

## OPINION NO. 68-054

**Syllabus:**

1. A non-charter municipality is without authority to contribute public funds to a river basin water quality control committee, a voluntary non-profit, non-governmental organization.
2. Whether or not a charter municipality is authorized to contribute public funds to such a committee must depend upon the form and content of the particular charter involved.

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**To: Roger Cloud, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, March 22, 1968**

Before me is your recent request for my opinion which, in part, reads as follows:

"Is it lawful for either a charter or non-charter municipality or both to contribute public funds to a river basin water quality control committee, a voluntary, nonprofit organization comprised of representatives of industry and local government, when such funds are to be used by the committee to defray part of the cost of employing consulting engineers to conduct a water quality control study for the river basin in which the municipality is located?"

"The question is an outgrowth of action taken in Ohio to comply with the Federal Water Quality Control Act of 1965. This act authorizes the federal government to establish water control standards on interstate streams. In the event matters discharged into interstate waters reduce the water quality below federal standards, the act further authorizes the federal government to undertake action to abate the discharge of such matters.

"To promote compliance with the federal standards the Ohio Water Pollution Control Board has been encouraging formation of voluntary, non-profit water control committees in various Ohio river basins. Committee membership is comprised of representatives of the industries and local governments located within a river basin. Each of these two groups contributes to the committee an amount equal to half the cost of conducting a water quality study within the basin, and the study is performed by consulting engineers employed by the committee."

You have further advised that the question presented results from the desire of the Muskingum River Basin Water Quality Control Committee to have the City of Canton expend public funds for studies to be made by said Committee.

It should first be noted that the Federal Water Quality Act is not here involved. That Act provided that if on or before June 30, 1967, a state did submit to the Secretary of Interior water quality criteria applicable to interstate waters or portions thereof within such state and a plan for implementation and enforcement of the water quality criteria, and the Secretary approved such criteria and plan, then they would be the water quality standards applicable to such interstate waters or portions thereof.

Should a state fail to submit to the Secretary of Interior the criteria and plan for the interstate streams, the Secretary could then set standards applicable to such state.

Pursuant to the Federal Water Quality Control Act, the Ohio Water Pollution Control Board did conduct public hearings and has submitted to the Secretary criteria and plans for all interstate streams in Ohio.

Inasmuch as the Muskingum River is an intrastate stream, criteria therefor and a plan for implementation was not submitted to the Secretary.

However, the Board is currently in the process of establishing water quality standards for all intrastate streams pursuant to the provisions of Section 6111.041, Revised Code, which provides, in part, as follows:

"In furtherance of sections 6111.01 to 6111.08, inclusive, of the Revised Code, the water pollution control board shall adopt standards of water quality to be applicable to the waters of the state. Such standards shall be adopted pursuant to a schedule established, and from time to time amended, by the board, to apply to the various waters of the state according to criteria for the protection of the public health and welfare, the present and planned use of such waters for public water supplies, industrial and agricultural needs, propagation of fish, aquatic life, and wildlife, and recreational purposes. Such standards may be amended from time to time as determined by the board. Prior to establishing, amending, or repealing standards of water quality the board shall, after due notice, conduct public hearings thereon. Notice of hearings shall specify the waters to which the standards relate, and the time, date, and place of hearing."

To facilitate the proceedings at such public hearings and so the Water Pollution Control Board will have available to it comprehensive data upon which standards will be based, the Board has encouraged holders of permits issued by the Board to aid each other in the study of each basin in question. Collectively they could better study the problems of the basin and make a presentations to the Board.

Accordingly, in several river basins there have been established committees composed of representatives of industry, government and other interested persons. One such committee is the

Muskingum River Basin Water Quality Committee which has employed consulting engineers to study the basin and wishes the City of Canton to contribute to the cost of such study.

Your question is whether or not it is lawful for either a charter or non-charter municipality to contribute public funds to a river basin water quality control committee, a voluntary, non-profit, non-governmental organization, established for the purpose described above.

The established rule of law in this jurisdiction is that if a municipality adopts a charter, such municipality has the power thereunder to enact and enforce ordinances relating to local affairs. However, if a charter is not adopted, the organization and operation of such municipality is regulated by the statutory provisions covering the particular subject. State ex rel. Petit v. Wagner, 170 Ohio St. 297 (1960); Morris v. Roseman, 162 Ohio St. 447 (1954).

Though the contemplated action here involved is the expenditure of public funds, rather than the enactment of an ordinance, the question must be governed by the authority or power of the municipality to act.

It being clear that non-charter municipalities are limited by the provisions of the general law, I am of the opinion that the General Assembly has enacted no statutory provisions which authorizes such municipalities to contribute funds to the voluntary, non-governmental committees here in question.

The answer to the question of whether or not a charter municipality may contribute funds to such a committee is less than definite. The answer to each case, because of the wide variety of charter formulation possible, would depend upon the form and content of the particular charter involved. Opinion No. 851. Opinions of the Attorney General for 1964, page 65.

Therefore, it is my opinion and you are advised as follows:

1. A non-charter municipality is without authority to contribute public funds to a river basin water quality control committee, a voluntary non-profit, non-governmental organization.
2. Whether or not a charter municipality is authorized to contribute public funds to such a committee must depend upon the form and content of the particular charter involved.