

OPINION NO. 83-059**Syllabus:**

1. A county-wide organization for civil defense formed under R.C. 5915.07 is a "public office" under R.C. 117.01 and, as such, is subject to examination by the Bureau of Inspection and Supervision of Public Offices.
2. A county auditor may not use the procedure set forth in R.C. 117.15 for issuing a warrant to pay the costs of an audit from the county general fund and charging the amount so paid to the taxing district at the next semi-annual settlement period where the audit is of a county-wide organization for civil defense, since such an organization is not a taxing district.

3. A county auditor may not use the procedure set forth in R.C. 117.15 for charging various funds with the pro rata share of an examination by the Bureau of Inspection and Supervision of Public Offices to charge the funds of a county-wide organization for civil defense for the cost of an audit of the organization's funds where the cost was initially paid from the county general fund.
4. R.C. 117.15 does not authorize a county auditor to charge the costs of an audit of a county-wide organization for civil defense, which were paid initially from the county general fund, directly to political subdivisions which were members of the organization at the time of its dissolution.
5. Absent specific provisions governing the winding up of the affairs of a county-wide organization for civil defense which has been dissolved, the governing body of such an organization may require the political subdivisions which were members at the time of dissolution of the organization to make payments in accordance with the agreement establishing the organization in order to satisfy the obligations of the organization, including the cost of an audit by the Bureau of Inspection and Supervision of Public Offices.

To: James R. Unger, Stark County Prosecuting Attorney, Canton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 11, 1983

I have before me your request for an opinion on several questions involving the authority of the Auditor of State to conduct an audit of a county-wide disaster services organization (formed under R.C. 5915.07) and receive payment for his expenses incurred therein, when the county-wide disaster services organization has insufficient funds to reimburse the county general fund under R.C. 117.15. Your request concerns an audit of the Stark County-Wide Disaster Services Organization. The audit was conducted by the Bureau of Inspection and Supervision of Public Offices in 1982, and covered the period June 1, 1980, through June 30, 1982. You have informed me that the Auditor of State certified the cost of the audit in the amount of \$1,943.66 to the Stark County Auditor, and that the Stark County Auditor issued a warrant in that amount which was paid by the Stark County Treasurer from the Stark County general fund. You have stated, further, that the cost of the audit has been submitted to the Executive Committee of the Stark County-Wide Disaster Services Organization, but that the Organization has only \$1,145.60 in unencumbered funds. It is my understanding, pursuant to paragraph 6 of the resolution authorizing the formation of the Stark County-Wide Disaster Services Organization, that the funds of the Organization are held by the Stark County Treasurer in a special fund known as the "Stark County Disaster Services Fund." It is also my understanding that the Organization has been terminated, but that the members of the Executive Committee have remained in office pending the final resolution of the affairs of the Organization.

You have stated your questions as follows:

- (1) Is a county-wide disaster services organization formed under Section 5915.07 of the Revised Code, a "public office" which is subject to examination by the Bureau of Inspection and Supervision of Public Offices since House Bill 440 became effective on March 13, 1981?
- (2) Should the answer to Question Number One be that a county-wide disaster services organization is not a "public office" subject to examination under Chapter 117 of the Revised Code, should the Auditor of State refund the charge for the examination of the records of the Stark County-Wide Disaster Services Organization to the Stark County General Fund?

- (3) Should the answer to Question Number One be that a county-wide disaster services organization is a "public office" subject to examination under Chapter 117 of the Revised Code, can the Stark County Auditor charge the amount due on the examination against the \$1,145.60 of unencumbered funds in the Civil Defense Fund of Disaster Services for which he serves as fiscal officer and reimburse the Stark County General Fund for the warrant issued to the Auditor of State?
- (4) Should the answer to Question Number One be that a county-wide disaster services organization is a "public office" subject to examination under Chapter 117 of the Revised Code, can the County Auditor charge the amount of the audit expense paid to the Auditor of State to the political subdivisions which comprised the membership of the county-wide disaster services organization at the time of its dissolution under the authority contained in Section 117.15 of the Revised Code?
- (5) Should the answer to Question Number One be that a county-wide disaster services organization is a "public office" subject to examination under Chapter 117 of the Revised Code, can the executive committee of a county-wide disaster services organization organized under Section 5915.07 require the political subdivisions which comprised its membership at the time of dissolution be required to reimburse the county general fund for the examination expense?

Your first question concerns the authority of the Bureau of Inspection and Supervision of Public Offices to audit a county-wide disaster services organization, in light of recent changes to R.C. 117.01.

R.C. 117.01 creates the Bureau of Inspection and Supervision of Public Offices, in the Office of the Auditor of State, and provides that the Bureau "shall inspect and supervise the accounts and reports of all public offices as provided in sections 117.01 to 117.19 of the Revised Code." R.C. 117.09 provides that the Bureau "shall commence an examination of each public office not more than two years from the release date of the last report of examination of such public office."

The definition of "[p]ublic office" applicable to R.C. Chapter 117 is set forth in R.C. 117.01(A), as follows:

"Public office" means any state agency, county, municipal corporation, township, police district, township fire district, joint fire district, joint ambulance district, joint recreation district, township waste disposal district, township road district, community college district, technical college district, detention home district, a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.61 of the Revised Code, a joint-county mental health district, school district, public institution, or political subdivision, and the offices thereof. "Public office" also includes any taxing authority, taxing unit, or district authority as defined in section 5705.01 of the Revised Code. (Emphasis added.)

Your question is whether this definition includes a county-wide disaster services organization established under R.C. 5915.07.¹

¹ R.C. 5915.07 states, in pertinent part:

The board of county commissioners of any county and the legislative authority of all or a majority of the other political subdivisions, including the municipal corporation having the largest population, within such county may enter into an agreement establishing a county-wide organization for civil

It is clear that a county-wide organization for civil defense is not one of the bodies specifically mentioned in this definition. I find, however, that such an organization is a "political subdivision" for purposes of R.C. 117.01(A) and is, thus, subject to inspection by the Bureau.

The term "political subdivision" is susceptible of a wide variety of definitions, depending upon the context in which it is used. See, e.g., R.C. 2743.01(B) (defining "[p]olitical subdivisions" for purposes of Court of Claims provisions); R.C. 3501.01(T) (defining "[p]olitical subdivision" for purposes of elections provisions); R.C. 5705.01(A) (defining "[s]ubdivision" for purposes of tax levy law); R.C. 5713.081 (defining "political subdivision" for purposes of the collection of delinquent taxes levied on real property owned by the public); R.C. 5915.01(F) (defining "[p]olitical subdivision" for purposes of civil defense). In its general sense, the term "political subdivision" is used "to encompass all types of public agencies authorized to exercise governmental functions," 1979 Op. Att'y Gen. No. 79-018, at 2-59, and it is in this sense in which the term is used in R.C. 117.01. See generally 1972 Op. Att'y Gen. No. 72-039 (concluding that a metropolitan housing authority is a political subdivision for purposes of R.C. Chapter 167) (1960 Op. Att'y Gen. No. 1736, approved and followed); 1972 Op. Att'y Gen. No. 72-035.

As your letter of request notes, R.C. 117.01 was amended by Am. Sub. H.B. 440, 113th Gen. A. (1980) (eff. March 13, 1981). Prior to that amendment, R.C. Chapter 117 contained no formal definition of a public office. There is, however, no question but that, prior to this recent amendment to R.C. 117.01, a county-wide organization for civil defense was considered to be subject to inspection by the Bureau. One of my predecessors, in 1954 Op. Att'y Gen. No. 4224, p. 460, concluded that a regional organization for civil defense was a "public office" within the meaning of R.C. 117.09, and that its accounts and records were subject to examination and audit by the Bureau. Op. No. 4224 states, at 466-67:

I do not believe that it could seriously be contended that a regional organization for civil defense is not a public agency, nor that its officers are not public officers, nor that its funds are not "public moneys" as such term is defined in Section 117.10, Revised Code. The purpose and function of such an organization, the method of its creation, the means by which it is supported, and the powers given it under the provisions of Chapter 5915., Revised Code, all clearly indicate that it has been clothed with some part of the sovereignty of the state, and this is the chief and controlling test of what constitutes a public office. I have no difficulty, therefore, in concluding that the accounts and records of such organizations are subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices.

A regional organization for civil defense is established under R.C. 5915.07, the same provision which authorizes establishment of a county-wide organization, and the same analysis is applicable to both types of organizations. See 1983 Op. Att'y Gen. No. 83-057.

I find no indication in Am. Sub. H.B. 440 that, by adopting a formal definition of "public office," the General Assembly intended to reduce the number of public

defense in accordance with such regulations as are promulgated by the governor. A director of disaster services who shall have the responsibility for coordinating the organization, administration, and operation of such county-wide civil defense organization shall be appointed in accordance with and shall be subject to the direction and control prescribed by the regulations promulgated by the governor.

The terms "civil defense" and "disaster services" appear to be used interchangeably in R.C. Chapter 5915. See, e.g., R.C. 5915.01(C), (G); R.C. 5915.02; R.C. 5915.03.

offices which were subject to inspection by the Bureau. Rather, the Act amended R.C. 117.01 to broaden "state offices" to "public offices" and "taxing district" to "public office." Further, R.C. 117.01(A), as adopted by Am. Sub. H.B. 440, includes all taxing authorities, taxing units, and district authorities, as defined in R.C. 5705.01, and also includes language nearly parallel to the definition of "[s]ubdivision" appearing in R.C. 5705.01(A).

It is a general rule of statutory construction that every part of a statute's language is to be given effect. See R.C. 1.47(B); State ex rel. Bohan v. Industrial Commission, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) ("it is the duty of courts to accord meaning to each word of a [legislative] enactment if it is reasonably possible to do so"). For the term "political subdivision" to encompass any bodies other than those expressly named as public offices in R.C. 117.01(A), that term must be given a broad construction to include all types of public bodies authorized to exercise governmental functions. Under such broad construction, the term "[p]ublic office," as defined in R.C. 117.01(A), includes a county-wide organization for civil defense established pursuant to R.C. 5915.07.

In response to your first question, it is, therefore, my opinion that a county-wide organization for civil defense formed under R.C. 5915.07—such as the Stark County-Wide Disaster Services Organization—is a "public office" under R.C. 117.01 and, as such, is subject to examination by the Bureau of Inspection and Supervision of Public Offices. In light of this response, I find it unnecessary to address your second question.

Your third question asks whether, on the facts presented, the Stark County Auditor may charge the amount due on the examination, against the unencumbered funds in the Civil Defense Fund of Disaster Services² and reimburse the Stark County general fund for the warrant issued to the Auditor of State. It is my understanding that the total cost of the examination was \$1,943.66 and that the Organization has only \$1,145.60 in unencumbered funds, so that even if such action were undertaken, the reimbursement to the general fund would be for less than the amount of the warrant.

The procedure for charging each public office for expenses incurred by the Bureau in examining the accounts of the public office is set forth in R.C. 117.15. It is clear under R.C. 117.15 that the costs applicable to the audit of a particular public office (except costs of vacation and sick leave of the personnel) should be borne by that public office. R.C. 117.15 states, in relevant part:

The necessary expenses of the maintenance and operation of the administrative office of the bureau of inspection and supervision of public offices shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. The total amount of compensation paid state examiners, their expenses, the cost of employees assigned to assist the state examiners, the cost of experts employed pursuant to section 117.03 of the Revised Code, and the cost of typing, reviewing, and copying reports shall be borne by the public office to which such state examiners are so assigned by the chief inspector and supervisor or deputy inspectors and supervisors of public offices, except that annual vacation and sick leave of state examiners, employees, and typists shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. State examiners shall be compensated by the taxing district or other public office under examination for activities undertaken pursuant to division (B) of

2

I am assuming, for purposes of this opinion, that although the fund in question is referred to in the resolution establishing the Organization as the "Stark County Disaster Services Fund" and in your letter as the "Civil Defense Fund of Disaster Services" it is, in fact, the fund of a county-wide organization for civil defense established under R.C. 5915.07, and, although it is held by the Stark County Treasurer, it is not simply a fund of the county.

section 117.03 and division (D) of section 117.091 of the Revised Code. (Emphasis added.)

R.C. 117.15 does not, however, specify how these costs are to be paid except where the public office which was audited is a taxing district. On this point, it states:

The auditor of state shall certify the amount of such compensation, expenses, cost of experts, reviewing, copying, and typing to the county auditor of the county in which the taxing district is situated. The county auditor shall forthwith issue his warrant in favor of the auditor of state on the county treasurer who shall pay it from the general fund of the county, and the county auditor shall charge the amount so paid to the taxing district at the next semi-annual settlement period. (Emphasis added.)

The term "taxing district" is not defined for purposes of R.C. 117.15, and it is possible that the term, as used in R.C. Chapter 117, has a definition broader than the one set forth in R.C. 5711.01(E). See 1978 Op. Att'y Gen. No. 78-050 (concluding that a county is a taxing district for purposes of R.C. 117.15). I am, however, aware of no theory under which a county-wide organization for civil defense, established under R.C. 5915.07, could be considered to be a taxing district. See generally 1983 Op. Att'y Gen. No. 83-021. Such an organization has no authority to tax; it is supported, according to agreement and any applicable rules, by appropriations made by participating political subdivisions. See R.C. 5915.07, 5915.11. As a practical matter, the procedure set forth in R.C. 117.15 could not apply to a county-wide organization for civil defense since that organization does not receive funds at the semi-annual settlement periods. See generally R.C. 319.43-.50; R.C. 321.24-.33. I find, therefore, that the procedure whereby the county auditor may issue a warrant for audit costs certified by the State Auditor and charge the amount to the taxing district at the next semi-annual settlement period is not available where the audit is of a county-wide civil defense organization, which is not a taxing district.

R.C. 117.15 goes on to set forth provisions for distributing the cost of examination of each taxing district audited among the various funds examined. The final paragraph of R.C. 117.15 states:

To distribute the cost of examination of each taxing district audited, the fiscal officer of such taxing district may charge each fund examined with the pro rata share of such examination costs as each fund relates in part to the total examination expense. The bureau of inspection and supervision of public offices shall furnish the fiscal officer of such taxing district, at the conclusion of each examination or analysis and report made pursuant to division (D) of section 117.091 of the Revised Code, a statement showing the total cost of such examination or analysis and report and the percentage chargeable to each fund examined. The fiscal officer may distribute such costs to each fund. The cost of typing, reviewing, and copying reports shall likewise be distributed, and each fiscal officer shall be notified of the amount chargeable to the several funds individually.

One of my predecessors considered this language in 1956 Op. Att'y Gen. No. 6184, p. 22, and concluded that the cost of an examination of the books and funds of a law library association should be paid from the county treasury and charged to the funds of such law library association. With respect to the paragraph quoted above, 1956 Op. No. 6184 states, at 24-25:

The language found in that paragraph is plain and unambiguous and conveys a clear and definite meaning. By this amendment the legislature made specific provision for the cost of an examination to

³ As I noted in 1983 Op. Att'y Gen. No. 83-057, note 3, I am aware of no current rules pertaining to this subject.

be charged to each separate fund examined. It will be noted that no distinction is made between the accounts of a public office and those of a private association. By the lack of such a distinction it is apparent that the legislature intended that the expense of examination should be paid from the fund of a private association as well as from the fund of a public office.

I note, however, that 1956 Op. No. 6184 categorized the law library association as a private association which received public money. As such, the association was subject to the portion of R.C. 117.01 which provided that the expense of examining the funds of such a body were to be borne by the taxing district providing the public money.⁴ It follows that, since the county was responsible for providing at least some of the funds to the library association, the county auditor, as fiscal officer of the county, had authority under R.C. 117.15 to charge the expense to the funds of the library association. See R.C. 3375.51, 3375.53, 3375.56; Op. No. 78-050.

The relationship between the county and a county-wide organization for civil defense is different from that between a county and a law library association. The county-wide organization is a public office in its own right. Thus, under R.C. 117.15, it is responsible for payment of the costs of an audit of its accounts. In contrast, a law library association is a private association receiving public money and, under R.C. 117.01, the cost of an audit of its accounts is to be borne by the body providing the public money. Under the final paragraph of R.C. 117.15, the fiscal officer of a taxing district is authorized to allocate among the various funds the costs of examination for which the taxing district is responsible. I cannot read that paragraph as authorizing the fiscal officer of a taxing district to make charges against a fund which is neither a fund of the taxing district nor the fund of a private body to which the taxing district provides public money under R.C. 117.01.

For the reasons outlined above, I do not find any authority in R.C. 117.15 which would permit the Stark County Auditor to charge the amount due on the examination of the Stark County-Wide Disaster Services Organization against the fund of that Organization, and reimburse the Stark County General Fund for the warrant issued to the Auditor of State. I am, similarly, unaware of any other statutory provision which grants such authority. I note that I do not quarrel with a literal application of the language of R.C. 117.15 which provides that the costs of an audit shall be borne by the public office which has been audited. Thus, the cost of an audit of a county-wide organization for civil defense is to be borne by that organization. You have indicated that the cost of the audit in question has been submitted to the Executive Committee of the Stark County-Wide Organization for Civil Defense. As is discussed more fully below in connection with your fifth question, that cost appears to be a legal obligation of the Organization, which the Executive Committee has a duty to satisfy.

Your fourth question asks whether the county auditor may, under R.C. 117.15, charge the amount of the audit expense to the political subdivisions which comprised the membership of the Organization at the time of its dissolution. For the reasons discussed in connection with your third question, I do not believe that the language of R.C. 117.15 is broad enough to authorize such action. The provisions of R.C. 117.15 governing charges to a particular taxing district pertain to instances in which that taxing district has been audited. A county-wide organization for civil defense is not a taxing district. As I discussed in 1983 Op. Att'y Gen. No. 83-057, a subdivision participating in a county-wide organization for civil defense is responsible for the expenses of such an organization only as provided by rule of the Governor or by agreement of the members of the organization. While it appears that the members of a county-wide civil defense organization are taxing districts

⁴ The analogous provision now appearing in R.C. 117.01 states: "The bureau may examine the accounts of every private institution, association, board, or corporation receiving public money for its use, and may require of them annual reports in such form as it prescribes. The expense of such examination shall be borne by the public office providing such public money."

to which the auditor could, practically, charge amounts at the next semi-annual settlement period, see R.C. 5915.01, 5915.07, I cannot find that such a procedure would come within the plain language of R.C. 117.15, since it is not the individual taxing districts which have been audited but, rather, a separate entity formed by a number of taxing districts.

I note, further, that were a county auditor to attempt to make such charges, he would confront the question of how much to charge each of the subdivisions. No provision of law or rule sets forth such a standard. The resolution forming the Organization states, in paragraph 9, only that "[e]ach participating political subdivision hereto agrees to pay into the 'Stark County Disaster Services Fund' promptly upon demand and invoice therefor, the amount assessed against it by the Executive Committee. . . ." I am aware of no principle of law which would permit the county auditor to allocate audit costs among the various subdivisions.

The final paragraph of R.C. 117.15, which provides for the fiscal officer of a taxing district to charge costs against the various funds of the taxing district, is, similarly, inapplicable to the situation you have described. The Organization is not a taxing district, and the controversy in question does not concern audits of accounts of the individual political subdivisions.

In response to your fourth question, I conclude, therefore, that the county auditor is not authorized by R.C. 117.15 to charge the amount of the audit expenses paid to the Auditor of State to the political subdivisions which were members of the Organization at the time of its dissolution.

Your fifth question concerns the authority of the Executive Committee of the Organization to require the political subdivisions which comprised its membership at the time of its dissolution to reimburse the county general fund for the cost of the audit. As I discussed in Op. No. 83-057, unless a more specific agreement has been made, the Executive Committee has authority to assess its members in any reasonable manner for the costs of the Organization. Neither the agreement establishing the Organization nor the documents terminating it specify the role of the members of the Executive Committee in winding up the affairs of the Organization. With respect to termination of the Organization, the resolution authorizing its formation states only:

This agreement may be terminated at any time by mutual agreement of the parties hereto, and may be terminated by any party at the end of any calendar year by action of its legislative authority and service of written notice thereof on the Board of County Commissioners of Stark County not less than ninety (90) days prior to the end of said calendar year.

Id. at paragraph 10. Similarly, the provisions of R.C. Chapter 5915 do not specify when or how a county-wide organization for civil defense may be dissolved.⁵

In the absence of more specific provisions governing the winding up of the affairs of the Organization, I find it implied that the Executive Committee has authority to effect the dissolution in a reasonable manner, and that it retains necessary authority over members of the Organization until all obligations of the Organization have been satisfied. See generally Jewett v. Valley Ry. Co., 34 Ohio St. 601 (1878); State ex rel. Village of Mayfield Heights v. Higham, 35 Ohio App. 243, 172 N.E. 159 (Cuyahoga County 1929). Thus, while the Organization as such is no longer an active body, the Executive Committee has implied authority to assess

⁵ The provisions of R.C. Chapter 5915 nowhere expressly authorize the dissolution of a county-wide organization for civil defense. I do not think it follows that such an organization, once created, may never be terminated. Compare R.C. 5915.07 with 1972 Op. Att'y Gen. No. 72-097 (concerning withdrawal of a village from a garbage and refuse disposal district). I do, however, think it follows that such an organization may not, by dissolution, absolve its members of obligations which have accrued to the organization.

its members for amounts reasonably due from them to satisfy charges lawfully made against the Organization.

As noted above, I find it clear from R.C. 117.15 that the cost of an audit of a county-wide organization for civil defense is to be borne by that organization. Thus, the Executive Committee may assess participating political subdivisions for the cost of the audit. Paragraph 9 of the resolution authorizing the formation of the Organization provides, however, that amounts assessed against member subdivisions should be paid into the Stark County Disaster Services Fund. It does not authorize the Executive Committee to require that payments be made directly to any other person or fund.

I conclude, therefore, that, in order to wind up the affairs of the Organization, the Executive Committee of the Organization may require the political subdivisions which comprised its membership at the time of dissolution to make payments to the Organization's fund, the Stark County Disaster Services Fund, to cover the cost of the audit of the accounts of that Organization made by the Bureau of Inspection and Supervision. The Executive Committee may then proceed to make such payment of the cost of the audit as is required to satisfy its legal obligation—in this case, to the county general fund. The Executive Committee may not, however, require the political subdivisions to make such payments directly to the county general fund.

Based upon the foregoing, it is my opinion, and you are hereby advised, as follows:

1. A county-wide organization for civil defense formed under R.C. 5915.07 is a "public office" under R.C. 117.01 and, as such, is subject to examination by the Bureau of Inspection and Supervision of Public Offices.
2. A county auditor may not use the procedure set forth in R.C. 117.15 for issuing a warrant to pay the costs of an audit from the county general fund and charging the amount so paid to the taxing district at the next semi-annual settlement period where the audit is of a county-wide organization for civil defense, since such an organization is not a taxing district.
3. A county auditor may not use the procedure set forth in R.C. 117.15 for charging various funds with the pro rata share of an examination by the Bureau of Inspection and Supervision of Public Offices to charge the fund of a county-wide organization for civil defense for the cost of an audit of the organization's funds where the cost was initially paid from the county general fund.
4. R.C. 117.15 does not authorize a county auditor to charge the costs of an audit of a county-wide organization for civil defense, which were paid initially from the county general fund, directly to political subdivisions which were members of the organization at the time of its dissolution.
5. Absent specific provisions governing the winding up of the affairs of a county-wide organization for civil defense which has been dissolved, the governing body of such an organization may require the political subdivisions which were members at the time of dissolution of the organization to make payments in accordance with the agreement establishing the organization in order to satisfy the obligations of the organization, including the cost of an audit by the Bureau of Inspection and Supervision of Public Offices.