OPINION NO. 79-018

Syllabus:

1. A regional council of governments established under R.C. Chapter 167, or its governing board, may have sufficient powers to qualify as a waste treatment management agency under §208(c) of the Federal Water Pollution Control Act, as amended, and 40 C.F.R. §§130.15 and 131.11(o), with authority to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix); whether such authority exists depends upon the membership of the council of governments, the agreements, bylaws, and contracts under which it operates, the actions of its member governments, and the terms of the particular Water Quality Management Plan.

2. Regardless of the agreements, bylaws, and contracts under which a council of governments operates and the actions of its member governments, a council of governments cannot have the legal authority required to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(v) and (vi).

3. A regional planning commission may have sufficient powers under R.C. 713.23 to qualify as a waste treatment management agency under §208(c) of the Federal Water Pollution Control Act, as amended, and 40 C.F.R. §§130.15 and 131.11(o), with authority to implement and enforce the components set forth in 40 C.F.R. 131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix) to the extent that such components may be satisfied by, or in connection with, experimental or demonstration projects; whether such authority exists depends upon the terms of the particular Water Quality Management Plan.

4. Regardless of any steps that may be taken by boards or commissions which are members of a regional planning commission, a regional planning commission cannot have the legal authority required to implement and enforce the components set forth in 40 C.F.R. 131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix) to the extent that such components cannot be satisfied by, or in connection with, experimental or demonstration projects, or the components set forth in 40 C.F.R. 131.11(o)(2)(v) and (vi).

To: James F. McAvoy, Director, Ohio Environmental Protection Agency, Columbus, Ohio

By: William J. Brown, Attorney General, May 24, 1979

I have before me a request from your predecessor, Ned E. Williams, for my opinion on matters relating to water quality management. The letter of request includes the following explanation:

> Pursuant to the Congressional mandate of the Federal Water Pollution Control Act Amendments (P.L. 92-500) including the Clean Water Act of 1977 (P.L. 95-217) and subsequent regulations (40 CFR Parts 130 and 131), Ohio's six designated Water Quality Management planning agencies are developing recommended management structures to implement all elements of the regulations (including those for both point and non-point sources of pollution) of a Water Quality Management Plan. These management structures will guide the improvement and maintenance of the State's water quality as well as being requisite to the State being able to continue construction grant approvals and issuance of NPDES permits for wastewater facilities.
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> . . . .
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> Principal assumptions made by the local planning agencies include:
>
> 1) An existing Council of Governments (COG) is the logical and appropriate forum for implementation and enforcement of a Water Quality Management Plan;
>
> A. COG has all necessary powers vested in it by member governments (through resolution) to be an "areawide" water quality policy-making body;

There is sufficient authority under the Ohio Revised Code (ORC), specifically under Section 167.01 through 167.08 ORC, for a COG to perform Water Quality Management policy and implementation roles as defined by P.L. 92-500 and associated Federal regulations; and

A COG does or can have the legal authority to implement and enforce a Water Quality Management Plan in the absence of any other management agency designated by the Governor; and

2) A Regional Planning Commission (RPC) under the ORC has sufficient powers to be an areawide policy body; or through contractual agreements and/or expansion of RPC powers, [an] RPC can be an "areawide" policy-making body for a Water Quality Management Plan; and an RPC, in the absence of any other management agency designated by the Governor, can implement and enforce a Water Quality Management Plan.

The letter requests my opinion on each of the following questions:

1) Under the Ohio Revised Code, does a COG have sufficient powers and adequate board representation to qualify as the "areawide" policy body (under 40 CFR Parts 130, 131) and does the board have the legal authority to implement and enforce all components (both point and non-point source) of a Water Quality Management Plan (with mechanisms for local conflict resolution and/or binding arbitration, etc.) in the absence of any other management agency designated by the Governor?

2) Under the existing Ohio Revised Code, does an RPC have sufficient powers and adequate board representation to qualify as the "areawide" policy body and does it have the legal authority to implement and enforce all components of a Water Quality Management Plan in the absence of any other management agency designated by the Governor?

3) If it is the opinion of the Attorney General that sufficient powers and adequate board representation do not exist under the Ohio Revised Code, what procedures could be taken, if any, by a COG to gain sufficient powers and adequate board representation?

4) If it is the opinion of the Attorney General that sufficient powers and adequate board representation do exist under the Ohio Revised Code, what procedures and charter provisions must be developed for a COG to be the "areawide" policy body with legal authority to implement and enforce a Water Quality Management Plan?

5) If it is the opinion of the Attorney General that sufficient powers and adequate board representation do not exist under the Ohio Revised Code, what steps must be taken, if any, by the boards or

commissions of the RPC's to gain sufficient powers and adequate representation?

6) If it is the opinion of the Attorney General that sufficient powers and adequate board representation do exist under the Ohio Revised Code, what procedures and charter provisions must be developed for the RPC's to become the "areawide" policy bodies with legal authorities to implement and enforce a Water Quality Management Plan?

I will address, first, questions 1, 3, and 4, which pertain to regional councils of government (COG's). A regional council of governments may be established under R.C. Chapter 167 by the governing bodies of two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions of Ohio, or the corresponding bodies of other states. A COG has authority under R.C. 167.03 to carry out a number of different activities which pertain to planning, making studies, promoting cooperative arrangements, making and reviewing recommendations, and coordinating planning for the area. Under R.C. 167.03(C), a COG may, if the governing bodies of its members take appropriate action, undertake "such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern."

R.C. 167.08 authorizes a COG, under contract, to perform any function or render any service which a political subdivision may perform or render. It provides:

> The appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may contract with any council established pursuant to sections 167.01 and 167.07, inclusive, of the Revised Code to receive any service from such council or to provide any service to such council. Such contracts may also authorize the council to perform any function or render any service in behalf of such counties, municipal corporations, townships, special districts, school districts, or other subdivisions, which such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may perform or render.

A political subdivision may authorize a COG to perform only such functions and duties as the political subdivision is capable of performing. See 1971 Op. Att'y Gen. No. 71-010. It is clear that the powers which a COG may have will depend upon the type of governing bodies which constitute the membership of the COG and also upon the actions taken by particular political subdivisions.

The first question of your predecessor's letter asks, in part, whether a COG has sufficient powers and adequate board representation to qualify as "the 'areawide' policy body" under 40 C.F.R. Parts 130 and 131. " 'Areawide' policy body" is not a term which appears in the Federal Water Pollution Control Act (FWPCA) or regulations thereunder. By means of communications with the Ohio EPA staff, I have determined that your predecessor did not use the term " 'areawide' policy body" to mean "designated areawide planning agency" as defined in 40 C.F.R. §130.2(j) and described in 40 C.F.R. §130.13(c), nor to mean "policy advisory committee" as that term is used in 40 C.F.R. §130.16(c) and (d); rather, your predecessor used the term " 'areawide' policy body" to mean "waste treatment management agency," as that term is used in §208(c) of the FWPCA, as amended, and 40 C.F.R. §§130.15 and 131.11(o).

When the Governor submits a Water Quality Management Plan to the Administrator of the United States Environmental Protection Agency under §208 of the FWPCA, the Governor is required to designate one or more waste treatment management agencies to carry out the Plan. Under §208(c)(2) of the FWPCA, the Administrator is required to accept the designation made by the Governor unless he finds that there is not adequate authority in the designated agency or agencies. There is no need for a single management agency to have legal authority to implement and enforce all components of a Water Quality Management Plan; rather, the tasks may be divided as best suits a particular state. No requirements concerning representation, as such, are applicable to a waste treatment management agency. A COG which has authority to carry out any part of a Water Quality Management Plan may be designated as the management agency with such responsibility.

The first question of your predecessor's letter is framed in terms of board representation and legal authority of the board. The word "board" is used in connection with regional councils of government in R.C. 167.04, which authorizes a COG to adopt bylaws creating a governing board that may act for the COG as provided by its bylaws. The authority of a particular board will depend upon the bylaws which the COG adopts, but clearly cannot exceed the authority of the COG. If the governing board is to act on behalf of the COG, pursuant to bylaws adopted under R.C. 167.04, to carry out any portion of a Water Quality Management Plan, the board need not have any particular sort of representation; the board need only have adequate authority to carry out such portion of the Plan.

Whether a COG, or its governing board, will have the legal authority to implement and enforce a specific component of a Water Quality Management Plan will depend upon the particular COG, the bylaws which establish its board, and the provisions of the Water Quality Management Plan. Which political subdivisions will be required to act to carry out a Water Quality Management Plan will depend upon the terms of the Plan; to the extent that functions assigned by law solely to the Director of Environmental Protection, the Chief of the Division of Soil and Water Districts of the Department of Natural Resources, or other State officials are part of an approved Plan, a COG will be unable to implement the entire Plan in a particular area.

Until the Plan is completed and approved, it is impossible to know precisely what legal authority will be required to implement and enforce it; however, 40 C.F.R. §131.11(o)(2), based directly on §208(c)(2) of the FWPCA, sets forth the authority which may be required of a management agency, as follows:

> Depending upon an agency's assigned responsibilities under the plan, the agency must have adequate authority and capability:
>
> (i) To carry out its assigned portions of an approved State water quality management plan(s) (including the plans developed for areawide planning areas designated pursuant to Section 208(a)(2), (3), or (4) of the Act) developed under . . . [40 C.F.R. Part 131];
>
> (ii) To effectively manage waste treatment works and related point and nonpoint source facilities and practices serving such area in conformance with the approved plan;
>
> (iii) Directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any approved water quality management plan developed under . . . [40 C.F.R. Part 131];

(iv) To accept and utilize grants or other funds from any source for waste treatment management or nonpoint source control purposes;

(v) To raise revenues, including the assessment of user charges;

(vi) To incur short and long-term indebtedness;

(vii) To assure, in implementation of an approved water quality management plan, that each participating community pays its proportionate share of related costs;

(viii) To refuse to receive any wastes from a municipality or subdivision thereof, which does not comply with any provision of an approved water quality management plan applicable to such areas; and

(ix) To accept for treatment industrial wastes.

Since I am not familiar with the provisions which will appear in Ohio's Water Quality Management Plans, I assume, for purposes of this opinion, that all of the capabilities listed in 40 C.F.R. §131.11(o)(2)(ii) through (ix) will be required to carry out each Plan. I shall not attempt to predict what additional capabilities may be required to satisfy 40 C.F.R. §131.11(o)(2)(i).

R.C. 167.01 extends the potential membership of COG to all political subdivisions. The term "political subdivision" is used there in its general sense, to encompass all types of public agencies authorized to exercise governmental functions. See 1972 Op. Att'y Gen. No. 72-039, in which I determined 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.) R.C. 167.02(C) authorizes the State of Ohio to be ex officio member of every COG and prohibits it from being a voting member of a COG.

Among those political subdivisions with authority to manage waste treatment works and related point source facilities in Ohio are municipalities (Ohio Const. art. XVIII, §4; R.C. 715.40), boards of county commissioners (R.C. 6117.01), soil and water conservation districts (R.C. Chapter 1515), conservancy districts (R.C. Chapter 6101), sanitary districts (R.C. Chapter 6115), and regional water and sewer districts (R.C. Chapter 6119). The authority of any political subdivision or other person to construct and manage waste treatment works is subject to plan approval by the Director of Environmental Protection under R.C. 6111.44 and 6111.45 and general supervision by the Director under R.C. 6111.46.

The authority to manage non-point source practices is not given to all of the political subdivisions listed above. Municipalities may adopt standards governing such practices under the authority of Ohio Const. art. XVIII, §3. Boards of county commissioners are authorized by R.C. 307.79 to adopt rules establishing management practices for nonfarm uses of land outside of municipal corporations for purposes of implementing the applicable Waste Treatment Management Plan; however, such rules are subject to repeal by voters within the county under R.C. 307.791. Under R.C. 1515.30(E), the Chief of the Division of Soil and Water Districts of the Department of Natural Resources may also adopt rules governing nonfarm practices, to apply in municipalities and counties that do not adopt their own rules for such sources. Authority to adopt rules establishing management practices for farming and silvicultural operations and for concentrated animal feeding operations on farms is granted to the Chief by R.C. 1515.30(E). R.C. 1515.31 authorizes the Chief to enter into cooperative agreements with the board of

supervisors of any soil and water conservation district to obtain compliance with the Chief's rules and orders pertaining to agricultural and urban sediment pollution abatement. While the Chief is authorized to administer rules pertaining to animal waste management, enforcement powers under R.C. 1515.30 are limited to enforcement of rules pertaining to animal waste management. The Chief, a State official, cannot be a member of a COG; however, the soil and water conservation districts with which the Chief may enter into agreements are political subdivisions under R.C. 1515.04 that can assign their functions to a COG pursuant to R.C. Chapter 167.

If any political subdivision with authority to manage waste treatment works or related point or non-point source facilities is a member of a COG, and if such subdivision has undertaken the management of such works or facilities, the subdivision may, by appropriate action, authorize the COG to carry out its management functions under R.C. 167.03(C), to the extent that such management is necessary or desirable for dealing with problems of mutual concern. Similarly, a COG may enter into a contract under R.C. 167.08 to provide such management services to a political subdivision. By these methods, members of a COG may authorize the COG — and, pursuant to the bylaws of the COG, the governing board — to manage facilities and practices in conformance with a Water Quality Management Plan, as required by 40 C.F.R §131.11(o)(2)(ii). Such actions may include authorization to accept industrial wastes for treatment, as required by 40 C.F.R. §131.11(o)(2)(ix), and to refuse wastes from a municipality or subdivision thereof which does not comply with any provision of an approved Water Quality Management Plan, as required by 40 C.F.R. §131.11(o)(2)(viii), to the extent that particular subdivisions have such authority.

The steps which must be taker by a subdivision to transfer its management functions to a COG will depend upon the particular subdivision; for example, in a municipality governed by R.C. 729.50, action by the director of public service would be necessary to designate a COG as agent for purposes of managing the sewage treatment works. The question whether the authority granted to governmental bodies by existing statutes is sufficient to authorize effective management in compliance with federal requirements is subject to determination by the United States Environmental Protection Agency.

It should be noted that R.C. 167.02(D) permits any member of a COG to withdraw from the COG upon sixty days notice or in the manner provided in the agreement establishing the COG; no such agreement may require a political subdivision desiring to withdraw to retain its membership for a period in excess of two years. The possibility that members will withdraw might affect the effectiveness with which a COG undertakes management functions. In 1972 Op. Att'y Gen. No. 72-097 I discussed a similar concern pertaining to withdrawal from a garbage and refuse district created under R.C. Chapter 343.

The authority to design and construct new waste treatment works and to operate and maintain new and existing works is linked closely with the authority to manage such works. The political subdivisions discussed above — municipal corporations, counties, soil and water conservation districts, conservancy districts, sanitary districts, and regional water and sewer districts — have authority to design and construct and to operate and maintain new works, subject to plan approval and supervision by the Director of Environmental Protection. Which of the political subdivisions must act to effect a Water Quality Management Plan will depend upon the terms of the Plan. The functions of designing, constructing, operating, and maintaining particular works, required by 40 C.F.R. §131.11(o)(2)(iii), may be delegated to the COG, as permitted by R.C. 167.03(C) and 167.08, by a political subdivision which has taken the steps necessary to undertake such functions. For example, Ohio Const. art. XVIII, §5, requires that a municipality proceeding to construct or operate a public utility, or to contract with any person or company therefor, shall act by ordinance, which shall be subject to a referendum demand by the voters. Similarly, R.C. 6117.06 provides that, prior to construction of an improvement by a county, the board of county commissioners must approve plans

submitted by the sanitary engineer, adopt a resolution declaring that the improvement is necessary, and hold a hearing on the resolution.

The capability to accept and utilize grants or other funds from any source for waste treatment management or non-point source control purposes may be necessary to carry out a Water Quality Management Plan, as provided by 40 C.F.R. §131.11(o)(2)(iv). R.C. 167.06 authorizes a COG to accept grants. It provides:

> 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.

The statute does not restrict the use of such funds. Under this provision, a COG may use funds from any source for waste treatment management or non-point source control purposes to the extent that the COG is authorized to carry out those activities and to the extent that the grantor of the funds permits such use. If it is necessary to enter into a contract to obtain a grant, a COG may do so under R.C. 167.03. See 1968 Op. Att'y Gen. No. 68-004.

R.C. 167.06(A) authorizes a COG to accept funds or services from its member governments and to establish schedules of dues to be paid by its voting members. It provides:

> 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.

This authority will permit a COG, by adoption of the appropriate provisions, to assure that, as long as a political subdivision is a voting member of a COG, such community pays its proportionate share of costs related to implementation of an approved Water Quality Management Plan, as required by 40 C.F.R. §131.11(o)(2)(viii). Alternatively, costs might be allocated by contract under R.C. 167.08, whether or not the particular political subdivision is a member of a COG.

R.C. 167.06(A) and (B) are the only provisions of R.C. Chapter 167 which deal with financial operations of a COG. A COG is given no authority to raise revenues by means other than acceptance of grants and assessments of its members. As I stated in 1974 Op. Att'y Gen. No. 74-080:

> R.C. 167.06 provides that a council of governments may be funded by appropriations of its member subdivisions and by grants from the state and the United States. There is no indication of a legislative intent to confer taxing power upon such a council, which would make it, in effect, a governmental subdivision rather than a council of subdivisions.

I concluded, in 1973 Op. Att'y Gen. No. 73-119, that a COG may, by agreement of its members and in accordance with necessary action taken by its members, collect income taxes assessed by its members on their behalf. It does not follow, however, that a COG may impose assessments on persons other than its member governments. In 1971 Op. Att'y Gen. No. 71-010, my predecessor stated:

> It is noted that a [regional] council [of governments] 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. (Emphasis from the original.)

It is my opinion that this limitation on the authority of a COG extends also to the assessment of user charges and, therefore, that a COG may not assess user charges as required by 40 C.F.R. §131.11(o)(2)(v). While a COG might, if properly authorized, carry out the ministerial duty of collecting user charges on behalf of a political subdivision, it cannot be empowered to make the decision to charge such fees.

I reach the same conclusion with respect to incurring debt. Members of a COG may have authority to borrow money in different manners. (See, e.g., R.C. 6101.46 and 6101.50, which authorize the board of directors of a conservancy district to borrow money and issue notes therefor.) R.C. Chapter 167 does not prevent a political subdivision from incurring debt to pay its dues to the COG; however, the chapter does not suggest that a COG may be authorized, even by agreement of its members, to incur debt, as required by 40 C.F.R. §131.11(o)(2)(vi). Although certain members of a COG may be "subdivisions" for purposes of the Uniform Bond Law (R.C. Chaper 133), a COG is not included within the definition of "subdivision" which appears in R.C. 133.01(A) and, therefore, cannot issue bonds under that chapter. A similar conclusion concerning the authority of a joint board of county commissioners was reached in 1959 Op. Att'y Gen. No. 499. 1974 Op. Att'y Gen. No. 74-080 is related; in that opinion, I determined that a regional council of school districts does not qualify as a "school district" for purposes of R.C. Chapter 3317, and, therefore, cannot be granted school foundation payments pursuant to that chapter. Even if a COG were authorized to incur debt, the possible transiency of its membership would seem to restrict the prospects for undertaking long-term debt.

In answer to your predecessor's first question, I conclude that, depending upon the membership of a COG, the agreements, bylaws, and contracts under which it operates, and the actions of its member governments, a COG — or its governing board — may have sufficient powers to qualify as a waste treatment management agency under §208(c) of the FWPCA, as amended, and 40 C.F.R. §§130.15 and 131.11(o), with authority to implement and enforce the components set forth in C.F.R. §131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix); however, regardless of the agreements, bylaws, and contracts under which it operates and the actions of its member governments, a COG will never have the authority required to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(v) and (vi), for it may not assess user charges or incur debt. In addition, the activities of a COG will be subject to approval or control by State agencies in many respects. To the extent that responsibilities assigned to State agencies are part of a Water Quality Management Plan, a COG will not have authority to implement all components of the Plan.

The answer to your predecessor's third question is essentially the same. While a COG may increase its powers to carry out a Water Quality Management Plan by expanding its membership, broadening its bylaws or the agreement by which it is established, or entering into contracts, it is unable to take on all powers that may be necessary for implementation and enforcement of a Water Quality Management Plan.

Your predecessor's fourth question is related, for it asks what procedures and charter provisions are necessary to enable a COG to implement and enforce a Water Quality Management Plan. Without knowing the elements of the Plan or the

membership of the COG, it is impossible to propose specific language. The types of provisions which would expand a COG's power are suggested in the preceding discussion. While a COG cannot be empowered to assess user charges or incur debt, it can be given responsibility for carrying out such duties as it is authorized to undertake.

Turning now to questions 2, 5, and 6 of your predecessor's letter, the considerations are very much the same. The basic question is whether a regional planning commission (RPC) has authority to carry out those functions which are addressed above with respect to councils of governments.

Under R.C. 713.21, a regional planning commission may be created through the cooperation of:

> [t]he planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county . . . .

The RPC may provide for participation by school districts, authorities, and other units of local government upon terms that it sets. The authority of the RPC to prepare and consider plans extends throughout the area which the RPC covers, excluding any municipalities without planning commissions.

As discussed above, an entity need not have any particular membership or representation to be a waste treatment management agency. It need only have authority to carry out its assigned responsibilities under the Water Quality Management Plan. Therefore, regardless of its membership, an RPC may be designated as a waste treatment management agency with responsibility for carrying out such duties as it is authorized to perform.

R.C. 713.23 sets forth the powers of an RPC. They include the following:

> (A) The regional . . . planning commission may make studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the region. . . . The commission may make such studies, maps, plans, recommendations, and other reports as to areas outside the region . . . concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects which affect the development and welfare of the region . . . as a whole or as more than one political unit with the region. . . .
>
> (B) The duties of the planning commission include but are not limited to:
>
> (1) Preparing the plans, including studies, maps, recommendations, and reports on:
>
> (a) Regional goals, objectives, opportunities, and needs, and standards, priorities, and policies to realize such goals and objectives;
>
> . . .
>
> (d) The general land, water, and air

> transportation systems, and utility and communication systems;
>
> (e) General locations and extent of public and private works, facilities, and services;
>
> (f) General locations and extent of areas for conservation and development of natural resources and the control of the environment;
>
> (g) Long-range programming and financing of capital projects and facilities.
>
> (2) Promoting understanding of and recommending administrative and regulatory measures to implement the plans of the region;
>
> . . .
>
> (4) Contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils; coordinating the planning with neighborhood planning areas; cooperating with the state and federal governments in coordinating planning activities and programs in the region;
>
> (5) Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; making recommendations to achieve compatibility in the region;
>
> (6) Reviewing, evaluating, and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area;
>
> (7) Undertaking other studies, planning, programming, conducting experimental or demonstration projects found necessary in the development of plans for the region . . . , and coordinating work and exercising all other powers necessary and proper for discharging its duties.

As discussed above, until the Water Quality Management Plan is approved, it is impossible to know what authority will be necessary to carry out the Plan in compliance with 40 C.F.R. §131.11(o)(2)(i). For purposes of this opinion, I assume that all capabilities listed in 40 C.F.R. §131.11(o)(2)(ii) through (ix) will be required.

The powers granted to an RPC by R.C. 713.23 are all related to planning, evaluation, and recommendation. After an RPC has prepared a plan under R.C. 713.23, it is required to certify such plan to each planning commission and board of county commissioners within the planned area pursuant to R.C. 713.23. If a city planning commission or board of county commissioners adopts the plan, the plan takes legal effect under R.C. 713.25, as provided by law or charter; otherwise, it remains merely a recommendation. See State ex rel. Kearns v. Ohio Power Co., 163

Ohio St. 451 (1955); State ex rel. Ohio Power Co. v. Franklin County Regional Planning Commission, 158 Ohio St. 496 (1953). Under R.C. 713.25, any departure from a plan approved by a board of county commissioners must be approved by the board. If a board of county commissioners adopts a plan concerning the location of a sewage or garbage disposal plant, the plan ceases to be of effect in that respect unless the board acts within six months to purchase the site or begin appropriation proceedings. Thus, an RPC must rely on other bodies to bring its plans into effect.

After a plan prepared by an RPC is adopted, the RPC may be required to carry out ministerial functions relating to the approval of plats under R.C. 711.10 and 711.101. See 1973 Op. Att'y Gen. No. 73-040; 1972 Op. Att'y Gen. No. 72-020. An RPC is given no general authority to carry out ministerial acts on behalf of its members.

R.C. 713.21 authorizes an RPC to contract for professional or consultant services from other governmental and private agencies and persons; however, such authority must be restricted to the activities which the RPC is authorized to carry out. Since an RPC is a creature of statute, its powers cannot be extended beyond those granted by statute. See 1966 Op. Att'y Gen. No. 66-147.

The only basis on which an RPC might manage waste treatment works and related point and non-point source facilities and practices, as required by 40 C.F.R. §131.11(o)(2)(ii), or design and construct new works and operate and maintain new and existing works, as required by 40 C.F.R. §131.11(o)(2)(iii), is if such works or facilities are experimental or demonstration projects under R.C. 713.23(B)(7), found necessary in the development of plans for the region.

The capacity of an RPC to accept industrial waste for treatment, as required by 40 C.F.R. §131.11(o)(2)(ix), or to refuse to receive wastes from a municipality or subdivision thereof which does not comply with an applicable provision of a Plan, as required by 40 C.F.R. §131.11(o)(2)(viii), can be exercised only within these parameters. The process of plat approval might be used to direct the flow of such wastes, if appropriate plans are approved and rules adopted; however, action by bodies other than the RPC will be necessary for such result.

The financial activities of an RPC are governed by R.C. 713.21, which provides, in part:

> The number of members of such regional planning commission, their method of appointment, and the proportion of the costs of such regional planning to be borne respectively by the various municipal corporations, townships, and counties in the region and by other participating units of local government shall be such as is determined by a majority of the planning commissions and boards . . . . Such boards and legislative authorities of such municipal corporations, and the governing bodies of other participating units of local government, may appropriate their respective shares of such costs. The sums so appropriated shall be paid into the treasury of the county in which the greater portion of the population of the region is located, and shall be paid out on the certificate of the regional planning commission and the warrant of the county auditor of such county for the purposes authorized by sections 713.21 to 713.27, inclusive, of the Revised Code. The regional planning commission may accept, receive, and expend funds, grants, and services from the federal government or its agencies, from departments, agencies, and instrumentalities of this state or any adjoining state or from one or more counties of this state or any adjoining state or from any

> municipal corporation or political subdivision of this or any adjoining state, including county, regional, and municipal planning commission of this or any adjoining state, or from civic sources, and contract with respect thereto, either separately, jointly, or cooperatively, and provide such information and reports as may be necessary to secure such financial aid. Within the amounts thus agreed upon and appropriated or otherwise received, the regional planning commission may employ engineers, accountants, consultants, and employees as are necessary and may rent or lease such space, purchase, lease, and lease with option to purchase such equipment, and make such purchases as it deems necessary to its use.

These provisions permit the RPC, in carrying out its duties, to assure that each participating community pays its proportionate share of related costs. Thus, if an RPC is authorized to implement any portion of an approved Water Quality Management Plan, it can satisfy 40 C.F.R. §131.11(o)(2)(vii) with respect to such portion of the Plan.

An RPC is authorized by R.C. 713.21 to accept, receive, and expend grants and other funds from governmental or civic sources. To the extent that the RPC can carry out waste treatment management or non-point source control, it can satisfy 40 C.F.R. §131.11(o)(2)(iv).

An RPC is not authorized to raise revenue except by establishing the proportion of its costs to be paid by each of its members and by other participating units of local government. Therefore, it cannot assess user charges as required by 40 C.F.R. §131.11(o)(2)(v).

An RPC is not authorized to incur debt. Rather, R.C. 713.21 contemplates that it will spend only such money as it has received, and R.C. 713.23 limits its activities regarding the financing of capital projects to preparing plans and studies. As a result, an RPC cannot satisfy 40 C.F.R. §131.11(o)(2)(vi).

In response to your predecessor's second question, I conclude that, depending upon the terms of a particular Water Quality Management Plan, an RPC may qualify as a waste treatment management agency under §208(c) of the FWPCA, as amended, and 40 C.F.R. §§130.15 and 131.11(o) for the purposes of implementing the components set forth in 40 C.F.R. §131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix), to the extent that such components may be satisfied by, or in connection with, experimental or demonstration projects. An RPC will not be able to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(v) and (vi).

The answers to your predecessor's fifth and sixth questions follow directly. The powers of an RPC cannot be expanded beyond those granted by statute. There are no steps which can be taken by an RPC or by its members to give an RPC all of the capabilities listed in 40 C.F.R. §131.11(o)(2)(i) through (ix).

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

1. A regional council of governments established under R.C. Chapter 167, or its governing board, may have sufficient powers to qualify as a waste treatment management agency under §208(c) of the Federal Water Pollution Control Act, as amended, and 40 C.F.R. §§130.15 and 131.11(o), with authority to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix); whether such authority exists depends upon the membership of the council of governments, the

agreements, bylaws, and contracts under which it operates, the actions of its member governments, and the terms of the particular Water Quality Management Plan.

2. Regardless of the agreements, bylaws, and contracts under which a council of governments operates and the actions of its member governments, a council of governments cannot have the legal authority required to implement and enforce the components set forth in 40 C.F.R. §131.11(o)(2)(v) and (vi).

3. A regional planning commission may have sufficient powers under R.C. 713.23 to qualify as a waste treatment management agency under §208(c) of the Federal Water Pollution Control Act, as amended, and 40 C.F.R §§130.15 and 131.11(o), with authority to implement and enforce the components set forth in 40 C.F.R 131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix) to the extent that such components may be satisfied by, or in connection with, experimental or demonstration projects; whether such authority exists depends upon the terms of the particular Water Quality Management Plan.

4. Regardless of any steps that may be taken by boards or commissions which are members of a regional planning commission, a regional planning commission cannot have the legal authority required to implement and enforce the components set forth in 40 C.F.R. 131.11(o)(2)(ii), (iii), (iv), (vii), (viii), and (ix) to the extent that such components cannot be satisfied by, or in connection with, experimental or demonstration projects, or the components set forth in C.F.R. 131.11(o)(2)(v) and (vi).