

OPINION NO. 66-070

Syllabus:

Under Section 4582.023, Revised Code, Huron Township may reimburse the officers and directors of the Huron joint port authority for expenses incurred by them in the survey or examination of facts to be used for the purpose of planning the future enlargement, improvement and use of the Huron, Ohio port facilities, if said expenses were incidental to said survey or examination.

To: George C. Steinemann, Erie County Pros. Atty., Sandusky, Ohio
By: William B. Saxbe, Attorney General, April 1, 1966

Your request for my opinion reads in part as follows:

"Under the authority of Section 4582.03 of the Revised Code of Ohio, the Township of Huron and the City of Huron took the necessary legislative action to create a joint port authority. This joint port authority has been in existence since the 13th. day of October, 1965, and has been formally organized by having the Board of Directors created and by the Board of Directors electing their officers.

"The joint port authority has to this time functioned as a fact finding body only and has not acquired title to any property nor exercised any of the other authority granted to it by the Revised Code.

"The Board of Directors of the joint port authority has requested financial assistance from Huron Township and the City of Huron to pay for office expenses and travel expenses incidental to their fact finding activities.

* * * * *

"The question which we herewith submit to you for your opinion is as follows:

"Would Huron Township be legally authorized to expend funds after the creation of this authority to defray the expense of the officers and directors of the Huron joint port authority incurred by them in gathering facts to be used in the future planning of the enlargement, improvement and use of the Huron, Ohio port facilities? Such expenses consisting of office expenses, utilities, travel expenses and other similar type expenditures."

As you noted in your letter of request, the sole statutory provision bearing upon your question is Section 4582.023, Revised Code, which provides that:

"Any municipal corporation, township, or county creating or participating in the creation of a port authority in accordance with section 4582.02 of the Revised Code may expend funds not otherwise appropriated to defray the expense of surveys and examinations incidental to the purposes of the port authority so created.

"Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the subdivision or subdivisions creating it, and in such event the properties of the port 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 between such subdivisions."

(Emphasis added)

In considering Section 4582.023, *supra*, I find it necessary to first determine whether said statute authorizes the defrayment of expenses of surveys and examinations made subsequent to the initial creation of a port authority.

I find nothing in Section 4582.023, *supra*, which limits the authority granted therein to those expenses incurred in the initial creation of a port authority. The phrase "incidental to the purposes of the port authority so created," suggests the statutory authority includes such expenses incurred subsequent to the creation of the port authority and specifically those incurred for the purpose of the enlargement and improvement of port facilities.

Secondly, your question suggests the necessity of a determination of whether the term "defray expenses" includes the reimbursement of officers and directors who have incurred expenses on behalf of the port authority.

In Webster's Third International Dictionary (1961), G.C.

Merriam Co., "defray" is defined in part as follows:

"1a To expend (money) Disburse; * * *

"2b To bear the expense of a person
* * * Reimburse."

The term "defray" is used in Section 4582.023, supra, in a nontechnical sense. Such a use suggests that the statutory authorization for the reimbursement or defrayment of the expenses designated in Section 4582.023, supra, may be made by the township trustees subsequent to the incurrment of said expenses.

The third consideration to be made in response to your question is the factual determination of whether the specific expenses to which you refer in your letter of request are contemplated by Section 4582.023, Revised Code. Although it is my opinion that the township trustees have the discretion to make this factual determination, I refer you to Opinion No. 243, Opinions of the Attorney General for 1957, where I cited with approval the following paragraph of the syllabus of Opinion No. 2170, Opinions of the Attorney General for 1930:

"2. In the absence of statutory or charter provision prohibiting or limiting such action, a public officer or public employe may lawfully be reimbursed from public funds for traveling and other personal expenses actually and necessarily incurred by him in the performance of a public duty in furtherance of a definite project or undertaking then under way or in immediate prospective contemplation, provided in the exercise of a sound and proper discretion, it appears that the incurring of said expenses is necessary for the benefit of the political subdivision which the officer or employe serves, and in the performance of a duty enjoined or authorized by law. If by statute or charter provision such expenses are limited the officer or employe may be reimbursed within the limitations allowed by such law only."

(Emphasis added)

You will note the similarity between this statement of the law in general regarding reimbursement of public officers and the specific provisions of Section 4582.023, supra. It follows that the Huron Township Trustees must find that each of the expenses for which reimbursement is sought is incidental to "surveys and examinations" which are incidental to the purposes of the port authority.

If the township trustees find, in the exercise of sound and proper discretion, that the office expenses, utilities, travel expenses and other similar expenditures were actually incurred by the officers and directors of the Huron joint port authority and that said expenses were incidental to the gathering of facts to be used in the future planning of the enlargement, improvement and use of the Huron, Ohio port facilities, said officers and directors may be reimbursed for said expenses by Huron Township.

It is my opinion and you are hereby advised that under Section 4582.023, Revised Code, Huron Township may reimburse the officers and directors of the Huron joint port authority for expenses incurred by them in the survey or examination of facts to be used for the purpose of planning the future enlargement, improvement and use of the Huron, Ohio port facilities, if said expenses were incidental to said survey or examination.