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SYLLABUS:

A bi-county airport agency created by agreement of two counties is not a "county board" within the meaning of Section 309.09, Revised Code, and is not entitled to legal advice from the prosecuting attorney of either county under this section.

Columbus, Ohio, March 13, 1963

Hon. John S. Ballard
Prosecuting Attorney
Summit County
Akron, Ohio

Dear Sir:

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

"The Akron-Canton Airport is owned jointly by the Board of County Commissioners of Summit and Stark Counties with ordinary matters of daily management delegated to an Airport Agency but with matters of real estate control such as leases being referred by said Airport Agency to the Board of County Commissioners of Summit County pursuant to their agreement.

"In the past, private counsel has been engaged to handle certain matters for the Airport Agency and for the general management of the Airport; and our Office also contributed services involving management questions as separate from our duties to the Board of County Commissioners of Summit County.

"We anticipate an increase in the volume of requests and are concerned with whether or not our Office has a duty to or is permitted to furnish advice, service, and counsel to the Airport Agency and to the management operating under said Agency. We refer you to 1960 OAG 2383 and 1960 OAG page 205, No. 1234."

To answer your question, consideration must first be given to the authority by which the two counties jointly own the Akron-Canton Airport.

In this regard Sections 717.01 and 719.01, Revised Code, incorporated in Section 307.20, Revised Code, by reference, empower municipal corporations, and thus boards of county commissioners, to establish, maintain and operate airports, landing fields, or other air navigation facilities and to appropriate property for airports, landing fields or other air navigation facilities, respectively.

Section 307.15, Revised Code, provides in material part:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render.”

Pursuant to the above statutory authority, I am informed by supplementing correspondence, the boards of county commissioners of Summit and Stark County entered into an agreement for the establishment of a joint-county airport facility to be operated by a board of trustees denominated “airport agency.” The airport agency consists of four members, two appointed from Summit County and two appointed from Stark County. The power to appoint to the airport agency is by the terms of the agreement in the board of county commissioners of Summit County, and the airport agency is answerable to that board.

Rules and regulations established by the airport agency must have the approval of both boards of county commissioners.

Section 309.09, Revised Code, provides:

“The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards, including all tax supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. * * *”

The only matter to be inquired into is whether the Akron-Canton airport agency is a "county board" within the meaning of this section.

Upon consideration, I am of the opinion that the Akron-Canton "airport agency" is not a "county board."

While the term "county board" lacks statutory definition, I think it reasonable to conclude that the legislature intended to denote thereby a body or organization created by statute to exercise some part of the function of county government. The airport agency in question is a body created by contract and is separate and apart from any one county.

This conclusion is in accord with Opinion No. 1234, Opinions of the Attorney General for 1960, page 205, and Opinion No. 2383, Opinions of the Attorney General for 1961, to which you refer in your letter of request. In the former opinion it was held as disclosed by the first branch of the syllabus that:

"1. The prosecuting attorney of a county is the legal adviser of a joint township hospital board formed pursuant to Section 513.07, Revised Code, but it is not the legal adviser of a board of hospital governors appointed under Section 513.16, Revised Code."

The distinction in the two was held to lie in the fact that while a joint township district hospital board is made up of the township trustees of the townships included in the district, the board of governors is made up of persons appointed by the hospital board and by the judge of the court of common pleas.

In Opinion No. 2383, Opinions of the Attorney General for 1961, it was concluded that a regional planning commission established pursuant to Section 713.21, Revised Code, is not a "county board" within the meaning of Section 309.09, Revised Code. The basis for the conclusion was largely because "a regional planning commission is a co-operative venture involving at least one municipal corporation and one county * * * (and) is not essentially a subdivision of the county or a subordinate department of the county."

In accordance with the foregoing and in specific answer to your inquiry, I am of the opinion, and you are so advised, that a

bi-county airport agency created by agreement of two counties is not a "county board" within the meaning of Section 309.09, Revised Code, and is not entitled to legal advice from the prosecuting attorney of either county under this section.

Respectfully,
WILLIAM B. SAXBE
Attorney General