

OPINION NO. 88-098**Syllabus:**

1. A county bridge commission established pursuant to R.C. 5593.05 is a political subdivision, as that term is defined in R.C. 2744.01(F).
2. A county bridge commissioner appointed in accordance with R.C. 5593.05 is an employee, as that term is defined in R.C. 2744.01(B).
3. The operation of a bridge by a county bridge commission, as provided for in R.C. Chapter 5593, is a governmental function, as that term is defined in R.C. 2744.01(C).

To: William L. Thomas, Belmont County Prosecuting Attorney, St. Clairsville, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, December 28, 1988

I have before me your opinion request concerning the applicability of R.C. Chapter 2744, concerning tort liability for political subdivisions of the state, to a county bridge commission which is established and operated in accordance with R.C. Chapter 5593. You specifically ask:

1. Whether a County Bridge Commission established under Chapter 5593 of the Ohio Revised Code falls within the definition of a political subdivision as is set forth under Ohio Revised Code Section 2744.01(F) of the Sovereign Immunity Legislation.
2. Is a County Bridge Commissioner, appointed under Chapter 5593 of the Ohio Revised Code, within the definition of an employee as set forth under Ohio Revised Code Section 2744.01(B) of the Sovereign Immunity Legislation?
3. Is the operation of a bridge by a Bridge Commission, established under Chapter 5593, a governmental or a proprietary function, as defined under Ohio Revised [Code] Section 2744.01?

R.C. Chapter 2744 generally establishes the scope of tort liability for those entities defined in R.C. 2744.01(F) as political subdivisions. For purposes of R.C. Chapter 2744, the term "political subdivision" or "subdivision" means:

a municipal corporation, township, county, school district, or *other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state*. "Political subdivision" includes a county hospital commission appointed under [R.C. 339.14], regional planning commission created pursuant to [R.C. 713.21], county planning commission created pursuant to [R.C. 713.22], joint planning council created pursuant to [R.C. 713.231], interstate regional planning commission created pursuant to [R.C. 713.30], port authority created pursuant to [R.C. 4582.02 or .26] or in existence on December 16, 1964, and regional councils of political subdivisions established pursuant to [R.C. Chapter 167]. (Emphasis added.)

R.C. 2744.01(F). Concerning the meaning of this definition, I recently stated in 1988 Op. Att'y Gen. No. 88-034 at 2-153:

R.C. 2744.01(F) thus provides a list of governmental entities which are expressly included under the heading of "political subdivision." If the entity is not specifically listed in R.C. 2744.01(F), then in order to qualify as a "political subdivision" the entity must be: (1) a "body corporate and politic"; (2) "responsible for [a] governmental activit[y]"; (3) "in a geographic area smaller than that of the state."

Since a county bridge commission is not named in R.C. 2744.01(F) as an entity qualifying as a political subdivision, it is necessary to determine whether it meets the three criteria set forth in the definition and thereby constitutes a political subdivision.

The first inquiry is whether a county bridge commission is a "body corporate and politic," as that phrase is used in R.C. 2744.01(F). I note that this phrase is not defined by statute and is not otherwise precisely defined. It is clear that the General Assembly's designation of a public entity as a body corporate and politic does not confer upon such entity corporate powers in violation of Ohio Const. art. XIII, §1.¹ The term "body corporate and politic" does not, therefore, appear to be the equivalent of the word corporation, as that word is commonly understood. *See, e.g., Rees v. Olmsted*, 135 F. 296, 298 (6th Cir. 1905) ("[t]he mere fact that the act declared that the road commissioners who issued the bonds should be a 'body corporate with the powers and duties hereinafter specified,' did not definitively determine that the powers conferred were corporate within the meaning of [Ohio Const. art. XIII, §1]"); *State v. Powers*, 38 Ohio St. 54 (1882) (statutory designation of boards of education as "bodies politic and corporate" does not constitute the school district a corporation within the meaning of Ohio Const. art. XIII, §1); *Hunter v. Commissioners of Mercer County*, 10 Ohio St. 515, 520 (1860) ("[t]he county is not a corporation, but a mere political organization of certain of the territory within the state, particularly defined by geographical limits, for the more convenient administration of the laws and police power of the state...Such organization is invested with certain powers delegated to it by the state for the purposes of civil administration; and for the same purpose it is clothed with many characteristics of a body corporate").

Like the term "body corporate," the phrase "body politic" is not susceptible of precise definition. As stated in *Uricich v. Kolesar*, 132 Ohio St. 115, 118, 5 N.E.2d 335, 337 (1936), the phrase body politic "connotes simply a group or body of citizens organized for the purpose of exercising governmental functions. Such a group may be large or small, and it may be a group within a group." It appears, therefore, that, for purposes of R.C. 2744.01(F), a body politic and corporate is merely a public entity which has been assigned certain corporate powers. *See generally Board of Commissioners v. Mighels*, 7 Ohio St. 109, 115 (1857) (characterizing the power of a county to sue and be sued as "one corporate capacity," although that, in itself, does not make the county a "body corporate proper").

With this general definition in mind, I turn to an examination of R.C. Chapter 5593 under which county bridge commissions are formed and operate. R.C. 5593.01(D) defines the term "county bridge commission," as used in R.C. Chapter 5593, as meaning: "the bridge commission provided for in such sections of any county...or if such commission is abolished, any board or officer succeeding to the principal functions thereof or upon whom the powers given by such sections to such commissions are given by law." Pursuant to R.C. 5593.04, if the board of county commissioners desires to take advantage of the provisions of R.C. Chapter 5593, it shall pass a resolution:

declaring that the construction or acquisition of a bridge, or the partial acquisition and partial construction, together with adequate repairs and rehabilitation if such bridge is already completed, or adequate completion of construction if such bridge is in process of construction, will be a convenience, necessity, and benefit to such county....

¹ Ohio Const. art. XIII, §1 states: "The general assembly shall pass no special act conferring corporate powers."

Upon passage of a resolution under R.C. 5593.04, the board of county commissioners is under a duty to appoint three persons to form such bridge commission. R.C. 5593.05.

The general powers of a county bridge commission are set forth in R.C. 5593.03 which states in pertinent part:

- Any county...bridge commission may:
- (A) Construct, acquire by purchase or condemnation, and improve, operate, and maintain bridges...
 - (B) Pay the costs of such construction, acquisition, improvement, operation, and maintenance;
 - (C) Issue bridge revenue bonds of the state, or of such county...as provided by [R.C. Chapter 5593].

The more specific powers and duties of county bridge commissions appear in R.C. 5593.08, as follows:

- The bridge commission of any county...may:
- (A) Adopt bylaws for the regulation of its affairs and the conduct of its business;
 - (B) Adopt an official seal, which shall not be the seal of Ohio;
 - ...
 - (D) *Sue and be sued in its own name, and plead and be impleaded.* Any actions against a bridge commission shall be brought in the court of common pleas of the county in which the principal office of the commission is located, or in the court of common pleas of the county in which the cause of action arose, when such county is located within this state....
 - (E) Construct, acquire by purchase or condemnation, improve, maintain, repair, police, and operate any bridge, and establish rules for the use of any such bridge;
 - (F) Issue bridge revenue bonds of the county...payable solely from revenues, as provided in [R.C. 5593.10 and .16], for the purpose of paying any part of the cost of any bridge or bridges;
 - (G) Fix and revise from time to time and charge and collect tolls for transit over each bridge constructed or acquired by it;
 - (H) Acquire, hold, and dispose of real and personal property in the exercise of its powers and the performance of its duties under [R.C. Chapter 5593];
 - (I) Acquire, in the name of the county...by purchase or otherwise, on such terms and in such manner as it determines proper, or by the exercise of the right of condemnation in the manner provided by [R.C. 163.01-.22], any bridge, land, rights, easements, franchises, and other property necessary or convenient for the construction of a bridge or the improvement or efficient operation of any property acquired or constructed under [R.C. Chapter 5593], or for securing right-of-way leading to any such bridge or its approach facilities;
 - (J) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under [R.C. Chapter 5593]:
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 - (K) Employ consulting engineers, superintendents, managers, engineers, construction and accounting experts, attorneys, and other employees and agents as are necessary in its judgment, and fix their compensation. All such expenses are payable solely from the proceeds of bridge revenue bonds issued under [R.C. Chapter 5593], or from revenues.
 - (L) Receive and accept from any federal agency, subject to the approval of the board of county commissioners..., grants for or in aid of the construction, acquisition, improvement, or operation of any bridge...
 - (M) Provide coverage for its employees under [R.C. 4123.01-.94] and [R.C. 4141.01-.46];
 - (N) Do all acts necessary or proper to carry out the powers expressly granted in [R.C. Chapter 5593]. (Emphasis added.)

Thus, I note that a county bridge commission is created by statute as a public entity with certain corporate powers, *e.g.*, the authority to adopt an official seal, R.C. 5593.08(B); the power to sue and be sued in its own name, R.C. 5593.08(D); the power to enter into contracts, R.C. 5593.08(J).² *See generally Commissioners of the Canal Fund v. Perry*, 5 Ohio 56, 63 (1831) (in determining that the commissioners of the canal fund were not a corporation, the court stated: "what single feature of a corporation do they possess? They have no name given them as such, no power of perpetuating their succession, no common seal, no power to make any contracts, 'except in the name, and for the state,' or hold any property upon which execution could be levied, in case of a judgment against them. Mere agents of a corporation, the state, with limited and specified power, for a limited purpose, their acts, done agreeably to the authority delegated to them, are the acts of the State of Ohio, binding upon the state, not upon the commissioners, either as corporators or individuals").

The argument may be made that since the county bridge commission has not been expressly designated a body corporate and politic by statute, it may not qualify as such for purposes of R.C. 2744.01(F). As I had occasion to note in 1987 Op. Att'y Gen. No. 87-102 at 2-680, however:

[R.C. 2744.01(F), defining the term "political subdivision,"] is a broad definition, as evidenced by the types of commissions and councils that are expressly included.... R.C. 2744.01(F) specifically names as political subdivisions both entities that are designated by statute as bodies corporate and politic, see R.C. 4582.02 (stating that a port authority created pursuant to its provisions is a body corporate and politic); R.C. 4582.21(A) (for purposes of R.C. 4582.22-.59, "port authority" means a body corporate and politic created under R.C. 4582.22), and entities that are not so designated, see R.C. Chapter 167 (regional council of governments); R.C. 339.14 (county hospital commission); R.C. 713.21 (regional planning commission); R.C. 713.22 (county planning commission); R.C. 713.231 (joint planning council); R.C. 713.30 (interstate regional planning commission). (Emphasis added.)

² Pursuant to R.C. 5593.19, R.C. Chapter 5593 "shall provide an additional and alternative method for the doing of the things authorized by such chapter and shall be regarded as supplementary and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing." In light of this provision, one of my predecessors commented on the purpose served in establishing state, county, or city bridge commissions, as follows:

the purpose of the act creating bridge commissions was to create an entity separate and apart from the regular political subdivisions of the State to acquire bridges without encumbering or using county, city or state funds or credit. That such commissions are a legal entity separate in existence from the creating power can not be escaped in view of certain definite provisions of the act. The strongest of these, among others, is that the commissions and employe[e]s are paid not from public funds but from bridge revenues...that the commissions collect, control, deposit and disburse their own funds in a manner other than is provided for the state and its political [subdivisions]; that the commissions may sue and be sued in their own names and carry on their businesses, generally speaking, in their own manner, not subject to the limitations of general laws governing the state and its [subdivisions] and not subject to the supervision of the public officers of the state, cities, or counties.

1939 Op. Att'y Gen. No. 182, vol. I, p. 213, 216.

Since the definition of political subdivision appearing in R.C. 2744.01(F) specifically includes other entities which are not designated by statute as bodies corporate and politic, I must conclude that, although a county bridge commission is not so designated, the fact that it is clearly a public entity vested with various corporate powers qualifies it as a body corporate and politic for purposes of R.C. 2744.01(F). *See generally* 1939 Op. Att'y Gen. No. 182, vol. 1, p. 213 (syllabus) ("[e]mploye[e]s of the bridge commissions created under Sections 1084-2 to 1084-17, General Code [analogous provisions currently in R.C. Chapter 5593], are not employe[e]s of the state, counties, cities, or city school districts and, therefore, are not subject to the civil service laws of the State of Ohio"); note 2, *infra*.

The second requirement which must be met in order to qualify as a political subdivision, for purposes of R.C. Chapter 2744, is that the entity must be responsible for a governmental activity. The nature of the activities of a bridge commission is explained in R.C. 5593.22, concerning the exemption from taxation or assessment of a bridge or other property acquired under R.C. Chapter 5593, as follows:

The exercise of the powers granted by [R.C. Chapter 5593] is, in all respects, for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as *the operation and maintenance of bridges by a bridge commission constitutes the performance of essential governmental functions*,³ the commission shall not be required to pay any taxes or assessments upon any bridge or upon any property acquired or used by the commission under [R.C. Chapter 5593], or upon the income therefrom, and the bonds issued under such chapter, their transfer, and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation within the state. (Emphasis and footnote added.)

Based upon the characterization of the activities of a bridge commission in R.C. 5593.22 as constituting "essential governmental functions," I readily conclude that the exercise of the powers granted to a county bridge commission by R.C. Chapter 5593 is the performance of a governmental activity for purposes of R.C. 2744.01(F).

The final requirement which must be met in order for an entity to qualify as a political subdivision, as defined in R.C. 2744.01(F), is that the area in which the entity performs a governmental activity must be "a geographic area smaller than that of the state." Examination of the statutory scheme governing the establishment and operation of a county bridge commission makes it clear that the area served by such commission is smaller than that of the state. R.C. 5593.04, for example, concerning the board of county commissioners' passage of a resolution prior to the establishment of a county bridge commission, requires a finding that its activities with respect to such bridge "will be a convenience, necessity, and benefit to *such county*" (emphasis added). Pursuant to R.C. 5593.05, the county bridge commission is appointed by the board of county commissioners. Among the powers and duties of a county bridge commission is the authority to "[i]ssue bridge revenue bonds of the county," R.C. 5593.08(F); to "[a]cquire, in the name of the county...any bridge, land, rights, easements, franchises, and other property necessary or convenient for the construction of a bridge," R.C. 5593.08(I); to "[r]eceive and accept from any federal agency, subject to the approval of the board of county commissioners" certain grants, R.C. 5593.08(L); and to issue "bridge revenue bonds of such county," R.C.

³ As stated in 1988 Op. Att'y Gen. No. 88-034 n. 1 at 2-153: "While the term 'governmental activity' is not defined by R.C. 2744.01, the section does define the term 'governmental function' in division (C)(1). The General Assembly clearly did not intend for such terms to be synonymous, however, because the definition provided for by R.C. 2744.01(C)(1) requires that the reader already know whether an entity is a 'political subdivision.'" In this regard, I note that the term "governmental functions," as used in R.C. 5593.22, appears to be included within, although not synonymous with, the meaning of that term as set forth in R.C. 2744.01(C) for purposes of R.C. Chapter 2744.

5593.10. In light of the manner in which, and purpose for which, a county bridge commission is established and the manner in which it operates, it is apparent that the geographical area served by a county bridge commission is intended to be smaller than the entire state, even though the activities of the commission are "for the benefit of the people of the state," R.C. 5593.22.⁴ I must conclude, therefore, that since a county bridge commission established and operating under R.C. Chapter 5593 is, for purposes of R.C. 2744.01(F), a body politic and corporate responsible for governmental activities in a geographic area smaller than that of the state, it is a political subdivision for purposes of R.C. Chapter 2744.

Your second question asks whether a county bridge commissioner who is appointed under R.C. Chapter 5593 qualifies as an "employee," as defined in R.C. 2744.01(B). The general rule concerning a political subdivision's liability for its employees is set forth in R.C. 2744.02(A)(1) which states in pertinent part: "Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function."

For purposes of R.C. Chapter 2744, the word "employee" means, in part:

an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of his employment for a political subdivision. "Employee" does not include an independent contractor. *"Employee" includes any elected or appointed official of a political subdivision.* (Emphasis added.)

R.C. 2744.01(B). Pursuant to R.C. 5593.05, the board of county commissioners appoints "three persons who shall constitute the bridge commission of such county." It is clear, therefore, that county bridge commissioners serve by appointment.

The term "official," as used in R.C. 2744.01(B), is not defined, but is generally understood to mean: "An officer; a person invested with the authority of an office." *Black's Law Dictionary* 978 (5th ed. 1979). See generally R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). Concerning the characteristics of a public office, the

⁴ The provisions of R.C. 5593.03 appear to raise some question as to whether a county bridge commission may act throughout the entire state. Pursuant to R.C. 5593.03:

Any county or city bridge commission may:

(A) Construct, acquire by purchase or condemnation, and improve, operate, and maintain bridges entirely *within the state or such county* or city, or over rivers and navigable waters which form *a boundary of the state, or such county* or city, notwithstanding that the waters of such river or navigable water may not at all times extend to or reach said boundary line, whenever the bridge, any part thereof, or the approach facilities thereto will extend within the *boundary of the state or of such county* or city.... (Emphasis added.)

R.C. 5593.03, thus seems to suggest that a county or city bridge commission would have authority to act with regard to any bridge so long as it is located entirely within the state. It appears, however, that in 1981-1982 Ohio Laws, Part I, 1668 (Am. Sub. H.B. 98, eff., in part, July 6, 1982) where the General Assembly abolished the State Bridge Commission, R.C. 5593.03 was amended to delete the reference in the first sentence to the state bridge commission, but the remaining portions of R.C. 5593.03 were inadvertently left intact without further deletion of references to the state bridge commission's jurisdiction. See, e.g., R.C. 5593.03(C) (authorizing, in part, a county or city bridge commission to "[i]ssue bridge revenue bonds of the state").

court in *State ex rel. Landis v. Board of Commissioners*, 95 Ohio St. 157, 159, 115 N.E. 919, 919 (1917) stated:

The usual criteria in determining whether a position is a public office are durability of tenure, oath, bond, emoluments, the independency of the functions exercised by the appointee, and the character of the duties imposed upon him. But it has been held by this court that while an oath, bond and compensation are usually elements in determining whether a position is a public office they are not always necessary.

In this regard, I note that, pursuant to R.C. 5593.05, county bridge commissioners shall serve a term; take, subscribe, and file an oath of office; and execute a bond, "approved by the board..., in the penalty of five thousand dollars, conditioned according to law, which bond shall be filed and recorded as other bonds required of county...officials." With respect to the independency of the functions of the county bridge commissioners, examination of the powers and duties of such commissioners as prescribed by R.C. Chapter 5593 reveals that, with few exceptions, *see, e.g.*, R.C. 5593.08(L) (approval by board of county commissioners prior to receipt of federal grants), the decisions of the bridge commissioners are not subject to approval outside the commission. *See generally* R.C. 5593.03 and .08 (powers and duties of bridge commissions); and R.C. 5593.10 (issuance of bridge revenue bonds upon resolution of bridge commission). In light of the characteristics of the position of county bridge commissioner and the manner in which the duties of such position are performed, I must conclude that the members of a county bridge commission, appointed in accordance with R.C. 5593.05, are appointed officials of the county bridge commission and, thereby, qualify as employees of the county bridge commission for purposes of R.C. Chapter 2744.

Your final question reads as follows: "Is the operation of a bridge by a Bridge Commission, established under Chapter 5593, a governmental or proprietary function, as defined under Ohio Revised [Code] Section 2744.01"? The term "governmental function," as used in R.C. Chapter 2744, is defined in R.C. 2744.01, as follows:

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare, that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons, and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace, to prevent and suppress riots, disturbances, and disorderly assemblages, and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

(e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;

(f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;

(g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;

(h) The design, construction, reconstruction, renovation, repair, maintenance, and *operation* of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;

(i) The enforcement or nonperformance of any law;

(j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;

(k) The collection and disposal of garbage, refuse, and other solid wastes, including, but not limited to, the *operation* of dumps, sanitary landfills, and facilities;

(l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(m) The *operation* of a health or human services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;

(n) The *operation* of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;

(o) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(p) Urban renewal projects and the elimination of slum conditions;

(q) Flood control measures;

(r) The design, construction, reconstruction, renovation, *operation*, care, repair, and maintenance of a township cemetery;

(s) The issuance of revenue obligations under section 140.06 of the Revised Code;

(t) The design, construction, reconstruction, renovation, repair, maintenance, and *operation* of any park, playground, playfield, indoor recreational facility, zoo, zoological park, bath, swimming pool or pond, and the *operation* and control of any golf course;

(u) A function that the general assembly mandates a political subdivision to perform. (Emphasis added.)

Within the definition of "governmental function" in R.C. 2744.01(C) is a reference to the definition of a "proprietary function," as defined in R.C. 2744.01(G), about which you also ask. R.C. 2744.01(G) states:

(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies all of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The *operation* of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and *operation* of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and *operation* of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, *operation*, and upkeep of a sewer system;

(e) The *operation* and control of a public stadium, auditorium,

civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility. (Emphasis added.)

Examining the definition of the term "governmental function," I note that the operation of a bridge by a county bridge commission does not appear to fit squarely within any of the activities specified in R.C. 2744.01(C)(2). The only activity with respect to bridges which is so included is set forth in R.C. 2744.01(C)(2)(e) which encompasses the regulation of the use of, and the maintenance and repair of, bridges. R.C. 2744.01(C)(2)(e) does not, however, mention the "operation" of bridges. Elsewhere within R.C. 2744.01(C)(2) the "operation" of various facilities and structures is specifically mentioned. It is a general rule of statutory construction that, where the legislature uses certain language in one instance and "wholly different language in the other, it will...be presumed that different results were intended." *Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927).

Although the operation of a bridge by a county bridge commission may not be specifically included within the definition of a governmental function under R.C. 2744.01(C)(2), it may be considered a governmental function if it otherwise meets the test set forth in R.C. 2744.01(C)(1). A function of a political subdivision not enumerated in division (C)(2) qualifies, pursuant to R.C. 2744.01(C)(1), as a governmental function, so long as it:

satisfies *any* of the following:

- (a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;
- (b) A function that is for the common good of all citizens of the state;
- (c) A function that promotes or preserves the public peace, health, safety, or welfare, that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons, and that is not specified in division (G)(2) of this section as a proprietary function. (Emphasis added.)

Thus, pursuant to R.C. 2744.01(C)(1), so long as a function of a political subdivision qualifies as one of the three types of functions listed in that subdivision of R.C. 2744.01, it qualifies as a governmental function for purposes of R.C. Chapter 2744. Compare R.C. 2744.01(C)(1) with R.C. 2744.01(G)(1) (defining a "proprietary function," in part, as meaning, a function of a political subdivision "that satisfies all of the following..." (emphasis added)).

The operation of a bridge by a county bridge commission is provided for in various portions of R.C. Chapter 5593. See, e.g., R.C. 5593.03(A) (authority to construct, acquire, improve, operate, and maintain certain bridges); R.C. 5593.03(B) (authority to pay the costs of such construction, acquisition, improvement, operation, and maintenance); R.C. 5593.08(E) (authority to construct, acquire, improve, maintain, repair, police, and operate any bridge); R.C. 5593.13 (fixing of tolls in amount sufficient to pay for, among other things, the cost of maintaining, repairing, and operating bridges); and R.C. 5593.20 (authority to adopt bylaws and rules "for the control and regulation of each bridge constructed or acquired by it..."). Further, R.C. 5593.22, as set forth above, provides that the exercise of the powers conferred upon a county bridge commission by R.C. Chapter 5593 is for the benefit of the people of the state, not just for those in the area encompassed within the geographical area of the commission. Thus, the operation of a bridge by a county bridge commission clearly qualifies as a governmental function under R.C. 2744.01(C)(1)(b).

With respect to the requirements of R.C. 2744.01(C)(1)(c), I note again that R.C. 5593.22 specifies that the activities of a county bridge commission are for the improvement of the health and living conditions of the people of the state. Further, R.C. 5593.22 expressly categorizes the exercise of the powers granted by R.C. Chapter 5593.22 as the performance of essential governmental functions. See generally note 3, *supra*. In addition, R.C. 2744.01(G)(2) does not list the operation of a bridge by a county bridge commission as a proprietary function. I must conclude, therefore, that the operation of a bridge by a county bridge

commission constitutes a governmental function under R.C. 2744.01(C)(1)(c), as well as under R.C. 2744.01(C)(1)(b).

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. A county bridge commission established pursuant to R.C. 5593.05 is a political subdivision, as that term is defined in R.C. 2744.01(F).
2. A county bridge commissioner appointed in accordance with R.C. 5593.05 is an employee, as that term is defined in R.C. 2744.01(B).
3. The operation of a bridge by a county bridge commission, as provided for in R.C. Chapter 5593, is a governmental function, as that term is defined in R.C. 2744.01(C).