

OPINION NO. 66-056**Syllabus:**

1. The board of trustees of a regional airport authority may, in addition to the means of raising money for the acquisition, construction, maintenance, or operation of an airport or airport facility provided by Section 308.08, Revised Code, by agreement with a county or municipal corporation provide for such costs and expense to be borne in part or wholly by such county or municipal corporation.

2. Where the board of trustees of the regional airport authority contracts with a board of county commissioners for the acquisition, construction, maintenance or operation of an airport or airport facility and provides that the costs thereof shall be an expense of the regional airport authority, the portion of such expense to be paid by the county is limited to the funds which it may appropriate annually from the general fund of the county. If, by agreement with the regional airport authority, the airport or airport facility is to be owned or owned and operated by the county, the costs of acquisition of land and facilities for the operation of the airport may be submitted by resolution as a tax levy in conformance with the provisions of Section 5705.19, Revised Code.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, March 4, 1966

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

"An airport authority has been established in Greene County by virtue of Section 308.03 of the Ohio Revised Code and has requested an opinion regarding capital improvements namely acquisition of land and facilities for the actual operation of an airport.

"Specifically the question raised is:

1. Is the Board limited to the means provided under Section 308.08 in raising money for improvements, or 2. Can the Board through the Greene County Commissioners place this issue on the ballot in November as a proposed tax levy under Section 5705.19 (F)?"

Section 308.08, Revised Code, reads in part as follows:

"A regional airport authority which proposes to acquire by purchase or otherwise, or proposes to construct, replace, extend, enlarge, maintain, or operate any airport or airport facility, and desires to raise money for any of such purposes or for the purpose of repaying or refunding any outstanding issue of bonds of the regional airport authority or pay any obligation assumed by it or of repaying or refunding any outstanding issue of bonds or notes of any political subdivision issued to acquire, construct, replace, extend, enlarge, or maintain any airport or airport facility acquired by the regional airport authority or repay any advances or loans made to the regional airport authority by any person or political subdivision, may issue revenue bonds therefor which bonds shall not be secured by the general credit of the regional airport authority or by the general credit of the state or any political subdivision.

" * * * * * * * * "

In determining whether the foregoing authority to issue revenue bonds constitutes the only manner in which a regional airport authority may raise money for the construction of an airport, an examination of other powers granted by the legislature to the board of trustees of a regional airport authority is in order.

Section 308.06, Revised Code, reads in part as follows:

"Upon the creation of a regional airport authority as provided by section 308.03 of the Revised Code, and upon the qualifying of its board of trustees and the election of a president and a vice-president, said authority shall exercise in its own name all the rights, powers, and duties vested in and conferred upon it by sections 308.01 to 308.17, inclusive, of the Revised Code, and, subject to such reservations, limitations, and qualifications as are set forth therein, said regional airport authority;

" * * * * * * * * "

"(B) May make contracts in the exercise of the rights, powers, and duties conferred upon it;

" * * * * * * * * "

"(K) May provide by agreement with any county, including the counties within its territorial boundaries, or any municipal corporation or any combination thereof for the acquisition, construction, maintenance, or operation of any airport or airport facility

owned or to be owned and operated by it or owned or to be owned and operated by any such county or municipal corporation and the terms on which it shall be acquired, constructed, maintained or operated, and the amount of the cost and expense thereof to be paid by each such county or municipal corporation;

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

It seems clear, therefore, that the board of trustees of a regional airport authority may, in addition to the means of raising money provided by Section 308.08, supra, by contractual agreement with a county or municipal corporation provide for the acquisition, construction, maintenance or operation of an airport or airport facility, the cost and expense of which may be borne in part or wholly by such county or municipal corporation depending upon the terms of the agreement.

I can perceive of no authority, however, for the board of trustees to act "through" the county commissioners save for the authority to contract with the county. Once created, the board of trustees of the regional airport authority acts as a separate entity in its own name.

Section 308.03, Revised Code, reads in part:

"Any two or more contiguous counties or any single county may create a regional airport authority by the adoption of a resolution by the board of county commissioners of each county to be included in the regional airport authority. Such resolution shall state:

" * * * * * * * * * * * * * * *"

"(G) The manner and to what extent the expenses of the regional airport authority shall be apportioned among the counties creating it.

" * * * * * * * * * * * * * * *"

"The resolution creating a regional airport authority may be amended to include additional counties or for any other purpose, by the adoption of such amendment by the board of county commissioners of each county included or to be included in the regional airport authority.

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

From the foregoing, it is apparent that in the resolution creating the regional airport authority, the board of county commissioners has provided for the extent to which it will bear the expense of the regional airport authority. It follows that any subsequent agreement between the county and the regional airport authority under Section 308.06 (K), supra, involving additional

expenses, must result in a modification or amendment of the original resolution.

The legislature has made specific provision for the payment of the county's portion of the expenses of the regional airport authority in Section 308.17, Revised Code, which reads as follows:

"The board of county commissioners of any county included within a regional airport authority may appropriate annually, from the moneys to the credit of the general fund of the county and not otherwise appropriated, that portion of the expenses of the regional airport authority to be paid by such county as provided in the resolution creating the regional airport authority adopted under section 308.03 of the Revised Code, or by any amendment thereto."

(Emphasis added)

It would seem, therefore, that in any agreement made between the board of county commissioners and the board of trustees of the regional airport authority pursuant to Section 308.06 (K), supra, where the cost of acquisition of land and facilities for the operation of an airport is to be provided for as an expense of the regional airport authority, then the express provision of the legislature is controlling. Such expense, as agreed upon by the board of county commissioners, must be appropriated annually from moneys to the credit of the general fund of the county. I am aware, however, that Section 308.06 (K), supra, also provides that such agreement between the board of county commissioners and the board of trustees of the regional airport authority may also encompass the acquisition, construction, maintenance or operation of any airport or airport facility owned or to be owned and operated "by any such county". In this latter circumstance where ownership is to be in the county, I see no reason why the costs of acquisition of land and facilities for the operation of the airport may not be submitted by resolution as a proposed tax levy, provided that the board of county commissioners can comply with all other provisions of Section 5705.19, Revised Code.

It is therefore my opinion that the board of trustees of a regional airport authority may, in addition to the means of raising money for the acquisition, construction, maintenance, or operation of an airport or airport facility provided by Section 308.08, Revised Code, by agreement with a county or municipal corporation provide for such cost and expense to be borne in part or wholly by such county or municipal corporation.

I am further of the opinion that where the board of trustees of the regional airport authority contracts with a board of county commissioners for the acquisition, construction, maintenance or operation of an airport or airport facility and provides that the costs thereof shall be an expense of the regional airport authority, the portion of such expenses to be paid by the county is limited to the funds which it may appropriate annually from the general fund of the county. If, by agreement with the regional airport authority, the airport or airport facility is to be owned or owned and operated by the county, the costs of acquisition of land and facilities for the operation of the airport may be submitted by resolution as a tax levy in conformance with the provisions of Section 5705.19, Revised Code.