

OPINION NO. 71-010

Syllabus:

Regional Councils of Governments, authorized by Chapter 167, Revised Code, are exempt from the payment of taxes under the sales tax provisions of Section 5739.02, Revised Code.

To: G. W. Porterfield, Tax Commissioner, Columbus, Ohio
By: Paul W. Brown, Attorney General, January 8, 1971

I have your request for my opinion which asks:

"Under the provisions of section 5739.02 of the Revised Code the sales tax does not apply to 'sales to the state, or any of its political subdivisions.'

"Chapter 167 of the Revised Code provides for the formation of Regional Councils of Government. Your opinion is respectfully requested as to whether such councils qualify for exemption from sales tax as political subdivisions of the state."

Section 167.01, Revised Code, provides for the establishment of Regional Councils of Governments:

"That governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions."

It is noted from this section that such a council is a voluntary association of two or more Ohio political subdivisions alone or together with political subdivisions of other states.

The powers of such a council are set forth in Section

167.03, Revised Code. Generally, these powers are limited to the study of governmental problems common to two or more members of the council, the promotion of cooperative arrangements among its members or with governmental agencies or private personnel, and the performance, by the governing bodies of the members, of such functions and duties as are capable of performance by the members. A council, therefore, is given no "governmental powers" that are not provided to its members.

Further, Section 167.06, Revised Code, provides for the financial support of a council:

"(A) The governing bodies of the member governments may appropriate funds to meet the expenses of the council. Services of personnel, use of equipment, and office space, and other necessary services may be accepted from members as part of their financial support. The members of the council, or the state of Ohio, its departments, agencies, instrumentalities, or political subdivisions or any governmental unit may give to the council moneys, real property, personal property, or services. The council may establish schedules of dues to be paid by its voting members to aid the financing of the operations and programs of the council in the manner provided in the agreement establishing the council or in the by-laws of the council. The council may permit non-member political subdivisions to participate in any of its activities regardless of whether such political subdivisions have paid dues to the council.

"(B) The council may accept funds, grants, gifts, and 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.

"* * * * * * * *"
(Emphasis added)

It is noted that a council is given no power to tax to raise revenue, but must rely on appropriation of funds from its member political subdivisions, or the acceptance of funds from other sources.

Finally, Section 167.07, Revised Code, provides in part:

"Membership on the council and holding an office of the council does not constitute the holding of a public office or employment within the meaning of any section of the Revised Code. * * *"
(Emphasis added)

The question is, therefore, whether an organization with the characteristics cited above can qualify for purposes of exemption from the Ohio Sales Tax.

Section 5739.02, Revised Code, which levies the Ohio Sales Tax, provides as follows:

"For the purpose of providing revenue with which to meet the needs of the state * * * an excise tax is hereby levied on each retail sale made in this state.

* * * * * * * *

"(B) The tax does not apply to the following:

"(1) Sales to the state, or any of its political subdivisions;

* * * * * * * *

"For the purpose of the proper administration of sections 5739.01 to 5739.31, inclusive, of the Revised Code, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established."

The term "political subdivision" used in the exemption provision of Section 5739.02, supra, has not been defined within the statute.

Indicative of the probable legislative intent of providing the exemption in Section 5739.02, supra, to "political subdivisions," we note, in Zangerle v. Cleveland, 145 Ohio St. 347 (1945), at pages 355 and 357, the following:

"Public property used exclusively for any public purpose is exempt from taxation for two reasons: (1) It is purchased and maintained by public money derived from taxation and to tax such property would amount only to taking public money from one pocket and putting it into another, and (2) the product of the expenditure of tax money should not be made the subject of another tax."

Hence, the act of taxing a Regional Council of Governments on its purchases, when the funds of the council might have been derived from its members who in turn received such monies as a result of tax revenues, seems to constitute a "tax on tax revenues." Such a situation the Ohio General Assembly has sought to avoid.

Therefore, it is my opinion and you are hereby advised that Regional Councils of Governments, authorized by Chapter 167, Revised Code, are exempted from the payment of sales tax under the provisions of Section 5739.02, Revised Code.