

**OPINION NO. 1584**

**Syllabus:**

There is no limitation on the power granted to a port authority created pursuant to Section 4582.02, Revised Code, to restrain it from planning, constructing and developing

port facilities within the territory of a municipal corporation within its boundaries but which did not participate in the creation of the port authority and in the absence of such a limitation it should not be implied that the General Assembly intended to exclude the port authority from exercising the power granted to it by the Revised Code within the territorial limits of such a municipal corporation. (Second branch of syllabus of Opinion No. 1277, Opinions of the Attorney General for 1964, overruled.)

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**To: Chester W. Goble, Auditor of State, Columbus, Ohio**

**By: William B. Saxbe, Attorney General, December 9, 1964**

I have your request for my opinion which reads as follows:

"This Bureau has received a copy of your formal Opinion No. 1277, dated August 11, 1964, and is uncertain as to the proper interpretation of certain language contained in the Opinion.

"We understand your Opinion to state that a municipal corporation, which has not participated in the creation of a port authority, but which is within a county which has so participated, may continue to exercise the powers set forth in Sections 721.04 to 721.11, inclusive, Revised Code of Ohio.

"In order to eliminate any misinterpretation, your opinion is requested whether a port authority, organized under the provisions of Chapter 4582 of the Ohio Revised Code, may plan, improve, develop and construct port facilities within the territory of a municipal corporation which has not participated in the creation of the port authority, but which is included within the territory, of a county which has participated in creating such port authority."

Essentially, you are asking for a re-examination of the second branch of the syllabus of Opinion No. 1277, Opinions of the Attorney General for 1964, which is as follows:

"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."

Section 4582.02, Revised Code, provides for the creation

of a port authority by a municipal corporation, a county or any combination thereof:

"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."

Section 4582.05, Revised Code, states that the area of jurisdiction of a port authority "shall include all of the territory of the political subdivision or subdivisions creating it,\* \* \*". While I have found no judicial definition of the "territory" of the county, the county is defined in Hunter v. Commissioners of Mercer County, 10 Ohio St. 418, 422, as follows:

"\* \* \* \* \*"

"\* \* \*The county is not a corporation, but a mere political organization of certain of the territory within the state, particularly by geographical limits, for the more convenient administration of the laws and police power of the state, and for the convenience of the inhabitants.\* \* \*"

Upon consideration I am persuaded that the territory of the county is all that area within its boundaries -- including incorporated areas -- which is not specifically excluded.

As stated in Shulman v. Wallace, 188 N.Y.S. 2d 894, 897, 18 Misc. 2d 91, the:

"\* \* \* \* \*"

"\* \* \*term 'territory' is not a word of art but that said term is defined broadly as meaning a large extent or tract of land; a region; a district; and it also means the extent or compass of land and the waters thereof within the bounds of or belonging to the jurisdiction of any sovereign, state, city or other municipal body. 86 C.J.S. Territory pp. 647-648.\* \* \*"

"\* \* \* \* \*"

While this judicial construction of the term "territory" is not directly on point it is applicable here by analogy. Therefore, if a county creates or participates in creating a port authority, the jurisdiction of said port authority is established by the statute as that of the creating or participating county.

The definition of the area of jurisdiction of a port authority contained in Section 4582.02, *supra*, contains no specific exclusion of municipal corporations which did not participate in the creation of said authority but which are located in the territorial jurisdiction of the county creating or participating in the creation of a port authority.

Section 4582.06, Revised Code, enumerates specific grants of power which a lawfully created port authority may exercise. The more pertinent powers are contained in subdivisions (A), (B), and (C) which are as follows:

"A port authority created in accordance with section 4582.02 of the Revised Code has full power and authority to:

"(A) Purchase, construct, sell, lease, and operate docks, wharves, warehouses, piers, and other port, terminal, or transportation facilities within its jurisdiction consistent with the purposes of the port authority, and to make charges for the use thereof, which shall be not less than the charges established for the same services furnished by a public utility or common carrier in the particular port authority area;

"(B) Straighten, deepen, and improve any canal, channel, river, stream, or other water course or way which may be necessary or proper in the development of the facilities of such port;

"(C) Acquire, own, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority;  
(Emphasis added)

"\* \* \* \* \*"

It can readily be seen that these subdivisions enumerated above contain no limitations as to the area within which the port authority is empowered to act other than the jurisdictional limitation contained in Section 4582.02, *supra*.

In subdivision (G) of Section 4582.06, Revised Code, cited hereinafter, the port authority is authorized to exercise the power of eminent domain to acquire real estate for any of the purposes of the port authority. Subdivision (G) reads as follows:

"(G) Exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or

other property, necessary or proper for the construction or the efficient operation of any facility of the port authority and included in its official plan, pursuant to the procedure provided in sections 719.04 to 719.21, inclusive, of the Revised Code, with respect to municipal corporations, if funds equal to the appraised value of the property to be acquired as the result of such proceedings, are on hand and available for such purposes, except that:"

However, in subparagraph (1) of that same subdivision (G), supra, the statute grants to "any municipal corporation" the power to revoke the right of the port authority to exercise the power of eminent domain in the manner prescribed in Chapter 719, Revised Code, as to any properties within the boundaries of the municipal corporation, and requires the port authority to proceed in accordance with Chapter 2709, Revised Code, relating to the exercise of eminent domain by certain private corporations. If the statute did not provide the powers to plan, construct and develop facilities within the territory of a municipal corporation which did not participate in the creation of the port authority, there would be no necessity for providing the authority for any municipal corporation to revoke the port authority's power to undertake eminent domain proceedings within such a municipal corporation as provided in Chapter 719, Revised Code.

My conclusion in this matter is further supported by pertinent parts of Section 4582.021, Revised Code, which are as follows:

"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 appropriations, expenditures, charges for materials used or labor performed by public officials or employees of said municipal corporation in the placing, construction, development, or improvement of land fills; waterfront shoreways or highways; bulkheads; connecting ways; tracks; breakwaters; soil erosion projects; harbor improvements; public beaches; boat harbor facilities; drainage systems; docks; wharves; piers; places; ways; buildings and appurtenances; sewers; public utility facilities for power, light, heat or water; dredging or channel improvement projects; communications systems; and lake-front improvements. Such municipal corporations may decline to demand compensa-

tion 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.

"\* \* \* \* \*"

As is readily seen, this statute requires that a county creating a port authority compensate any municipal corporation (within the port authority's jurisdiction and whether or not participating in the creation of the port authority) desiring to receive such compensation for the investments which that municipal corporation has in its waterfront facilities. The statute clearly indicates that a municipal corporation shall retain its ability to operate any facilities which it owns by providing that the municipality may decline such compensation and continue its possession and operation of the waterfront facilities.

In Section 4582.11, (B), cited hereinafter, the General Assembly made it clear that it did not intend to restrict the powers of any municipal corporation or county which did not participate in the creation of the port authority. Section 4582.11, (B), reads as follows:

"(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:"

The language includes no restriction upon the ability of the port authority to exercise the powers which were granted to it by Section 4582.06, Revised Code. Rather the language is written in such fashion as not to limit the ability of either a municipal corporation pursuant to Sections 721.04 to 721.11, Revised Code, or a county to exercise the powers of planning construction and development of waterfront facilities granted to each by the Revised Code.

Therefore, it is my opinion and you are hereby advised that there is no limitation on the power granted to a port authority created pursuant to Section 4582.02, Revised Code, to restrain it from planning, constructing and developing port facilities within the territory of a municipal corporation within its boundaries but which did not participate in the creation of the port authority and in the absence of such a limitation it should not be implied that the General Assembly intended to exclude the port authority from exercising the power granted to it by the Revised Code within the territorial limits of such a municipal corporation. (Second branch of syllabus of Opinion No. 1277, Opinions of the Attorney General for 1964, overruled.)