

Note from the Attorney General's Office:

1964 Op. Att'y Gen. No. 64-1277 was overruled in part by
1964 Op. Att'y Gen. No. 64-1584.

OPINION NO. 1277

Note: This opinion overruled by Opinion 1584, 1964.

Syllabus:

1. When a port authority has been created pursuant to Chapter 4582, Revised Code, there is no authority, express or implied, for the "joinder" to, or the expansion of, the existent port authority by the subsequent inclusion of other subdivisions.

2. When a county acts alone in the creation of a port authority pursuant to Chapter 4582, Revised Code, the area of jurisdiction of the port authority for purposes of planning, improving and developing port facilities does not include the incorporated territory of those municipal corporations within the county which are empowered to act pursuant to Sections 721.04 to 721.11, inclusive, Revised Code.

3. When a county has created a port authority pursuant to Chapter 4582, Revised Code, the area of jurisdiction of the port authority for purposes of levying the taxes authorized by Section 4582.14, Revised Code, includes all of the territory in the county regardless of whether any part of the territory is located within the boundaries of any municipal corporation.

4. A county which creates a port authority pursuant to Chapter 4582, Revised Code, may not limit the territorial jurisdiction of the port authority to include only one or several of the townships within the county.

5. A township may in no instance create or participate in the creation of a port authority.

To: Robert Webb, Ashtabula County Pros. Atty., Jefferson, Ohio
By: William B. Saxbe, Attorney General, August 11, 1964

Your request for my opinion reads as follows:

"1. Once a port authority has been properly created, pursuant to Chapter 4582 of the Revised Code of Ohio, by a County and a Municipality; how may another Municipality, at some later date, become one of the political subdivisions comprising the port authority?"

"2. Once a County has created a port authority pursuant to Chapter 4582 of the Revised Code, are all incorporated villages within the County excluded from the territorial jurisdiction of the port authority?

"3. May a County create a port authority under Chapter 4582 of the Revised Code with a specific territorial jurisdiction limited to one or several townships within the County?

"4. May a Township be joined with a Municipality to comprise a port authority with the territorial jurisdiction including the Municipality and the Township, exclusive of the remaining Townships and Municipalities of the County?

* * * * *

"Question two, may be asked another way: is 'County', as mentioned in Section 4582.05 of the Revised Code, defined as the unincorporated area of the County, exclusive of all Villages and Cities as defined in Section 763.01 of the Revised Code.

"Section 4582.05 of the Revised Code states that the area of jurisdiction of a port authority includes the entire territory of the political subdivision creating it and seemingly supplies the answers to questions three and four. It is however, of prime importance to this County, to know whether the tax levy as provided in Revised Code Section 4582.14 may be limited to those townships contiguous to Lake Erie and adjacent to Municipalities which are contiguous to Lake Erie."

Inasmuch as your first question involves a matter of first impression arising under Chapter 4582, Revised Code, the answer thereto must, of necessity, be ascertained from the several sections and the legislative intent as demonstrated by choice of language used therein. Considerable aid is, however, furnished in Chapter 308, Revised Code, authorizing the creation of Regional Airport Authorities.

Section 4582.02, Revised Code, provides:

"Any municipal corporation, county, or any combination of a municipal corporation, municipal corporations, county, or counties may create a port authority. A municipal corporation shall act by ordinance, and a county shall act by resolution of the county commissioners, in authorizing the creation of a port authority. A port authority created hereunder shall be a body corporate and politic which may sue and be sued, plead

and be impleaded, and shall have the powers and jurisdiction enumerated in sections 4582.01 to 4582.16, inclusive, of the Revised Code. The exercise by such port authority of the powers conferred upon it shall be deemed to be essential governmental functions of the state of Ohio, but no port authority shall be immune from liability by reason thereof."

In addition to the express grant of power and authority in this section, a port authority, being a creature of statute, has also the power and authority necessarily implied from the express grant to carry out its purpose and function.

I am unable to find from a thorough examination of Sections 4582.01 to 4582.20, inclusive, Revised Code, any express authority enabling an existent port authority to "join," or to enlarge itself by the inclusion of, another subdivision, either a county or municipality. In fact, the several provisions of this chapter clearly indicate that the legislature did not intend that a county or municipality could, at a later date, join and become a part of an existent port authority.

By the express provisions of this chapter, a port authority created pursuant to Section 4582.02, supra, shall be governed by a board of directors, the membership of which is to be determined by the subdivision or subdivisions creating said authority. Section 4582.05, Revised Code. The board of directors of a port authority is charged with a duty of preparing a plan for future development and upon completion of such plan of giving notice thereof in each county in which there is a political subdivision participating in the creation of the authority. Section 4582.07, Revised Code. At the end of a calendar year, any surplus funds may be paid over to the general fund of the political subdivisions creating and comprising the port authority. Section 4582.13, Revised Code. Pursuant to Section 4582.16, Revised Code, no political subdivision creating or participating in the creation of a port authority shall exercise the rights and powers provided in Section 307.65 and Sections 721.04 to 721.11, inclusive, Revised Code. Finally, in the event of dissolution of the port authority, which may only be accomplished by the subdivision or subdivisions creating it, the properties of the port authority shall be transferred to the subdivision or subdivisions creating it in such a manner as may be agreed upon between such subdivisions. Section 4582.023 (4582.02.3), Revised Code.

These sections make no provision for any subdivisions other than the subdivisions creating or participating in the creation of a port authority.

The only provision in this chapter which authorizes a port authority to act in cooperation with nonparticipating subdivisions is Section 4582.17, Revised Code, which provides in part:

"A port authority created in accordance with section 4582.02 of the Revised Code may enter into such contracts or other arrangements with the United States government, or

any department thereof, with persons, railroads, or other corporations, with public corporations, and with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of this state, including sewerage, drainage, conservation, conservancy, or other improvement districts in this or other states as may be necessary or convenient for the exercise of powers granted by sections 4582.01 to 4582.16, inclusive, of the Revised Code, * * *

Sections 4582.01 to 4582.16, inclusive, Revised Code, were enacted, effective June 30, 1955 (126 Ohio Laws, 142), and, as has been stated above, there is no express provision for the later inclusion of another political subdivision in the port authority. Section 4582.17, *supra*, was enacted two years later (127 Ohio Laws, 247) effective August 30, 1957, and expressly authorizes port authorities to enter into contracts or other arrangements with the therein enumerated persons, corporations and governmental agencies. However, from an examination of the entities with which a port authority may make arrangements, I am convinced that the phrase "or other arrangements" does not contemplate the expansion of the port authority by means of the joining of additional subdivisions. If the term has any implication in this regard, it implies the continuing existence of each of the participating parties rather than the merger of one of the parties to the previously existent port authority.

Another point in support of this conclusion is demonstrated by a comparison of the Port Authority law, Chapter 4582, Revised Code, and the Airport Authority law, Chapter 308, Revised Code. In the airport authority provisions, the legislature has expressly provided in Section 308.03, Revised Code. In the airport authority provisions, the legislature has expressly provided in Section 308.03, Revised Code, that the resolution creating a regional airport authority may be amended to include additional counties whereas the port authority provisions are silent. The reason for this appears to lie in the fact that an airport authority has only the power, by Sections 308.06 (L) and 308.08, Revised Code, to issue revenue bonds whereas a port authority is a taxing authority which may levy taxes for all purposes (Section 4582.14, Revised Code) and issue bonds and notes (Section 4582.06 (D), Revised Code) in addition to the issuance of revenue bonds (Section 4582.06 (E), Revised Code). In the case of the airport authority, the later inclusion of additional counties will have no effect upon the outstanding bonded indebtedness inasmuch as the bonds are payable out of airport revenues only. However, in the case of a port authority, since it may issue bonds or notes payable out of taxes levied against the property of the electors within the jurisdiction of the port authority, the subsequent inclusion of another subdivision located outside the jurisdiction of the existent port authority would enable that subdivision to reap all of the benefits of improvements without paying, via taxation, its fair share of the expense attendant thereto. This result would be violative of Section 4582.14, Revised Code, because, although the territorial jurisdiction of the port authority is increased, the tax cannot be

assessed against the additional property since it was not submitted to the electors of the newly acquired territory and it was not authorized by the affirmative vote of at least a majority of the qualified electors within the jurisdiction of the expanded port authority.

Finally, it must be noted that the legislature, at the time that it enacted Chapter 4582, Revised Code, was fully aware of the joinder problem. Express provision is made for the joining of other subdivisions or the withdrawal of a participating subdivision in the following cases: Township Joint Hospital Districts, Section 513.18, Revised Code (express provision for joinder); County Tuberculosis Hospital Districts, Section 339.27, Revised Code (joinder of additional counties), and Section 339.28, Revised Code (withdrawal of a participating member), and County Joint District Children's Homes, Section 5153.49, Revised Code (withdrawal of participating member). In contrast to the above joint districts, a port authority has neither the express power to join with another subdivision nor the power to allow a participating subdivision to withdraw; a port authority can only be dissolved by the subdivision or subdivisions creating it (Section 4582.023 (4582.02.3), Revised Code).

Consequently, although the subdivisions creating a port authority may dissolve the port authority and with the participation of additional subdivisions, immediately thereafter create a new and larger port authority, I must conclude that there is no authority either express or necessarily implied, in Chapter 4582, Revised Code, for a port authority to "join" or enlarge itself by the inclusion of another subdivision, either a county or municipality.

In response to your second question, the purpose of the port authority act, Chapter 4582, Revised Code, as stated in Section 2 of Senate Bill No. 193 (126 Ohio Laws, 142 at 153) is:

"* * * to permit the prompt organization of port authorities to take advantage of the St. Lawrence Seaway project authorized by the National Congress, thereby advancing the interests and the welfare of the state of Ohio and its citizens. * * *"

In order to advance the interests and welfare of the State of Ohio and its citizens, a port authority created pursuant to Section 4582.02, Revised Code:

"* * * is given broad authority and powers with regard to the effectuation of the purposes of its creation, and these powers include, among others, the making of improvements; the purchase, acquisition, and disposition of property; the exercise of the power of eminent domain; the issuance of revenue bonds and other securities; the making of contracts with other governmental agencies; the establishment, operation, and maintenance of foreign trade zones; promoting, advertising, and publicizing the port and its facilities; providing traffic in-

formation and rate information to shippers and shipping interests; and appearing before rate-making authorities to represent and promote the interests of the port. Also a port authority is empowered to foster and encourage the participation of private enterprise in the development of port facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the port authority." (43 Ohio Jurisprudence 2d, Section 4, pages 585 to 586)

In addition, a port authority, by Section 4582.14, Revised Code, is expressly made a taxing authority within the provisions of Section 5705.01, Revised Code, and it may levy a tax upon the property within its jurisdiction for all purposes including bond debt charges.

The jurisdiction of a port authority is prescribed by Section 4582.05, Revised Code, which provides:

"The area of jurisdiction of a port authority created in accordance with section 4582.02 of the Revised Code shall include all of the territory of the political subdivision or subdivisions creating it, provided that in no case shall the same area be included in more than one port authority."

Section 4582.022 (4582.02.2), Revised Code, reads as follows:

"The provisions of Section 4582.021 (section 4582.02.1) shall apply only to the counties affected by the provisions of section 307.65 of the Revised Code and to those counties containing municipal corporations affected by sections 721.04 to 721.11, inclusive, of the Revised Code."

Pursuant to this section a county which qualifies under the section may act alone in creating a port authority without the participation of a municipal corporation only upon compliance with Section 4582.021 (4582.02.1), Revised Code, This section provides in part:

"Any county, which seeks to create a port authority shall, prior to such creation of a port authority, and prior to the exercising of the hereinafter described rights, compensate in full the municipal corporations included in the territory of such county, in an amount of money equal to the waterfront investment of such municipal corporations in the territory or adjoining lands, including but not limited to * * * Such municipal corporations may decline to demand compensation for any of the

foregoing components of its waterfront investment and thereby retain its possession, custody, control, and property interest in the component for which no compensation is demanded."

Inasmuch as a county may, by law, create a port authority without the participation of a municipal corporation (Sections 4582.02, 4582.021 (4582.02.1), and 4582.022 (4582.02.2), supra), your second question in effect asks whether the jurisdiction of such a port authority includes the incorporated territory of the municipal corporations within the county. There is no provision in Section 4582.05, supra, limiting the jurisdiction of the port authority to the unincorporated territory as there is in the county zoning law (Chapter 303, Revised Code), particularly Sections 303.02 and 303.18, Revised Code, pertaining to Rural Zoning, and Section 303.28, et seq., Revised Code, pertaining to Slum Removal. On the first examination then it would appear that Section 4582.05, supra, contemplates the inclusion of "all of the territory" of the county. However, upon further consideration, it becomes clear that the jurisdiction of a port authority created by a county to plan, develop and construct excludes in every instance the incorporated territory of those municipal corporations located within the county creating the port authority which are authorized to act under authority of Sections 721.04 to 721.11, inclusive, supra.

The following reasons are submitted in support of this conclusion.

Section 4582.021 (4582.02.1), supra, provides that when a county acts alone in creating a port authority, the county must first compensate in full the municipal corporations included in the county for the waterfront investment of such municipal corporations. However, this section further provides that such municipal corporations may decline to demand compensation for any part of its waterfront investment and thereby retain its possession, custody, control and property interest in that component. Clearly, if such a municipal corporation declines compensation for each and every part of its waterfront investment, then the county, as the port authority, does not acquire, by purchase or otherwise, the possession, custody, control or property interest in that property.

Further, inasmuch as such a municipal corporation did not participate in the creation of the port authority, it may begin or continue to develop its port facilities pursuant to Sections 721.04 to 721.11, inclusive, supra, without the intervention of the port authority. Section 4582.11, Revised Code, provides in part:

"Nothing contained in sections 4582.01 to 4582.16, inclusive, of the Revised Code shall:

* * * * *

"(B) Impair the powers of any county, township, or municipal corporation to develop or improve port and terminal facilities except as restricted by section 4582.16 of the Revised Code;

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Section 4582.16, Revised Code, provides:

"No municipal corporation or county, respectively, creating or participating in the creation of a port authority in accordance with section 4582.02 of the Revised Code shall during the time said port authority is in existence have the right to exercise the rights and powers as provided in sections 721.04 to 721.11, inclusive, or section 307.65 of the Revised Code, respectively."

Clearly, if the municipal corporation, located within the county which creates a port authority, has the powers and rights conferred by Sections 721.04 to 721.11, inclusive, supra, then said municipal corporation does not forfeit or lose by operation of law these powers and rights when the county acts alone.

Therefore, since such a municipal corporation may sell all or a portion of its waterfront investment to the port authority or retain it, may contract or make other arrangements with the port authority, and may begin or continue to develop and improve its port facilities independently of the port authority, it must follow of necessity that the jurisdiction of a port authority created by a county acting under Sections 4582.02, 4582.021 (4582.02.1), and 4582.022 (4582.02.2), supra, for the purpose of planning, developing and improving port facilities does not include the incorporated territory of any municipal corporation which is empowered to act pursuant to Sections 721.04 to 721.11, inclusive, supra. Furthermore, the mere fact that such a municipal corporation may demand and receive compensation for some or every part of its waterfront investment does not alter the result or impair its powers and rights to act under Sections 721.04 to 721.11, inclusive, supra, at a subsequent time.

In regard to a port authority's jurisdiction for taxing purposes, however, the answer is different. Section 5705.01, Revised Code, provides in part:

"As used in sections 5705.01 to 5705.47, inclusive, of the Revised Code:

"(A) 'Subdivision' means any county, municipal corporation, township, township police district, township fire district, township waste disposal district, or school district, except the county school district.

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"(C) 'Taxing authority' or 'bond issuing authority' means, in the case of any county, the board of county commissioners; in the case of a municipal corporation, the council or other legislative authority of such

municipal corporation; in the case of a school district, the board of education; in the case of a township, the board of township trustees; and in the case of a township police district, a township fire district, or a township waste disposal district, the board of township trustees of the township in which such district is located.

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

"(I) 'District authority' means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity which 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, and other such boards."

The jurisdiction of a port authority is provided by Section 4582.05, supra, which states:

"The area of jurisdiction of a port authority created in accordance with section 4582.02 of the Revised Code shall include all of the territory of the political subdivision or subdivisions creating it, provided that in no case shall the same area be included in more than one port authority."

Section 4582.14, Revised Code, authorizing the levy of taxes, provides:

"Upon the affirmative vote of at least a majority of the qualified electors within the port authority voting at an election held for the purpose of authorizing same, the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of fifty-five one hundredths of one mill annually on the total value of all property as listed and assessed for taxation for any period not exceeding five years, except that when the tax is for the payment of bond debt charges, such tax shall be for the life of the bond indebtedness.

"The board of directors of a port authority shall be the taxing authority within the provisions of section 5705.01 of the Revised Code.

"Such tax shall be for the purpose of providing funds necessary for the port authority budget and shall be certified annually to the taxing authorities of the political subdivision or subdivisions within the port authority. The collection of such tax levy shall conform in all matters to the provisions of the Revised Code governing the collection of taxes and assessments levied by local taxing districts and the same provisions concerning the nonpayment of taxes shall apply to taxes levied pursuant to this section."

Although a port authority may be a "subdivision" for the purposes of the sales tax law, Opinion No. 1158, Opinions of the Attorney General for 1960, it clearly is not a "subdivision" within the meaning of the uniform tax levy law, Section 5705.01 (A), supra. Rather, a port authority is the product of the actions of one or more subdivisions under authority of Section 4582.02, supra. A port authority shall be a body corporate and politic which may sue and be sued, plead and be impleaded, but it does not possess the characteristic of sovereign immunity from liability. Section 4582.02, supra. The concept of a subdivision or subdivisions creating or participating in the creation of a port authority clearly indicates that the legislature did not intend to clothe a port authority with the attributes of a subdivision as that term is used in Section 5705.01 (A), supra. Further support for this conclusion is found in the history of Section 5705.01 (A), supra. The term "subdivision" has been broadened by the legislature over the years so as to include township police, fire and waste disposal districts. However, the section has not been amended to include port authorities which were first authorized by law in 1955. See also State, ex rel. Matthews v. Zangerle (App.), 15 Ohio Law Abs., 661.

A port authority is created by subdivisions (Section 4582.02, supra); it is dissolved by the subdivisions (Section 4582.023 (4582.02.3), Revised Code); it is governed and managed by a board of directors who represents the various subdivisions (Section 4582.03, supra); its jurisdiction includes the territory of the subdivisions involved (Section 4582.05, supra); and the tax levied must be certified to the subdivisions within the port authority for assessment and collection (Section 4582.14, supra). Insofar as a port authority can be made up of several counties or a county and municipal corporations located outside the county, a port authority must necessarily be a "taxing unit" as the term is defined in Section 5705.01 (H), supra. This determination is not in conflict with Opinion No. 1158, supra, because of the different issues involved, viz., levying taxes versus the exemption from paying sales taxes on purchases made with the proceeds of the tax money.

Inasmuch as the port authority may levy a tax upon the affirmative vote of a majority of the qualified electors within the county, the answer to the taxing aspect of your second question

revolves on the decision of whether persons living within the boundaries of a municipal corporation located within the county remain electors of the county. In reviewing the governmental structure of the state, it is manifest that counties and townships are the subdivisions of the state government existing for the purpose of carrying out the policies of the state at the local level by means of the powers and authority delegated to them by the state. All persons residing in the county and qualified under the election laws of the state are qualified electors of the county because the obligations, benefits and burden of county government must be shared by all alike even though some of them happen to reside within the boundaries of a municipal corporation located in the county. See Opinion No. 888, Opinions of the Attorney General for 1959, which is applicable by analogy even though it involved a township and municipality. The reasoning in this opinion is equally applicable to a county and municipality relationship because a township is also an agent, although more localized than a county, of the state.

In applying this reasoning to your second question, since the county created the port authority, the county is the subdivision, the jurisdiction of the port authority for taxing purposes is all of the territory within the county and the proposed tax levy must be authorized by the affirmative vote of a majority of the qualified electors of the county. The fact that some of these electors may reside within the boundaries of one or more municipal corporations in the county does not alter the result. In effect, when a county creates or participates in the creation of a port authority, all of the territory of the municipal corporations within the county is subject to the taxing jurisdiction of the port authority although the nonparticipating municipal corporations do not have representation on the board of directors, cannot share in surplus funds and cannot participate in the distribution of the port authority's property upon dissolution.

In response to your third question, which is also primarily concerned with the taxing powers of a port authority, it is my opinion that Section 4582.05, Revised Code, is dispositive of the matter. Once a county creates a port authority, the jurisdiction of the port authority is specified by Section 4582.05, supra, which states:

"The area of jurisdiction of a port authority created in accordance with section 4582.02 of the Revised Code shall include all of the territory of the political subdivision or subdivisions creating it, provided that in no case shall the same area be included in more than one port authority."

Clearly, the phrase "all of the territory of the political subdivision" contemplates more than one or two townships within the county. In this respect, Section 4582.05, supra, is clear and unambiguous and requires no construction or interpretation.

Section 4582.14, supra, provides in part:

"Upon the affirmative vote of at least a majority of the qualified electors within the port

authority voting at an election held for the purpose of authorizing same, the port authority may levy upon the property within its jurisdiction a tax, for all purposes including bond debt charges, not in excess of fifty-five one hundredths of one mill annually on the total value of all property as listed and assessed for taxation for any period not exceeding five years, except that when the tax is for the payment of bond debt charges, such tax shall be for the life of the bond indebtedness."

Consequently, in answer to your third question, once a county has created a port authority, the territorial jurisdiction of the port authority for taxation purposes includes all of the townships within the county.

The answer to your fourth question is contained in Section 4582.02, supra, which provides:

"Any municipal corporation, county, or any combination of a municipal corporation, municipal corporations, county, or counties may create a port authority. A municipal corporation shall act by ordinance, and a county shall act by resolution of the county commissioners, in authorizing the creation of a port authority. A port authority created hereunder shall be a body corporate and politic which may sue and be sued, plead and be impleaded, and shall have the powers and jurisdiction enumerated in sections 4582.01 to 4582.16, inclusive, of the Revised Code. The exercise by such port authority of the powers conferred upon it shall be deemed to be essential governmental functions of the state of Ohio, but no port authority shall be immune from liability by reason thereof."

Townships and port authorities, being creatures of statute, have only the powers and authority expressly granted by statute or necessarily implied therefrom. Section 4582.02, supra, empowers municipal corporations, counties or combinations thereof to create port authorities. No provision is made for the participation of townships other than that expressed in Section 4582.17, supra, which enables townships to contract or make other arrangements with existent port authorities. Consequently, since there is no express authority, either in Chapter 4582, Revised Code, or Chapter 5, Revised Code, enabling a township to participate in the creation of a port authority, your fourth question must be answered in the negative. In regard to the necessity of implying such a power, I am of the opinion that none exists, Cf. Section 307.65, Revised Code, enabling a county to develop and improve a port facility, and Sections 721.04 to 721.11, inclusive, Revised Code, enabling a municipal corporation to develop and improve port facilities. The fact that some counties and municipal corporations could accomplish results similar to those obtainable under Chapter 4582, Revised Code, lends support to the conclusion that a township does not have the statutory authority express or implied to participate in the creation of a port authority.

Therefore, in response to your specific questions you are hereby advised that:

1. When a port authority has been created pursuant to Chapter 4582, Revised Code, there is no authority, express or implied, for the "joinder" to, or the expansion of, the existent port authority by the subsequent inclusion of other subdivisions.

2. When a county acts alone in the creation of a port authority pursuant to Chapter 4582, Revised Code, the area of jurisdiction of the port authority for purposes of planning, improving, and developing port facilities does not include the incorporated territory of those municipal corporations within the county which are empowered to act pursuant to Sections 721.04 to 721.11, inclusive, Revised Code.

3. When a county has created a port authority pursuant to Chapter 4582, Revised Code, the area of jurisdiction of the port authority for purposes of levying the taxes authorized by Section 4582.14, Revised Code, includes all of the territory in the county regardless of whether any part of the territory is located within the boundaries of any municipal corporation.

4. A county which creates a port authority pursuant to Chapter 4582, Revised Code, may not limit the territorial jurisdiction of the port authority to include only one or several of the townships within the county.

5. A township may in no instance create or participate in the creation of a port authority.