

OPINION NO. 68-004**Syllabus:**

A regional council of political subdivisions organized and operating by virtue of Sections 167.01 through 167.08, Revised Code, has the power to enter into a contract with the federal government where it contributes cash or professional or technical services as part consideration for accepting funds, grants, gifts or other services from the government of the United States.

To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio
By: William B. Saxbe, Attorney General, January 9, 1968

I have before me your request for my opinion on whether a regional council of political subdivisions organized and operating by virtue of Sections 167.01 through 167.08, Revised Code, has the power to enter into a contract with the federal government as part consideration for accepting funds, grants, gifts or other services from the government of the United States.

Subsection (B), Section 167.06, Revised Code, permits a council to accept funds, grants, gifts, services from the government of the United States or its agencies, from this state or its departments, agencies, instrumentalities, or from political subdivisions or from any other governmental unit whether participating in the council or not, and from private and civic sources.

40 U.S.C.A. Sections 460 and 461 (g) state that the Administrator of the Housing and Home Finance Agency (now the Secretary of Housing and Urban Development) is authorized to make grants to organizations composed of public officials whom he finds to be representative of the political jurisdictions within a metropolitan area or urban region for the purpose of assisting such organizations to undertake studies, collect data, develop regional plans and programs and engage in such other activities as the Administrator finds necessary or desirable for the solution of the metropolitan or regional problems in such areas or regions.

A grant under this subsection shall not exceed two-thirds of the estimated cost of the work for which the grant is made.

Planning Agency Letter No. 50 dated August 16, 1965 issued by the Housing and Home Finance Agency, Urban Renewal Administration, Washington, D.C., states that the remaining one-third of the cost of the work may be met by the applicant in the form of cash or professional and technical services contributed by the jurisdictions comprising the membership of the organization.

This agency also has issued a General Instructions and Check List manual in which are coded certain items to be submitted with the council's application for a grant. Under Code UP 101, the applicant must submit legal documentation establishing authority of the applicant to perform the planning work.

The same manual in Section 2 Legal Data 1 (d), Page 3-2, requires documentation "Empowering the applicant to contract with the United States for the purpose of receiving and expending Federal funds. If copies of the laws cited are not available in printed compilations, the Planning Agency shall submit true copies."

It is evident, therefore, that in order to qualify for a federal grant, regional councils of political subdivisions must have the power to contract with the Housing and Home Finance Agency. (H.U.D.)

Section 167.03, Revised Code, reads as follows:

"(C) The council may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern."

Therefore, if the individual members can contract with the United States Government for grants-in-aid, the statute authorizes the councils to do likewise.

Subparagraph (A), Section 167.02, Revised Code, describes the members of regional councils of political subdivisions as follows:

"Membership in the council shall be the counties, municipal corporations, townships, special districts, school districts and other political subdivisions * * *"

Section 167.03, Revised Code, provides as follows:

"(A) The council shall have the power to:

" * * * * *"

"(2) Promote cooperative arrangements and co-ordinate action among its members, and between its members and other agencies of local or state governments, whether or not within Ohio, and the federal government;"

Therefore, the council itself can draft a cooperative arrangement between its members and the federal government.

It is fundamental that mutual consent is essential to every agreement, and that as a rule there can be no binding contract where there is no real consent. 11 O. Jur. 2d 261, Contracts, Section 17.

If there is no consideration for a contract, there can be no mutuality. 11 O. Jur 2d 258, Contracts, Section 11.

Therefore, if a "cooperative arrangement" made between the parties set forth by Section 167.03, Revised Code, supra, is drafted by the council, with one-third funds or services promised by the members as consideration in exchange for the promise of the United States Government, and there is a co-operative intent demonstrated by the members in the form of written mutual manifestations of assent, it will be deemed a contract.

Furthermore, Section 713.21, Revised Code, states that:

"* * * The regional planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or any adjoining state or from any municipal corporation or political subdivisions of this or any adjoining state, including county, regional, and municipal planning commission of this or any adjoining state, or from civic sources, and contract with respect thereto, * * *"

Such power to contract further was approved for regional planning commissions by my predecessor in Opinion No. 5678, Opinions of the Attorney General for 1955, at page 423.

The members of a regional planning commission are defined in Section 713.21, Revised Code, as follows:

"The planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may co-operate in the creation of a regional planning commission, for any region defined as agreed upon by the planning commissions and boards, ex-

clusive of any territory within the limits of a municipal corporation not having a planning commission."

It therefore appears that certain members of a regional planning commission, as, for example, boards of county commissioners, who are the executive officers of a "county", or township trustees are identical to certain members of regional councils of political subdivisions, as described in Section 167.03, Revised Code, supra.

The power to contract with the federal government provided by Section 713.21, Revised Code, supra, to individual members of a regional planning commission, is by application of Section 167.03 (C), supra, authority for a regional council of political subdivisions to so contract.

It is therefore, my opinion and you are hereby advised that a regional council of political subdivisions organized and operating by virtue of Sections 167.01 through 167.08, Revised Code, has the power to enter into a contract with the federal government where it contributes cash or professional or technical services as part consideration for accepting funds, grants, gifts or other services from the government of the United States.