to provide police protection to a county, municipal corporation, or township without a contract in certain circumstances); R.C. 509.05 (authorizing township police constables to "apprehend and bring to justice felons and disturbers of the peace, suppress riots, and keep and preserve the peace within the county"); R.C. 509.06 (authorizing constables, marshals, chiefs of police, and other police officers to call the sheriff or a deputy sheriff to their aid in state cases); R.C. 737.04 (authorizing contracts between municipal corporations for police protection); R.C. 737.041 (authorizing municipal police to provide police protection to a county, municipal corporation, or township without a contract in certain circumstances); R.C. 737.10 (authorizing a mayor to call upon the sheriff or the appropriate official of a municipal corporation or township to furnish law enforcement assistance in the event of riot); R.C. 737.19(C) (authorizing village marshals to "arrest any person fleeing from justice in any part of the state"); R.C. 2935.02 (authorizing an officer holding a warrant for the arrest of an individual to pursue and arrest such individual in any county in this state); R.C. 2935.03(D) (authorizing a peace officer to pursue, arrest, and detain a person, until a warrant can be obtained, outside the limits of the political subdivision that has appointed, employed, or elected him, when certain conditions are met). *See generally* 1968 Op. Att'y Gen. No. 68-155 at 2-190 ("a police officer may be given extra jurisdictional authority by a contract made pursuant to Sections 505.441 [now R.C. 505.43]² or 737.04" (footnote added)).

Consequently, except pursuant to statutory provisions, peace officers are not authorized to exercise police powers outside the territory of the political subdivision that has appointed, employed, or elected them. *See* Op. No. 86-068 at 2-375; *see also Cincinnati v. Alexander*, 54 Ohio St. 2d 248, 375 N.E.2d 1241 (1978); *State v. Vanbarg*, 73 Ohio Op. 2d 74, 335 N.E.2d 765 (Toledo Mun. Ct. 1975); *State v. Elder*, 67 Ohio Law Abs. 385, 120 N.E.2d 508 (Zanesville Mun. Ct. 1953); 1986 Op. Att'y Gen. No. 86-065; 1974 Op. Att'y Gen. No. 74-094, *overruled in part on other grounds*, Op. No. 86-065; Op. No. 68-155; 1939 Op. Att'y Gen. No. 1076, vol. II, p. 1547; 1938 Op. Att'y Gen. No. 1863, vol. I, p. 234. *See generally City of Fairborn v. Munkus*; Op. No. 71-076.

The particular situation presented to me in your request involves having peace officers of the various political subdivisions enumerated in R.C. 167.02 participate, pursuant to a cooperative agreement, in joint activities throughout the entire territory encompassed by the regional council of governments of which they are members. These subdivisions, however, are creatures of statute and have only those powers which are prescribed by statute or necessarily implied therefrom. *See, e.g., Dayton Teachers Ass'n v. Dayton Bd. of Educ.*, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975) (a board of education is limited to those powers clearly granted by statute); *State ex rel. Shriver v. Board of Comm'rs Belmont County*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (a board of county commissioners may exercise only those powers expressly conferred by statute or as may be necessarily implied therefrom); *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875) (a board of township trustees has only those powers enumerated by statute or necessarily implied therefrom). Without statutory authorization, these political subdivisions have no authority to enter into a cooperative agreement of the type you propose. None of the statutes enumerated above authorizing interjurisdictional exercise of police power by peace officers expressly or impliedly empowers the various political subdivisions enumerated in R.C. 167.02 to form such a cooperative agreement.³

² R.C. 505.441 was renumbered R.C. 505.43 by 1979-1980 Ohio Laws, Part I, 328 (Am. S.B. 98, eff. Oct. 6, 1980).

³ I am mindful that certain statutory provisions authorize one political subdivision to contract for police protection services from another political subdivision. *See, e.g.,* R.C. 311.29; R.C. 505.43; R.C. 505.50; R.C. 737.04. However, no provision of law authorizes the formation of a single agreement for police protection services among all the different types of political subdivisions enumerated in R.C. 167.02.

Moreover, nowhere in the Revised Code are additional powers conferred upon the individual political subdivisions of a regional council of governments.

In accordance with the foregoing, I find that your first question must be answered in the negative. The political subdivisions enumerated in R.C. 167.02 may not form, under a regional council of governments, a cooperative agreement under which the peace officers of such subdivisions participate in joint activities throughout the entire territory encompassed by the regional council of governments.⁴

Based upon my answer to your first question, I find it unnecessary, for purposes of this opinion, to address your remaining inquiry regarding state and federal participation, financial liability, and the distribution of proceeds from the sale of contraband seized in joint activities carried out under a cooperative agreement between the police departments of the political subdivisions of a regional council of governments. Accordingly, it is my opinion, and you are hereby advised that the various political subdivisions enumerated in R.C. 167.02 may not, as members of a regional council of governments, form a cooperative agreement under which the police departments of such subdivisions participate in joint activities throughout the entire territory encompassed by the regional council of governments.

⁴ I note that my conclusion herein does not prevent a political subdivision enumerated in R.C. 167.02 from contracting with another political subdivision enumerated in R.C. 167.02, pursuant to the appropriate statute, for the provision of police protection services. *See, e.g.*, R.C. 311.29; R.C. 505.43; R.C. 505.50; R.C. 737.04.