

May 19, 2025

The Honorable Elliot Kolkovich
Summit County Prosecuting Attorney
53 University Avenue, 6th floor
Akron, Ohio 44308-1680

SYLLABUS:

2025-009

1. Neither R.C. 307.07 nor R.C. 307.85(A) provide an Ohio county or a multi-county joint office of economic development the authority to apply for and accept a grant of authority from the Foreign-Trade Zones Board to be a foreign trade zone grantee under 15 C.F.R. 400.12.
2. A foreign trade zone grantee may be either a port authority or a corporation organized and chartered for the purpose of establishing, operating, and maintaining a foreign trade zone.
3. A multi-county joint office of economic development is not a corporate entity under Ohio law, but it has authority to contract with a corporate non-profit organization to carry out the functions and duties of the office. A joint office of economic development created under R.C. 307.07(A)(3) is a public office of a political subdivision. R.C. 307.85(A) is not the functional equivalent of R.C. 1743.11.



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May 19, 2025

OPINION NO. 2025-009

The Honorable Elliot Kolkovich
Summit County Prosecuting Attorney
53 University Avenue, 6th floor
Akron, Ohio 44308-1680

Dear Prosecutor Kolkovich,

You have requested an opinion regarding:

1. Whether either R.C. 307.07 or 307.85(A) provide an Ohio county the authority to apply for and accept a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 15 C.F.R. 400.12?
2. Whether there is any other enabling legislation that does give an Ohio county the authority to act as a foreign trade zone grantee under 15 C.F.R. 400.12?
3. Where several counties form a joint office of economic development ("JOED") under R.C. 307.07(C) through a cooperative agreement, is the JOED authorized under R.C. 307.85, as enabling legislation, to apply for, and accept, a

grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 15 C.F.R. 400.12?

4. Whether a JOED is a corporate entity under Ohio law? If not, is R.C. 307.85(A) a functional equivalent to R.C. 1743.11 with respect to an individual county or a JOED being authorized to apply for, and accept, a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 19 U.S.C.A. 81A and 15 C.F.R. 400.12, understanding that R.C. 307.85(A) is a much broader grant of authority with respect to any federal program?

I

The U.S. Foreign-Trade Zones Act of 1934 authorizes the establishment of foreign trade zones. A foreign trade zone (FTZ) is a site or location *inside* the United States that, for customs purposes, is legally considered *outside* of the United States. An FTZ allows for customs duty deferral, reduction, or elimination, depending on the circumstances. The Foreign-Trade Zones Board promulgated 15 C.F.R. 400.12 to establish rules for who is eligible to apply to the Foreign-Trade Zones Board “for grants of authority to establish” such zones.

Id. 15 C.F.R. 400.12 describes eligible applicants as follows:

- (a) In general. Subject to the other provisions of this section, public or private corporations may apply for grants of authority to establish zones. The Board shall give preference to public corporations.
- (b) Public corporations and private non-profit corporations. The eligibility of public corporations and private nonprofit corporations to apply for a grant of authority *shall be supported by enabling legislation of the legislature* of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply. Any application must not be inconsistent with the charter or organizational papers of the applying entity. (Emphasis added.)

Federal regulations, therefore, require that before a public corporation or private non-profit corporation may apply for FTZ status, the state needs to adopt enabling legislation authorizing the entity, “individually

or as part of a class,” to apply. *Id.* The Ohio General Assembly has enacted three specific statutes that serve as such enabling legislation: R.C. 1743.11, 4582.06(A)(7), and 4582.31(A)(9). Before addressing those statutes, I will review the relevant portions of Ohio law referenced in your questions.

R.C. 307.07 pertains to a county office of economic development and provides in relevant part:

(A) The board of county commissioners, by resolution, may create an office of economic development, to develop and promote plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments. . . . The moneys so appropriated may be used for the creation and operation of the office, for any economic development purpose of the office, and to provide for the establishment and operation of a program of economic development, including in support of a county land reutilization corporation organized under Chapter 1724. of the Revised Code.

. . .

(C) The boards of county commissioners of two or more counties, by resolution, may create a joint office of economic development for the purposes set forth in division (A) of this section. The counties participating in a joint office of economic development shall enter into an agreement that sets forth the contribution of funds, services, and property to the joint office from each participating county; establishes the person, public agency, or nonprofit organization that shall carry out the functions and duties of the office; and discloses any other terms by which the joint office shall operate.

R.C. 307.85(A) generally authorizes a county to participate in and support federal programs. It provides in relevant part:

The board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States, or with any such agency or organization that is receiving federal funds pursuant to a federal program, and for

such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state.

Next, consider R.C. 4582.06(A)(7) and 4582.31(A)(9), which govern port authorities. Both statutes use similar terminology to expressly grant port authorities permission to apply to federal authorities to establish a federal trade zone. R.C. 4582.06(A)(7) states:

A port authority created in accordance with section 4582.02 of the Revised Code may:

...

(7) Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones and to establish, operate, and maintain foreign trade zones; and to acquire land or property therefor, in a manner consistent with section 4582.17 of the Revised Code.

R.C. 4582.31(A)(9) is substantially similar to the provision above but only applies to port authorities created after July 9, 1982, and certain port authorities in existence on that date. *See* R.C. 4582.202.

R.C. 1743.11 is also relevant to the analysis that follows. That statute pertains to a corporation's authority to establish and operate an FTZ:

Any corporation may be organized and chartered *for the purpose of establishing, operating, and maintaining a foreign-trade zone within this state* under the act of June 18, 1934, 48 Stat. 998, 19 U.S.C.A. 81A, as amended or reenacted, and may apply to the board created under that act for a grant of the privilege of establishing, operating, and maintaining such a zone. If the application is granted, the corporation may accept the grant and establish, operate, and maintain such a zone subject to the act, as amended or reenacted, and rules adopted thereunder. (Emphasis added.)

The entities authorized by R.C. 4582.06(A)(7), 4582.31(A)(9), and 1743.11 all fit within the categories of entities specified in 19 U.S.C. §81a. The term "corporation" is defined in 19 U.S.C. §81a in the following manner:

(d) The term "corporation" means a public corporation and a private corporation, as defined in this Act;

(e) The term “public corporation” means a State, political subdivision thereof, a municipality, a public agency of a State, political subdivision thereof, or municipality, or a corporate municipal instrumentality of one or more States;

(f) The term “private corporation” means any corporation (other than public corporation) which is organized for the purpose of establishing, operating, and maintaining a foreign-trade zone and which is chartered under special Act enacted after [June 18, 1934] of the State or States within which it is to operate such zone.

II

You ask whether R.C. 307.07 and 307.85 may be considered “enabling legislation” authorizing an Ohio county to apply and establish an FTZ. In your request, you note the concern expressed by the FTZ Board’s Executive Secretary that “there is no specific enabling legislation” for Summit County to create an FTZ.

Temporarily putting aside the three statutes that expressly provide authority for certain entities, you suggest that R.C. 307.07 and 307.85(A) may suffice as

enabling legislation. Neither statute, however, contains any specific reference to FTZ's.

From the federal standpoint, 15 C.F.R. 400.12 specifies who is eligible to apply to the Foreign-Trade Zones Board for a grant of authority to establish an FTZ: "Subject to the other provisions of this section, public or private corporations may apply for grants of authority to establish zones. The [FTZ] Board shall give preference to public corporations." However, "[t]he *eligibility* of public corporations and private non-profit corporations to apply for a grant of authority *shall be supported by enabling legislation* of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, *is authorized* to so apply." (Emphasis added.) 15 C.F.R. 400.12(a) and (b).

A

R.C. 307.07 authorizes a board of county commissioners to create an office of economic development. The general purpose of an office of economic development is "to develop and promote plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments." R.C. 307.07(A). The boards of county commissioners of two or more counties may create a JOED for their region. R.C.

307.07(C). In this context, “economic development” is defined in part as “assisting in the establishment or expansion within the county or counties of industrial, commercial, or research facilities and by creating and preserving job and employment opportunities for the people of the county or counties.” R.C. 307.64 and 307.07(D).

Instead of hiring a director of economic development, the county (or multi-county JOED) may “[e]nter into an agreement with a public or private nonprofit organization to carry out all of the functions and duties of a director of economic development.” R.C. 307.07(A)(3) and (C). If a nonprofit organization operates the office of economic development, its actions remain subject to approval by the participating boards of county commissioners. *Id.* R.C. 307.07 grants the director of economic development broad authority “to carry out the functions and duties of the office” and promote the region’s economic development. R.C. 307.07(B).

However, unlike the statutes governing port authorities or private corporations organized for the purpose of establishing an FTZ, R.C. 307.07 does not specifically authorize the director or office of economic development to apply for a federal grant of authority to establish and operate an FTZ. *Compare* R.C. 307.07 with R.C. 1743.11, 4582.06(A)(7), and 4582.31(A)(9). R.C. 307.07 makes no reference to the subject of FTZs or to the federal law governing FTZs. It therefore lacks the

necessary specificity to serve as the enabling legislation described in 15 C.F.R. 400.12.

B

R.C. 307.85(A) authorizes a board of county commissioners, generally, to “participate in, give financial assistance to, and cooperate with other agencies or organizations” in establishing and operating federal programs. The Attorney General previously examined the application of R.C. 307.85 and came to the general conclusion that “the clear purpose of R.C. 307.85 was to enable the county commissioners to exercise whatever power was necessary to participate in the operation of a federal program.” 1979 Ohio Atty.Gen.Ops. No. 1979-053, 2-169. For this purpose, R.C. 307.85(A) allows a board of county commissioners to “adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state.”

For example, in 1984 Ohio Atty.Gen.Ops. No. 1984-038, 2-121, syllabus (citations omitted), the Attorney General concluded:

Pursuant to R.C. 307.85(A), a board of county commissioners may contract with an agency or department of the federal government in order to participate in a flood control program established and

operated under 33 U.S.C. § 701s, provided that such contract does not require a county to perform acts in conflict with state law.

Similarly, in 2004 Ohio Atty.Gen.Ops. No. 2004-016, the Attorney General determined that Ohio Const., art. VIII, §13 and R.C. 307.85 authorizes a board of county commissioners to receive money from the Ohio Department of Development emanating from the federal Small Cities Community Development Block Grant program and to lend those moneys to a private for-profit business enterprise for economic development. Nonetheless, in examining the specific regulatory scheme of the Community Development Block Grant (CDBG), 24 C.F.R. 570, it becomes apparent that the CDBG does not require the same “enabling legislation” for eligibility that is embedded in the FTZ Act and the regulations in 15 C.F.R. 400.12.

Your letter requesting my opinion indicates that the FTZ Board’s Executive Secretary raised concerns that R.C. 307.85 is not specific enough to serve as enabling legislation for the FTZ. That concern has merit. Prior attorney general opinions analyzed the authorization in R.C. 307.85 for different, more general purposes unrelated to FTZ’s. Enabling legislation for an FTZ must indicate “that the corporation, individually or as part of a class, is authorized to so apply.” 15 C.F.R. 400.12.

The method that the General Assembly has chosen for this purpose is reflected in the enabling legislation enacted in R.C. 4582.06(A)(7), R.C. 4582.31(A)(9), and R.C. 1743.11. If the General Assembly had intended R.C. 307.85 to authorize participation of counties in FTZ's, it could easily have employed the same or similar language used elsewhere that plainly and clearly expresses that intent. *See Lake Shore Elec. Ry. Co. v. Pub. Util. Comm.*, 115 Ohio St. 311, 319 (1926). Because the General Assembly did not specifically reference FTZs in R.C. 307.85, I must conclude that it did not intend for this statute to authorize counties to directly apply to the FTZ Board for a "grant of the privilege of establishing, operating, and maintaining such a zone." R.C. 1743.11.

C

You also point to R.C. 1743.11 as a potential source for the enabling legislation necessary for a county to apply for an FTZ grant of privilege. R.C. 1743.11 provides that "[a]ny corporation may be organized and chartered for the purpose of establishing, operating, and maintaining a foreign-trade zone within this state under the act of June 18, 1934, 48 Stat. 998, 19 U.S.C.A. 81A." There are two important reasons, however, why this statute is not applicable to a county or a multi-county JOED even when one of the JOED participants is a charter county.

First, a county is not the type of corporation that the statute contemplates. It is noteworthy that R.C. 1743.11 is located in Title 17 of the Revised Code, which pertains generally to private for-profit and non-profit corporations. More specifically, R.C. 1743.11 is nestled within the chapter of Title 17 pertaining to specialized *non-governmental* corporations, such as those relating to building maintenance, common carriers, protecting and preserving dead bodies, homes for the aged and indigent, caring for persons who are deaf and mute, elevator, and fishery companies, to name a few. *See* R.C. 1743.01 to 1743.11.

A county, however, is a political subdivision of the state even when it operates, as Summit County does, under a charter form of county government. “[A county charter] shall provide for the exercise of all powers vested in, *and the performance of all duties imposed upon counties and county officers by law.*” (Emphasis added.) Ohio Const., art. X, §3. A charter authorizes a county to deviate in certain respects from some state statutes, but the county must still comply with others. As explained in *State ex rel. O’Connor v. Davis*, 139 Ohio App.3d 701, 705 (9th Dist. 2000):

The Ohio Supreme Court has held that *Section 3, Article X of the Ohio Constitution*, which allows the people of a county to establish a charter form of government, does not limit the power of the

General Assembly “by general laws to provide for the *** ‘government of counties’” under Section 1, Article X. *Blacker v. Wiethe* (1968), 16 Ohio St. 2d 65, 242 N.E.2d 655, paragraph three of the syllabus. Thus, while the powers and duties of county government are established by the general laws of the State of Ohio, the charter document provides for the “form” as well as the “exercise” and “performance” of those powers and duties.

The Court concludes that “[w]hen a charter form of government attempts to exercise powers exceeding those conferred by the Ohio Constitution and the Revised Code, it lacks authority to do so.” *Id.*

Although R.C. 301.22 designates a county that adopts a charter as a “body politic and corporate,” that status does not transform a public governmental entity into a private corporation. The Ohio Supreme Court has concluded that “a body corporate and politic is a governmental body or public corporation having powers and duties of government. * * * [It is a body] created by the state for political purposes and to act as an agency in the administration of civil government, * * * and usually invested, for that purpose, with subordinate and local powers of legislation.” *Weber v. Oriana House*, 1995 WL 623068, *11 (9th Dist. Oct. 25, 1995), quoting *Hamilton Cty. Bd. of Mental Retardation and*

Developmental Disabilities v. Professionals Guild of Ohio, 46 Ohio St. 3d 147, 150 (1989).

Moreover, eligibility to apply for an FTZ grant of authority pursuant to 15 C.F.R. 400.12 requires the applicant to “be supported by enabling legislation of *the legislature* of the state.” (Emphasis added.) 15 C.F.R. 400.12(b). There is no state statutory provision specifically authorizing a charter county, or a JOED that includes a charter county as one of its participants, to apply for an FTZ.

The over-riding purpose for creating a county department of economic development or a JOED is not “for the purpose of establishing, operating, and maintaining a foreign-trade zone within this state,” as required by R.C. 1743.11. Rather, the overall purpose of a county department of economic development or JOED is “to develop and promote plans and programs designed to assure that county resources are efficiently used, economic growth is properly balanced, and that county economic development is coordinated with that of the state and other local governments.” R.C. 307.07(A).

When analyzing the text of a statute, “it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation.” *State v. Frost*, 57 Ohio St.2d 121, 125 (1979). If the General Assembly intended to authorize a board of

county commissioners or JOED to apply for and obtain a grant of authority to operate an FTZ, it would likely have employed language it previously used to plainly and clearly compel that result. *See Lake Shore Elec. Ry. Co. v. Pub. Util. Comm.*, 115 Ohio St. 311, 319 (1926). “[W]hen certain language is used in one instance and wholly different language is used in another instance, it is ‘presumed that different results were intended.’” *State ex rel. Rocco v. Cuyahoga Cty. Bd. of Elections*, 151 Ohio St.3d 306, 308 (2017) (quoting *Metro. Secs. Co. v. Warren State Bank*, 117 Ohio St. 69, 76 (1927)).

In comparing the language used by the General Assembly in R.C. 307.07 with the language used by the General Assembly in R.C. 4582.06(A)(7) and 4582.31(A)(9) to authorize port authorities, as a class, to apply to the FTZ Board for a grant of authority to establish, operate, or maintain an FTZ, there is a clear difference in the specificity of text. This difference is sufficient to conclude that R.C. 307.07 is not enabling legislation for a county office of economic development or a JOED to apply for a grant of authority to establish, operate, or maintain an FTZ.

Answering the final question, I conclude that a JOED created under R.C. 307.07 is a public agency formed by political subdivisions, rather than a private corporation as contemplated in R.C. 1743.11. Moreover, R.C. 307.07 does not contain the specific authorizing language necessary to serve as enabling legislation for a

multi-county JOED to apply for, establish, operate, or maintain an FTZ. “An unambiguous statute is to be applied, not interpreted.” *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus.

In summary, I find that R.C. 307.07 and 307.85 lack the necessary specificity contemplated by 15 C.F.R. 400.12 to serve as enabling legislation to authorize a county, including Summit County, or a JOED to apply to become an FTZ grantee. In addition, R.C. 1743.11 applies to private corporations specifically formed for the purpose of applying for, establishing, operating, and maintaining a federal trade zone, but it is not applicable to a charter county which is a public or governmental corporation.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. Neither R.C. 307.07 nor R.C. 307.85(A) provide an Ohio county or a multi-county joint office of economic development the authority to apply for and accept a grant of authority from the Foreign-Trade Zones Board to be a foreign trade zone grantee under 15 C.F.R. 400.12.
2. A foreign trade zone grantee may be either a port authority or a corporation organized and chartered

for the purpose of establishing, operating, and maintaining a foreign trade zone.

3. A multi-county joint office of economic development is not a corporate entity under Ohio law, but it has authority to contract with a corporate non-profit organization to carry out the functions and duties of the office. A joint office of economic development created under R.C. 307.07(A)(3) is a public office of a political subdivision. R.C. 307.85(A) is not the functional equivalent of R.C. 1743.11.

Respectfully,

A handwritten signature in blue ink, reading "Dave Yost". The signature is fluid and cursive, with the first name "Dave" and last name "Yost" clearly legible.

DAVE YOST
Ohio Attorney General