

OPINION NO. 92-022

Syllabus:

In the absence of a provision in the resolution or ordinance creating a regional transit authority setting forth the circumstances under which the authority may be dissolved or its membership modified, R.C. 306.54 requires that all member subdivisions, regardless of when they became members, consent to the withdrawal of any subdivision from membership in the regional transit authority.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Lee Fisher, Attorney General, June 26, 1992

You have requested my opinion concerning the procedure required by R.C. 306.54 for withdrawal of a subdivision's membership in a regional transit authority. By way of background, your letter states that the Toledo Area Regional Transit Authority (TARTA) consists of nine member subdivisions. A member township now wishes to withdraw from membership in TARTA. All but one of the other member subdivisions have consented to the township's withdrawal. You further state that the sole objecting subdivision was not an original member of TARTA, but joined after the authority's creation. Based on these facts, you ask whether R.C. 306.54 permits the township to withdraw from the regional transit authority without the consent of a member that was not an original member of the authority.

Dissolution or Modification of Membership of Regional Transit Authorities Under R.C. 306.54

R.C. 306.54, which governs the dissolution or modification in membership of a regional transit authority, states:

Subject to making due provisions for the payment and performance of its obligations, the resolution or ordinance creating the regional transit authority may provide for its dissolution or modification in membership under circumstances described therein, or a regional transit authority may be dissolved or its membership modified by its board of trustees with the consent of the subdivision or subdivisions *creating* such regional transit authority. In the event of dissolution the properties of the regional transit authority shall be transferred to the subdivision creating it, or if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon by such subdivisions. (Emphasis added.)

Thus, if the resolution or ordinance creating the regional transit authority has not otherwise provided for dissolution or modification of its membership, R.C. 306.54 allows the authority's board of trustees to dissolve or modify the authority's membership "with the consent of the subdivision or subdivisions *creating* such regional transit authority" (emphasis added). See generally 1972 Op. Att'y Gen. No. 72-054 at 2-211 (because R.C. 306.32 already allowed for the augmentation of membership in a regional transit authority, the enactment of R.C. 306.54 "must clearly have been intended to permit the *withdrawal* of one or more of the original component subdivisions..." (emphasis added)). You specifically question whether the adjective "creating," as used in R.C. 306.54 with respect to subdivisions, refers only to original member subdivisions of a regional transit authority or to all members comprising the authority.¹

¹ For purposes of this opinion, I have assumed that the resolution or ordinance creating TARTA has not otherwise provided for dissolution or modification of its membership.

Regional Transit Authorities

The formation, government, and operation of a regional transit authority are governed by R.C. 306.30-.71. According to R.C. 306.31, "[a] regional transit authority may be created in the manner provided in [R.C. 306.32]" for any one or more of the purposes set forth in R.C. 306.31. R.C. 306.32 provides, in part, for the creation of a regional transit authority as follows:

Any county, or any two or more counties, municipal corporations, townships, or any combination thereof, may create a regional transit authority by the adoption of a resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which is *to create or to join in the creation* of the regional transit authority....

....

The regional transit authority provided for in such resolution or ordinance shall be deemed to be created upon the adoption of such resolution or ordinance by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township enumerated in the resolution or ordinance.

The resolution or ordinance creating a regional transit authority may be amended to include additional counties, municipal corporations, or townships or *for any other purpose*, by the adoption of such amendment by the board of county commissioners of each county, the legislative authority of each municipal corporation, and the board of township trustees of each township which has *created or joined or proposes to join* the regional transit authority. (Emphasis added.)

R.C. 306.32 thus provides for the creation of a regional transit authority by the adoption of a resolution or ordinance by the governing body of each subdivision which "is to create or to join in the creation" of the regional transit authority.

R.C. 306.32 also provides for including additional subdivisions as members through the amendment of the resolution or ordinance creating the regional transit authority by the governing body of each subdivision "which has created or joined or proposes to join" the regional transit authority; amendments for "any other purpose" may be made in like manner. In order for a regional transit authority to add member subdivisions or otherwise amend the resolution or ordinance creating the regional transit authority, R.C. 306.32 requires the legislative authority of each subdivision that "created, or joined, or proposes to join" the regional transit authority to adopt the amendment. Thus, R.C. 306.32 requires, at a minimum, that every member subdivision, whether an original member or a member that subsequently joined the regional transit authority, consent to the addition of new members or to any other amendment in the resolution or ordinance creating the regional transit authority.

R.C. 306.321 provides an alternative method for adding subdivisions to the membership of a regional transit authority. Under R.C. 306.321, the resolution or ordinance creating the regional transit authority may be amended to include additional member subdivisions by adoption of such amendment by the legislative authority of each subdivision "which has created or theretofore joined or proposes to join" the regional transit authority. Like R.C. 306.32, R.C. 306.321 requires the consent of all member subdivisions, regardless of when the subdivision became a member, to the addition of a new member subdivision.

In light of the express requirement of the two statutes governing the addition of members to a regional transit authority that all members consent to an *increase* in membership and the fact that unanimous consent is required for any other amendment of the resolution or ordinance creating the regional transit authority, it would be reasonable to assume that the General Assembly also requires unanimous consent by the member subdivisions in the event of dissolution of, or withdrawal of membership from, a regional transit authority. See generally 1981 Op. Att'y Gen. No. 81-068 (syllabus, paragraph one) ("[p]ursuant to R.C. 306.54, a political subdivision may not unilaterally withdraw from membership in a regional

transit authority, absent a provision in the ordinance or resolution creating the regional transit authority permitting such withdrawal, but, rather, may withdraw only by an act of the board of trustees with consent of the other member subdivisions"). Thus, the use of the term "creating" to modify the word "subdivision[s]" in R.C. 306.54 refers to those subdivisions "comprising" or "forming" the regional transit authority, regardless of when the subdivisions became members. In a sense a regional transit authority is created anew each time its membership is increased or decreased, and all members remaining may be viewed as "creating subdivisions" of the new entity.

The argument may be made that throughout the statutory scheme governing regional transit authorities, the word "subdivision" has been modified by different terminology, *see e.g.*, R.C. 306.32, R.C. 306.321, and R.C. 306.54, with the intent that the different terminology have different meanings. Under such theory, the word "created" or "creating," when used in conjunction with the words "joined" or "heretofore joined" to describe a member subdivision, would establish two categories of members: original members and members that subsequently joined.

Such a literal reading of this terminology, however, could lead to unreasonable results in certain circumstances. For example, R.C. 306.54 provides that upon dissolution, all properties of the regional transit authority be transferred to the subdivision or subdivisions "creating" the regional transit authority, in the absence of contrary provision in the resolution or ordinance creating the regional transit authority. Thus, if a regional transit authority failed to provide otherwise in the resolution or ordinance creating the regional transit authority and, at the time the authority dissolved, none of the creating subdivisions remained as members, a literal reading of the term "creating" would require that all property of the regional transit authority be transferred to the "creating" member subdivisions, all of which may have long since withdrawn from membership. As stated, in part, in R.C. 1.47: "In enacting a statute, it is presumed that...(C) [a] just and reasonable result is intended...." Thus, a literal reading of the term "creating" in R.C. 306.54, as referring to only the original members of a regional transit authority, could not have been intended by the General Assembly.

Based on the foregoing, it is my opinion, and you are hereby advised, that in the absence of a provision in the resolution or ordinance creating a regional transit authority setting forth the circumstances under which the authority may be dissolved or its membership modified, R.C. 306.54 requires that all member subdivisions, regardless of when they became members, consent to the withdrawal of any subdivision from membership in the regional transit authority.