

OPINION NO. 82-103**Syllabus:**

When a political subdivision enters into an agreement under R.C. 167.03(C) or 167.08 with a regional council of governments of which it is a member, whereby the regional council of governments assumes certain duties and responsibilities of the member political subdivision, the regional council of governments must comply with all statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 10, 1982

I have before me your request for my opinion on the following question:

Where a political subdivision enters into an agreement under Section 167.03(C), Revised Code, with a regional council of government of which it is a member, whereby the regional council of government assumes certain duties and responsibilities of the member political subdivision, is the regional council of governments required to comply with the statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities?

In order to answer your question, it is helpful first to examine the nature of a regional council of governments. R.C. 167.01 authorizes the governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions to enter into an agreement with each other or with the corresponding bodies of another state to establish a regional council of governments. R.C. 167.03(A) and (B) authorize a regional council of governments to carry out a number of functions which involve planning, making studies and recommendations, promoting cooperative arrangements, and coordinating planning for the area.

Your question concerns the authority of a regional council of governments to act on behalf of its members pursuant to R.C. 167.03(C), which authorizes the council, by appropriate action of the governing bodies of its members, to "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." (Emphasis added.) This provision should be read in conjunction with R.C. 167.08, which authorizes a regional council of governments to contract with the appropriate officials, authorities, boards, or bodies of political subdivisions "to perform any function or render any service in behalf of such. . .political subdivisions, which such. . .political subdivisions may perform or render."

In 1979 Op. Att'y Gen. No. 79-018, I had occasion to consider the authority of a regional council of governments to act on behalf of its member subdivisions pursuant to R.C. 167.03(C) and 167.08. In that opinion, at 2-57, I stated: "A political subdivision may authorize a [regional council of governments] to perform only such functions and duties as the political subdivision is capable of performing." A similar conclusion was reached by one of my predecessors in 1971 Op. Att'y Gen. No. 71-010 at 2-22: "A council. . .is given no 'governmental powers' that are not provided to its members."

It is clear from the language of R.C. 167.03(C) that a regional council of governments, acting on behalf of its members, may carry out only such "functions and duties as are performed or capable of performance by the members." Similarly, R.C. 167.08 permits the council to perform or render on behalf of its

members only such functions or services as the members may perform or render. Thus, the council's authority to act on behalf of its members under R.C. 167.03(C) or 167.08 is derived from its members and cannot exceed the authority which the members have. See generally Brady v. French, 6 Ohio N.P. 122, 125 (1898) ("The commissioners themselves have no power to collect a dollar of taxes, yet it would be contended they have the power to employ a collector to do for them what they have no power to do for themselves. Such an agency, I am quite sure, would be without a parallel either with respect to private persons or public officials"). If a member political subdivision is restricted in carrying out a particular activity by requirements imposed by statute, the council's ability to act on behalf of the subdivision must be similarly restricted. As one of my predecessors stated, with respect to the authority of a regional council of governments to act on behalf of its member subdivisions pursuant to R.C. 167.03 and 167.08:

It will be noted. . .that in each reference the council is limited to performing on behalf of its contracting subdivisions just those functions which the subdivision itself is able to perform. This would rule out purchasing items without competitive bids on behalf of a subdivision the cost of which would exceed the statutory amount for which competitive bidding would be required. By the same test, however, it appears to follow that such purchasing functions could be carried out on a competitive bid basis.

1969 Op. Att'y Gen. No. 69-013, p. 2-15 at 2-16.

I find the same reasoning applicable to your question. Under R.C. 167.03(C) and 167.08, a regional council of governments may perform functions and duties on behalf of a member political subdivision only within the statutory constraints which define the manner in which that subdivision could perform the same functions and duties.

Your request mentions, in particular, a situation in which the members of a council of governments have taken action pursuant to R.C. 167.03(C) to have the council, on behalf of its members, receive, deposit, invest, and disburse funds. They propose to have the member subdivisions order and receive goods, and the council receive, deposit, and invest the funds, and disburse them to the appropriate vendor upon receipt of a properly approved voucher from the member subdivision. Based on the foregoing analysis, I conclude that, in such a situation, the regional council of governments may receive, deposit, and invest the funds on behalf of a member subdivision only by complying with all statutory requirements imposed upon that member subdivision in the receipt, deposit and investment of such subdivision's funds. While I realize that such a conclusion may cause practical difficulties, particularly if different requirements should apply to different subdivisions, I find that it is compelled by the legal principles involved.

Because you have asked only about instances in which a regional council of governments acts pursuant to agreements with its members, I have considered its authority to act pursuant to R.C. 167.03(C) and 167.08, but have not examined its authority to act pursuant to other statutory provisions. See generally 1973 Op. Att'y Gen. No. 73-119 (the funds of a regional tax collection agency composed of a number of municipalities are to be deposited or invested in accordance with the Uniform Depository Act); Op. No. 71-010 (regional councils of government are exempt from sales tax provisions). Similarly, I have not attempted to discuss any limitations which may apply to the types of functions and duties that a regional council of governments may perform on behalf of its members. See, e.g., R.C. 167.03(D) ("[t]he authority granted to the council by this section or in any agreement by the members thereof shall not displace any existing municipal, county, regional, or other planning commission or planning agency in the exercise of its statutory powers"); 1974 Op. Att'y Gen. No. 74-080 (a regional council of school districts is not entitled to receive school foundation payments pursuant to R.C. Chapter 3317).

In answer to your question, therefore, it is my opinion, and you are hereby advised, that when a political subdivision enters into an agreement under R.C. 167.03(C) or 167.08 with a regional council of governments of which it is a member,

whereby the regional council of governments assumes certain duties and responsibilities of the member political subdivision, the regional council of governments must comply with all statutory requirements imposed upon the member political subdivision in the performance of such duties and responsibilities.