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# HANDBOOK

## Ohio County Commissioners

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## CHAPTER 34

# TRANSIT

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### 34.01 INTRODUCTION

County commissioners can become involved in transit in two ways. First, commissioners may establish a county transit board. Second, they may establish, or cooperate with other political subdivisions in establishing, a regional transit authority. County commissioners may not establish a county transit board if any part of the county is included in a regional transit authority. A county transit board has jurisdiction only within the county while a regional transit authority may include territory in more than one county.

Commissioners in counties adjoining other states may also be involved in creating regional transit commissions. Regional transit commissions will not be discussed in this chapter, but the basic law is contained in Sections 306.80 - .90 of the Revised Code.

### COUNTY TRANSIT BOARDS

#### 34.02 ESTABLISHMENT OF COUNTY TRANSIT BOARD

County commissioners may establish a county transit board by adopting a resolution declaring that it is essential to the best interests of the county that a county transit system be established. The purpose of a county transit system is to provide passenger services including street railways, tramlines, subways, rapid transit, monorails, and bus systems. The system may not be involved in the movement of property by truck.

#### 34.03 APPOINTMENT AND ORGANIZATION OF BOARD

County commissioners appoint a county transit board consisting of seven members, who are the governing body for the authority. They serve overlapping three year terms.

Commissioners also appoint the chairman of the transit board and establish qualifications for board members, who must be electors of the county. Commissioners determine the compensation of the transit board members, and may remove them from office for cause. The transit board members may not have a financial interest in any contract, work, or service for the county, and no more than four may be of the same political party. County transit board law is found in Sections 306.01 - 306.13 of the Revised Code.

As soon as possible after appointment, the transit board organizes by electing a vice-chairman and secretary. They shall designate a fiscal officer, who need not be a member of the board. The board must also adopt by-laws and rules and regulations to govern its proceedings. Regular meetings must be held at least once a month. A majority of the board constitutes a quorum, however, to take any action, four members must vote in the affirmative.

#### **34.04 POWERS AND DUTIES OF TRANSIT BOARD**

**A** county transit board has the following powers and duties:

1. To acquire real and personal property.
2. To purchase, acquire, construct, enlarge, equip, repair, maintain, sell, exchange, lease, receive a right of use of, manage, control, and operate a county transit system.
3. To issue, with the approval of the county commissioners, revenue bonds (ORC 306.09 and .10).
4. To purchase supplies and equipment following county competitive bidding requirements (ORC 307.86 - .92), and enter into contracts.
5. To fix rates and charges for the use of its facilities.
6. To employ such persons as it deems necessary, prescribe their duties, and fix their compensation.
7. To borrow or accept money from and enter into contracts with governmental or private entities regarding these monies.
8. To conduct studies and surveys of the transit needs of the county.
9. To enter into arrangements with the federal or state government, any political subdivisions, or any public agency for the planning and installation of facilities.
10. To purchase property, fire, extended coverage, liability, and public officials insurance to protect its property, officers, and employees.

11. To purchase medical insurance for its officers and employees and their dependents.
12. To sell, lease or dispose of any of its property and grant easements.
13. To establish rules for the use and operation of the transit system.
14. To sue, be sued, and be held liable for damages resulting from negligence just as if it were a private system. No funds of a county, other than county transit funds, however, may be used to satisfy these judgements.
15. To prepare and make available annual financial reports. County commissioners must receive this report and must also receive a monthly report of revenues and expenditures.
16. To sell, lease, or grant the right of use of any of its property to any political subdivision or public agency having the power to operate a transit system, with the approval of the county commissioners, and without competitive bidding.
17. To make agreements with other general purpose political subdivisions to provide transportation services in return for payment.

#### **34.05 CIVIL SERVICE REQUIREMENTS; EMPLOYEES**

A county transit board, as noted above may hire employees, fix their compensation, and specify their duties. Employees of the transit board are not subject to supervision by other county officers (ORC 306.11). In this regard, the transit board must establish its own civil service organization and procedure. Appointments and promotions of employees must be by competitive examination as far as possible (ORC 306.04). It appears that the transit board is exempt from the specific requirements of Chapter 124 of the Revised Code.

In addition, if the transit board acquires an existing transit system, it must accept any seniority provisions concerning employees that exist at the time of such an acquisition (ORC 306.04). Likewise the transit board assumes all the employer's obligations under existing labor contracts (ORC 306.12).

Vacation, sick leave, and holidays are also within the power of the board and are not governed by state or county law provisions. Employees are members of the Public Employees Retirement System (PERS), and the transit board must assume any pension obligations that were previously assumed by another political subdivision if the system is acquired by the transit board.

#### **34.06 POWER OF EMINENT DOMAIN**

A county transit board has the power of eminent domain either within or outside of the county. This power includes the right to take real property, personal property, franchises,

and easements. If the county transit board wishes to use the power of eminent domain to obtain real property outside of the county, notice must be given to the county commissioners of the adjoining county who must approve the appropriation of property in their county.

The transit board may not use the power of eminent domain to acquire state or municipal land, rights, rights-of-way, franchises, or easements without the approval of the state or municipality. This power is not to be exercised with political subdivisions, common carriers, or public utilities unless provision is made for the restoration, relocation, or duplication of the property or facility or the payment of compensation (ORC 306.04(O)).

### **34.07 LOANS TO TRANSIT BOARD BY COMMISSIONERS**

County commissioners may advance funds from any available fund of the county for the acquisition of a transit system, and for the purchase of surveys, planning, and studies. These advances may be reimbursed from any funds of the transit authority in the future. This loan may also be repaid from the proceeds of subsequent bond issues.

### **34.08 GENERAL OBLIGATION BONDS FOR TRANSIT**

While the transit authority, with the approval of the county commissioners, may issue revenue bonds, county commissioners, if requested by the transit board may issue general obligation bonds of the county. The eligible purposes for the general obligation bonds include the purchase, acquisition, construction, enlargement, and improvement of the county transit system.

### **34.09 EXEMPTION FROM TAXATION**

The county transit authority is exempt from all taxation by the county or any other political subdivision of the state, except that if land is acquired outside of the county and is removed from the tax duplicate, monies in lieu of taxes must be paid (ORC 306.04(P)).

### **34.10 REAL PROPERTY TAX FOR COUNTY TRANSIT SYSTEM**

County commissioners may submit a property tax levy to the electors of a county for the purpose of purchasing, acquiring, constructing, enlarging, improving, equipping, repairing, and maintaining a county transit system under the jurisdiction of a county transit board (ORC 5705.19(Q)). The levy may also be used by a county to pay for contracting for services by another county transit board or to make permanent improvements under Section 306.06 of the Revised Code. The tax levy can be proposed for not more than five years.

### **34.11 SALES AND USE TAX FOR COUNTY TRANSIT SYSTEM**

County commissioners (ORC 5739.01(U) & (V)) in counties that have established a county transit board also have the authority to submit to the electors the question of a permissive transit sales and use tax (ORC 5739.023). The rate of the tax may not exceed 1.5 percent in one-quarter percent increments. This authority is in addition to other authorities counties have to enact sales taxes. Commissioners also may use Section 5739.026 of the Revised Code to enact a sales tax exclusively or in conjunction with other purposes for transit. County permissive sales and use tax authorities are explained in detail in chapter 16 of this handbook.

## **REGIONAL TRANSIT AUTHORITIES**

### **34.12 REGIONAL TRANSIT AUTHORITIES; GENERAL**

Regional transit authorities differ from county transit boards in many respects. They may offer a much broader range of services, and they may be formed by a county, or two or more counties, municipalities, townships, or any combination of the above, upon the adoption of a resolution or ordinance by the political subdivision(s) involved. A regional transit authority is a political subdivision of the state and a body corporate with all the powers of a corporation.

Like county transit boards, a regional transit authority may provide street railways, tramlines, subways, monorails, rapid transit, and bus systems. A regional transit authority, however, may also provide other water and air transportation facilities such as, ferry, helicopter and airplane services for the purpose of regularly scheduled mass movement of passengers. They may not be involved in trucking or in facilities designed to move property by truck.

A regional transit authority also has the authority to provide parking facilities in connection with transportation modes and facilities which it is authorized to provide, and may provide docks, wharves, warehouses, piers, marinas and other types of water transportation facilities.

As it relates to air transportation, a transit authority may provide a wide variety of facilities that serve aircraft and passengers (ORC 306.30(C)).

### **34.13 RESOLUTION CREATING REGIONAL TRANSIT AUTHORITY**

The resolution creating a regional transit authority must contain the following:

1. The necessity for the creation of the regional transit authority.
2. The counties, townships, or municipalities to be included within the authority.

3. The official name by which the authority shall be known.
4. The place of the principal office.
5. The number, term compensation, and manner of selection of the board of trustees. Compensation may not exceed \$50 for each board or committee meeting attended. If compensation is specified by an annual dollar amount, the president of the board may receive no more than \$6,000, while the maximum compensation of other board members may not exceed \$4,800.
6. The method by which vacancies on the board will be filled.
7. The manner of apportioning expenses among the jurisdictions.
8. The purposes, including the kinds of transit facilities, for which the regional transit authority is organized.

#### **34.14 REGIONAL TRANSIT AUTHORITY PROPERTY TAX**

The regional transit authority board may place on the ballot for the approval of the voters a property tax levy, not to exceed five mills. The revenue from the levy is not to be used for bond debt charges, although property tax levies for debt service are authorized in conjunction with the issuance of general obligation bonds. The levy may be for a period not to exceed 10 years.

If a property tax levy is rejected by a vote of the voters within the entire territory of the regional transit authority, the authority may then attempt to pass a property tax within any municipality or township that requests to be included in an election. In this case, the funds derived from the passage of the tax within selected jurisdictions must benefit these municipalities and townships. The regional transit authority may borrow money in anticipation of the proceeds of the tax levy.

#### **34.15 TRANSIT AUTHORITY PERMISSIVE SALES AND USE TAXES**

The board of trustees of a regional transit authority may, by resolution, levy a sales and use tax of not more than 1.5 percent in one-quarter percent increments. The tax may not become effective until approved by the electorate. See chapter 16 of this handbook for details concerning permissive taxes. Transit authority sales and use tax law is found in Revised Code Sections 306.70, 306.71, 5739.023 and 5741.022 of the Revised Code.

#### **34.16 COUNTY COMMISSIONERS SALES AND USE TAX FOR TRANSIT**

In addition to the sales and use tax that may be levied by a regional transit authority, county commissioners may levy a sales and use tax at the rate of one-quarter or one-half of one percent for transit purposes. This tax is authorized by Section 5739.026 of the

Revised Code, and requires a vote. Under this section of law, commissioners may enact the tax exclusively or in conjunction with other purposes for transit. This tax is explained in greater detail in chapter 16 of this handbook.

### **34.17 EXPANSION OF EXISTING REGIONAL TRANSIT AUTHORITY**

Additional counties, townships, or municipalities may be added to the regional transit authority by the adoption of an amendment by each jurisdiction included or to be included in the authority. Ohio law provides two approaches whereby additional jurisdictions may be added to the territory of an existing regional transit authority. If the existing regional transit authority has not enacted a property tax or sales and use tax then the enlargement can become effective when all parties approve of the enlargement.

If, however, the existing regional transit authority has enacted either a property or sales tax there are two options for expansion of the authority as follows:

1. **REFERENDUM PROCEDURE (ORC 306.32)** - Under the referendum procedure, the property or sales tax will become effective in the territory to be added to the regional transit authority unless a referendum is requested.

After political subdivisions approve the expansion of the authority the approval ordinances or resolutions are not effective for 60 days. During this period a referendum against inclusion of the new jurisdictions may be filed by petition of at least 10 percent of those who voted from the territory to be added at the last gubernatorial election.

If more than one subdivision is included in the expansion of the authority, the petition and vote is of the combined subdivisions and is considered a district. This means, for example, that if two townships are being added to the regional transit authority, the question could fail in one township, but could pass by sufficient votes in the other township that both townships would be included in the authority and the taxes would be extended to the new territory.

2. **AUTOMATIC ELECTION PROCEDURE (ORC 306.321)** - If the expansion of the regional transit authority proceeds under this provision of law, it results in an election on taxes within the entire territory of the enlarged regional transit authority.

After resolutions or ordinances approving of the enlargement of the authority are adopted by the existing and new members the board of trustees of the regional transit authority must submit one of the following tax questions to the electors of the enlarged authority:

- a. **Property Tax** - The property tax question can be for the renewal of an existing tax, the increase of an existing tax, the renewal and increase of an existing tax, or the imposition of an additional tax.

- b. Sales and Use Tax - The sales and use tax question has the same options as for a property tax levy: renewal, increase, renewal and increase, or imposition of an additional sales and use tax.

If the tax proposal is defeated by the electors, the transit authority is not enlarged, and previous property or sales taxes are collected at the former rates. In addition, if a sales tax is enacted, and the authority had previously collected a property tax, the property tax previously enacted must be reduced or eliminated. In this case the only way the property tax could be continued is if it were needed to retire outstanding debt.

### **34.18 BOARD OF TRUSTEES**

All powers of the regional transit authority are vested in a board of trustees. If the authority is created by exclusive action of county commissioners, they appoint all members. If the authority is established by two or more political subdivisions, members are appointed in the manner provided for in the adopting resolutions and ordinances. Initial terms are staggered, but thereafter terms of office are for three years. The board shall establish the rules and regulations of the authority. Each member must take an oath to honestly, faithfully, and impartially perform their duties, and that they will not have a direct or indirect interest in any contract let.

The board will meet and organize, electing one of its members as president and another as vice-president, who shall hold office until the next annual meeting. The board must appoint and fix the compensation of a secretary-treasurer, who may not be a member of the board. The secretary-treasurer is the fiscal officer of the authority and the custodian of its funds. The secretary-treasurer must be bonded.

### **34.19 POWERS AND DUTIES OF BOARD OF TRUSTEES**

The board of trustees of the regional transit authority has the following rights, duties and powers:

1. To sue and be sued.
2. To make contracts.
3. To adopt a seal.
4. To make, adopt, amend, and repeal bylaws.
5. To fix, alter, and collect rates, rentals, and other charges for the use of paying the expenses of transit facilities.
6. To have jurisdiction, control, possession, and supervision of all the property and interests of the authority.



7. To acquire, construct, lease, operate, maintain, or manage transit facilities, within or outside of its territorial boundaries, as necessary to accomplish the purposes of the organization, and to make charges for their use.
8. To hold; encumber; control; acquire by donation, purchase, or condemnation; construct; own; lease as lessee or lessor; use; and sell real and personal property for the location and protection of transit facilities.
9. To exercise the power of eminent domain.
10. To provide by agreement with any county or municipal corporation, or combination thereof, for the making of necessary surveys and studies and for the amount of expense for such surveys to be borne by each jurisdiction.
11. To provide by agreement with any county or municipality, or combination thereof, for the acquisition, construction, maintenance, or operation of any transit facility.
12. To employ and fix the compensation of consulting engineers, superintendents, managers, and other employees who are necessary to accomplish its purposes and to provide health insurance for its employees.
13. To procure insurance to cover losses, risks, and liabilities arising from its operations, including liability of its board of trustees.
14. To maintain funds necessary for the performance of its duties.
15. To direct its employees to enter lands within its territory, after five days written notice, to make surveys and studies necessary for the location and construction of transit facilities.
16. To request an airport zoning board to establish and enforce airport zoning regulations.
17. To make any contract for the purchase of supplies, material or work, subject to contracting, bidding, and purchasing laws.
18. To levy and collect taxes.
19. To issue bonds secured by its general credit.
20. To enter into and supervise franchise agreements.
21. To accept assignment of and supervise an existing franchise agreement.

22. To exercise a right to purchase a transit system and may issue revenue bonds to pay for it.
23. To apply for and accept grants or loans from any public entity.
24. To assume all employer's obligations under a labor contract if it acquires an existing transit system.
25. To provide for and maintain security, using its own employees who have the same arrest powers as police officers and must be trained.
26. To enter into an agreement for the sale and leaseback of mass commuting vehicles for federal income tax purposes.

### **34.20 EMINENT DOMAIN**

The board of trustees of a regional transit authority has the power of eminent domain. They may appropriate any land, rights-of-way, rights, franchises, easements, or other property necessary for the proper construction or operation of any transit facility under its jurisdiction. The board may exercise eminent domain either within its territory or outside of its territory, provided that if they desire to take real property outside of its jurisdiction they must notify county commissioners of the adjoining county who must approve of the appropriation of land.

The regional transit authority may not use the power of eminent domain to acquire state or municipal land, rights, rights-of-way, franchises, or easements without the approval of the state or municipality (ORC 306.36). This power is not to be exercised with political subdivisions, common carriers, or public utilities unless provision is made for the restoration, relocation, or duplication of the property or facility or the payment of compensation.

### **34.21 REVENUE BONDS**

The regional transit authority may issue revenue bonds for the construction, operation, and maintenance of transit facilities. They may also issue revenue bonds to pay off the bond issues of any political subdivision issued for transit purposes or to pay off loans or advances given by a political subdivision.

Such bonds shall be secured by pledge of and a lien on the revenues of the authority. The bonds may also be secured by a trust agreement between the board of trustees and a corporate trustee, which must be a trust company or bank having powers of a trust company, within or without the state. The bonds shall mature within 40 years of the issuance. The bonds, and any income derived from them, are tax exempt.

### **34.22 GENERAL OBLIGATION BONDS**

A regional transit authority may, after approval of the voters, issue general obligation bonds and levy property taxes to retire the bonds. The revenue from the bonds must be used for capital expenses, not operating expenses, although a regional transit authority may also propose a tax levy for operating purposes. The indebtedness from these bonds shall never exceed five percent of the total value of all taxable property within the boundaries of the authority.

The authority may also issue bonds without a vote of the people if the fiscal officer certifies that the estimated revenues, not including property taxes, is sufficient to pay the principal and interest on the bonds as they become due. The maximum amount of these bonds to become due each year may not exceed .1 percent of the total taxable value of the territory.

### **34.23 BIDDING PROCEDURE**

The authority may make any contract for supplies, material, and work without competitive bidding if the cost is not in excess of \$15,000. If the cost is more than \$15,000, the contract shall be let to the lowest and best bidder following a notice calling for bids published in a newspaper of general circulation once a week for two weeks.

The regional transit authority bidding law also exempts certain products and services from bidding, has special provisions concerning emergency purchases, and has special procedures concerning the sale or lease of real or personal property. See Section 306.43 of the Revised Code for additional information.

### **34.24 APPROPRIATIONS BY COUNTY COMMISSIONERS**

County commissioners may appropriate general fund monies to the regional transit authority. Such appropriations are limited to an amount specified in the resolution of the commissioners when the authority was established or expanded.

### **34.25 EXEMPTION FROM TAXATION**

A regional transit authority's real and personal property is exempt from taxation as long as its property is used exclusively for a public purpose. If, however, the property is leased to a private enterprise for more than one year it is not exempt from taxation (ORC 306.52). In addition, if the regional transit authority takes land by eminent domain outside of its territorial jurisdiction, payments in lieu of taxes must be paid (ORC 306.36(C)).