May 4, 2012

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room # 112
West Union, Ohio 45693

SYLLABUS: 2012-013

1. A regional council of county boards of developmental disabilities may receive and hold state moneys otherwise payable to a member county board of developmental disabilities that the member county board, pursuant to R.C. 5126.13, directs be disbursed directly to the regional council.

2. A regional council of county boards of developmental disabilities may invest the moneys of the regional council as authorized by the Uniform Depository Act, R.C. 135.01-.22. A regional council of county boards of developmental disabilities lacks statutory authority to invest its moneys in the publicly-traded stocks and bonds of for-profit corporations.

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OPINION NO. 2012-013

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room # 112
West Union, Ohio 45693

Dear Prosecutor Kelley:

I am in receipt of your request for an opinion concerning the authority of a regional council of governments formed by county boards of developmental disabilities ("county DD boards") to hold and invest moneys distributed to it by the Department of Developmental Disabilities ("DODD") pursuant to R.C. 5126.13. The Adams County Board of Developmental Disabilities ("Adams County DD Board") is a member of the Southern Ohio Council of Governments ("SOCOG"), which was formed by fifteen separate county DD boards. http://www.socog.org (last visited Apr. 24, 2012).[1] My understanding is that the Adams County DD Board has enacted a resolution directing the DODD to pay directly to SOCOG moneys that would have been paid to the Adams County DD Board as part of its "supported living" allocation. In this context, you have asked for an opinion on the following questions:

1. May a regional council of governments formed by county DD boards accept and hold moneys that have been disbursed by the DODD to the regional council at the direction of a member county DD board?

2. If the answer to question one is in the affirmative, may a regional council of governments formed by county DD boards invest moneys disbursed by the DODD to the regional council at the direction of a member county DD board in stocks and bonds and retain the earnings, if any, for the benefit of the member county DD board?

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[1] The Southern Ohio Council of Governments was formed by the county boards of developmental disabilities in Ross, Pike, Scioto, Pickaway, Adams, Brown, Clinton, Highland, Athens, Vinton, Jackson, Lawrence, Meigs, Fayette, and Gallia Counties. http://www.socog.org (last visited Apr. 24, 2012). "The Council's primary focus is in the areas of quality assurance, provider compliance, investigative services and residential administration of waivers and supported living." *Id.*

I begin by reviewing the relevant statutory provisions for county DD boards, Ohio's supported living program, and regional councils of governments. Each county has its own county DD board. R.C. 5126.02.[2] A county DD board is charged with providing programs and services to the developmentally disabled residents of a county. *See, e.g.*, R.C. 5126.04; R.C. 5126.05-.051; R.C. 5126.15; *see also Estate of Ridley v. Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities*, 150 Ohio App. 3d 383, 2002-Ohio-6344, 781 N.E.2d 1034, at ¶15 (Hamilton County); 2003 Op. Att'y Gen. No. 2003-009, at 2-61; 1985 Op. Att'y Gen. No. 85-031, at 2-111 to 2-112. One of the services a county DD board provides is supported living. *See* R.C. 5126.051(A) ("[t]o the extent that resources are available, a county board of developmental disabilities shall provide for or arrange residential services and supported living for individuals with mental retardation and developmental disabilities"). As the DODD's website explains: "Supported Living is a way to assist individuals with developmental disabilities to live as independently as possible in their own communities, with support from public funds. Services may be provided in the home of the individual, who lives on his/her own, or in the family home in which the individual resides." http://odmrdd.state.oh.us/residential/Pages/Supported-Living.aspx (last visited Apr. 24, 2012).[3]

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[2] County DD boards previously were designated "county boards of mental retardation and developmental disabilities" ("county MR/DD boards"). The name change was effected pursuant to Sub. S.B. 79, 128th Gen. A. (2009) (eff. Oct. 6, 2009). A county DD board retains the same powers and responsibilities as a county MR/DD board.

[3] More specifically, R.C. 5126.01(U) defines supported living as follows:

> (1) "Supported living" means services provided for as long as twenty-four hours a day to an individual with mental retardation or other developmental disability through any public or private resources, including moneys from the individual, that enhance the individual's reputation in community life and advance the individual's quality of life by doing the following:
>
> (a) Providing the support necessary to enable an individual to live in a residence of the individual's choice, with any number of individuals who are not disabled, or with not more than three individuals with mental retardation and developmental disabilities unless the individuals are related by blood or marriage;
>
> (b) Encouraging the individual's participation in the community;
>
> (c) Promoting the individual's rights and autonomy;
>
> (d) Assisting the individual in acquiring, retaining, and improving the skills and competence necessary to live successfully in the individual's residence.
>
> (2) "Supported living" includes the provision of all of the following:
>
> (a) Housing, food, clothing, habilitation, staff support, professional services, and any related support services necessary to ensure the health, safety, and welfare of the individual receiving the services;

R.C. 5126.41 provides that a county DD board "shall identify residents of the county for whom supported living is to be provided." The county DD board then works with the individual who is to receive supported living, or the individual's guardian, to develop an individual service plan identifying the individual's residence of choice, other individuals with whom the individual will live, the services the individual needs, and the providers of these services. R.C. 5126.41; *see also* 15 Ohio Admin. Code 5123:2-12-03 (supported living individual service plans). All providers of services to individuals receiving supported living must be certified by the DODD. *See* R.C. 5123.16(A)(1) ("'[p]rovider' means a person or government entity certified by the director of developmental disabilities to provide supported living"); R.C. 5123.16(B) ("[n]o person or government entity may provide supported living without a valid supported living certificate issued by the director of developmental disabilities"); R.C. 5123.161 (application for and issuance of a supported living certificate). Services are typically provided pursuant to a contract between the county DD board and the provider, with the individual receiving the services as a third-party beneficiary to the contract. *See* R.C. 5126.45(A)-(B); *see also* R.C. 5126.43(B) ("when no certified provider is willing and able to provide supported living for an individual in accordance with the terms of the individual service plan for that individual, a county board may provide supported living directly if it is certified by the director of developmental disabilities to provide supported living"). The county DD board must ensure the individual receives the contracted-for services from the provider. R.C. 5126.41; *see also* R.C. 5126.42 (county DD boards shall develop procedures for resolving grievances involving service providers and shall develop and maintain a system to assist individuals in selecting supported living service providers); 15 Ohio Admin. Code 5123:2-12-01 (supported living quality assurance).

The State of Ohio facilitates the provision of supported living services by providing financial assistance to county DD boards. R.C. 5123.0418(A)(1)(c) expressly authorizes the Director of Developmental Disabilities to use DODD funds for supported living, and the Revised Code contemplates county DD boards receiving regular distributions of state funds from the DODD for supported living. *See* R.C. 5126.43(A) ("[a]fter receiving notice from the department of developmental disabilities of the amount of state funds to be distributed to it for planning, developing, contracting for and providing supported living, the county board of developmental disabilities shall arrange for supported living on behalf of and with the consent of individuals based on their individual service plans developed under [R.C. 5126.41]"). The Revised Code also provides for the reallocation

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(b) A combination of lifelong or extended-duration supervision, training, and other services essential to daily living, including assessment and evaluation and assistance with the cost of training materials, transportation, fees, and supplies;

(c) Personal care services and homemaker services;

(d) Household maintenance that does not include modifications to the physical structure of the residence;

(e) Respite care services;

(f) Program management, as described in [R.C. 5126.14].

of state supported living funds from one county DD board to another when an individual moves to another county. *See* R.C. 5123.0410.

Regional councils of governments are governed primarily by R.C. Chapter 167. R.C. 167.01 permits the governing bodies of two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions to enter into an agreement to form a regional council of governments. In addition to the formative agreement, a regional council of governments is required to adopt by-laws designating the officers of the council and their method of selection, creating a governing board that may act for the council, and providing for the conduct of the council's business. R.C. 167.04(A). A regional council of governments is statutorily authorized to study governmental problems common to two or more members of the council, promote cooperative arrangements and coordinate action among its members and with other governmental entities, make recommendations for review and action to the members and other public agencies, promote cooperative agreements and contracts among its members and other entities, operate a public safety answering point, and perform planning either directly or pursuant to contracts with other planning agencies. R.C. 167.03(A). A regional council of governments may also, when authorized, step into the shoes, and perform the duties, of its members. *See* R.C. 167.03(C) ("[t]he council may, by appropriate action of the governing bodies of the members, perform 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 (members of a council of governments may contract with the council to provide services to and receive services from the council; "[s]uch contracts may also authorize the council to perform any function or render any service … which [the members] may perform or render"). A regional council of governments is an entity separate and distinct from its members. 1992 Op. Att'y Gen. No. 92-079, at 2-329; *see also* 1989 Op. Att'y Gen. No. 89-063, at 2-281 ("the provisions of R.C. Chapter 167 do create an entity distinct from, rather than subordinate to, its members").

With regard to funding its activities, a regional council of governments is required to adopt by-laws providing for the appointment of a fiscal officer "who shall receive, deposit, invest, and disburse the funds of the council in the manner authorized by the by-laws or action by the council." R.C. 167.04(B). The members of a regional council of governments "may appropriate funds to meet the expenses of the council," and 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." R.C. 167.06(A). Regional councils of governments also have broad authority to accept funds, grants, gifts, and services from their members, other governmental entities, and private sources. *See* R.C. 167.06(A)-(B); 2006 Op. Att'y Gen. No. 2006-008, at 2-70; 1998 Op. Att'y Gen. No. 98-004, at 2-23. A regional council of governments maintains its own funds. *See* 1998 Op. Att'y Gen. No. 98-004, at 2-23; 1989 Op. Att'y Gen. No. 89-063, at 2-273.

In addition to R.C. Chapter 167, your opinion request implicates R.C. 5126.13. This statute specifically authorizes county DD boards to enter into an agreement to form a regional council of

governments under R.C. Chapter 167. R.C. 5126.13(A). In the interest of simplicity and clarity of reference, I refer to such an entity as a regional council of county DD boards.[4]

Similar to the provisions in R.C. 167.03 and R.C. 167.08, R.C. 5126.13(A) states that the agreement creating a regional council of county DD boards "shall specify the duties and functions to be performed by the council, which may include any duty or function a county board is required or authorized to perform under [R.C. Chapter 5126]." R.C. 5126.13(A) further provides: "If directed to do so by a resolution adopted by a county board that is a member of a regional council, the department of developmental disabilities shall make any distributions of money for that county for the duties or functions performed by the council pursuant to its agreement that are otherwise required to be made to the county board under this chapter to the fiscal officer of the council designated under [R.C. 167.04]." Thus, R.C. 5126.13 authorizes a county DD board to direct the DODD to disburse moneys directly to a regional council of county DD boards.

Authority of a Regional Council of County DD Boards to Accept and Hold Moneys Distributed Pursuant to R.C. 5126.13

As indicated above, the Adams County DD Board has enacted a resolution directing the DODD to pay directly to SOCOG the supported living moneys that would have been paid to the Adams County DD Board. Your first question essentially asks whether this arrangement is permitted by law.

Moneys received by a county DD board, from whatever source, are to be maintained within the county treasury. The board of county commissioners of each county "shall establish a county developmental disabilities general fund" ("county DD general fund"), and different accounts within the county DD general fund are to be established as appropriate. R.C. 5705.091. All proceeds from levies under R.C. 5705.19(L) and R.C. 5705.222 for the benefit of a county DD board "shall be deposited to the credit of the county developmental disabilities general fund." *Id.* Further, all "[o]ther money received by the county for the purposes of [R.C. Chapters 3323 and 5126] and not required by state or federal law to be deposited to the credit of a different fund shall also be deposited to the credit

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[4] R.C. 5126.13 appears to be unique in that no other county board or agency is expressly authorized to form a regional council of governments. County DD boards, however, historically have been treated differently from other county boards and agencies. *See* R.C. 5126.02(A)(2) (the "functions of a county board shall not be combined with the functions of any other entity of county government"). As the Attorney General advised in 2003 Op. Att'y Gen. No. 2003-009, at 2-62:

> [R.C. 5126.02(A)(2)] thus requires that the [county DD] board retain authority and control over its administration and operations, and that it not be combined administratively with other entities of county government. R.C. 5126.02(D) [now, R.C. 5126.02(A)(2)] has been consistently construed to preserve the administrative independence of county MR/DD boards, and county MR/DD boards have been organized and operated in this manner. (Citations omitted.)

of the county [DD] general fund." R.C. 5705.091; *see also* R.C. 5126.05(F) ("[a]ll money received by gift, grant, devise, [or] bequest … shall be deposited in the county treasury to the credit of such [county DD] board and shall be available for use by the board"). A county DD board may maintain a surplus within the county developmental disabilities general fund. *See* R.C. 5705.222(C) (a county DD board may request the county auditor create a "reserve balance account" that "shall contain those moneys that are not needed to pay for current operating expenses and not deposited in the capital improvements account but that will be needed to pay for operating expenses in the future"); R.C. 5705.091 ("[u]nless otherwise provided by law, an unexpended balance … in any account in the county [DD] general fund shall be appropriated the next fiscal year to the same fund").

The situation you have described, however, implicates the statutory paradigm for a regional council of county DD boards. As discussed previously, county DD boards may join together to form a regional council of governments, and if a member county DD board so directs, the DODD may disburse state moneys directly to a regional council of county DD boards. R.C. 5126.13; *see also* R.C. 167.06(A)-(B) (a regional council of governments may accept funding from, among other sources, the State of Ohio). Thus, the moneys in question were disbursed directly to SOCOG pursuant to explicit statutory authority. As also noted previously, regional councils of governments are separate entities that maintain their own funds. *See* R.C. 167.04(B); 1998 Op. Att'y Gen. No. 98-004, at 2-23; 1992 Op. Att'y Gen. No. 92-079, at 2-329; 1989 Op. Att'y Gen. No. 89-063, at 2-273 and 2-281. Accordingly, a regional council of county DD boards may receive and hold state moneys otherwise payable to a member county DD board that the member county DD board, pursuant to R.C. 5126.13, directs be disbursed directly to the regional council.[5]

Investment Authority of a Regional Council of County DD Boards

Having answered your first question in the affirmative, I now address your second question. It asks about the authority of a regional council of county DD boards to invest in stocks and bonds and to use the proceeds earned from those investments for the benefit of an individual county DD board.

"Moneys held by a regional council of governments are public moneys that are held in trust for the public." 1998 Op. Att'y Gen. No. 98-004, at 2-26 (citations omitted). It is well established that public moneys cannot be loaned or invested by a public entity in the absence of specific statutory authorization. *See, e.g.*, *Fidelity & Casualty Co. v. Union Sav. Bank Co.*, 119 Ohio St. 124, 130-31,

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[5] Pending legislation, the Mid-Biennium Review budget bill, Am. Sub. H.B. 487, 129th Gen. A. (2011-2012), proposes to repeal the following language in R.C. 5126.13(A): "If directed to do so by a resolution adopted by a county board that is a member of a regional council, the department of developmental disabilities shall make any distributions of money for that county for the duties or functions performed by the council pursuant to its agreement that are otherwise required to be made to the county board under this chapter to the fiscal officer of the council designated under [R.C. 167.04]." If enacted in its current form, therefore, Am. Sub. H.B. 487 will delete the statutory language that is the basis of the conclusion in this opinion's first syllabus paragraph.

162 N.E. 420 (1928); *State v. Executor of Buttles*, 3 Ohio St. 309, 315-16 (1854); 1992 Op. Att'y Gen. No. 92-054, at 2-219. Further, the financial powers granted to public entities by statute are to be strictly construed. *See, e.g.*, *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916); 2006 Op. Att'y Gen. No. 2006-008, at 2-71 n.3; 2004 Op. Att'y Gen. No. 2004-005, at 2-44.

The fiscal officer of a regional council of governments is authorized to "receive, deposit, invest, and disburse the funds of the council in the manner authorized by the by-laws or action by the council." R.C. 167.04(B). Nothing in R.C. Chapter 167, however, discusses the specific investments available to a regional council of governments, and nothing in R.C. 5126.13 discusses the investment authority of a regional council of county DD boards. Thus, we turn to the Uniform Depository Act, which contains general provisions governing the deposit and investment of public moneys of political subdivisions. *See* R.C. 135.01-.22; *see also* 2010 Op. Att'y Gen. No. 2010-012, at 2-82; 1987 Op. Att'y Gen. No. 87-049, at 2-317; 1973 Op. Att'y Gen. No. 73-119, at 2-457.

The definition of "subdivision" in R.C. 135.01(L) includes any "district or local authority electing or appointing a treasurer, except a county."[6] In 2010 Op. Att'y Gen. No. 2010-012, at 2-83, the Attorney General concluded a school district free public library satisfied this standard, relying primarily on the following factors: (1) a school district free public library is created by statute and controlled by its own board of trustees; and (2) the library's board of trustees "elects a fiscal officer to serve as the library's treasurer." Similarly, a regional council of governments is an entity separate from its members, maintains its own funds, is governed by its own board, and appoints a fiscal officer who performs the same functions as a treasurer. *See* R.C. 167.01; R.C. 167.04(A)-(B); R.C. 167.08; 1998 Op. Att'y Gen. No. 98-004, at 2-23; 1992 Op. Att'y Gen. No. 92-079, at 2-329; 1989 Op. Att'y Gen. No. 89-063, at 2-273 and 2-281; *see also* R.C. 135.01(M) (in the case of a subdivision, the term "treasurer" means the treasurer or "officer exercising the functions of a treasurer"). Prior Attorney General opinions have also concluded that a regional council of governments is a subdivision under R.C. 135.01(L). *See* 1973 Op. Att'y Gen. No. 73-119, at 2-457 (despite some irregularities in its formation, a regional tax collection agency is a regional council of governments under R.C. Chapter 167 and its funds are to be deposited and invested in accordance with the requirements of the Uniform Depository Act, R.C. Chapter 135); *see also* 1998 Op. Att'y Gen. No. 98-004, at 2-26 (citing 1973 Op. Att'y Gen. No. 73-119 for the proposition that the moneys of a regional council of governments must be invested in accordance with the Uniform Depository Act); 1987 Op. Att'y Gen. No. 87-049, at 2-320 (same). Accordingly, a regional council of county DD boards is a subdivision under R.C. 135.01(L).

For purposes of R.C. 135.01-.21, the public moneys of a subdivision are classified as active deposits, inactive deposits, and interim deposits. *See* R.C. 135.01(A), (E), (F), (K); 2010 Op. Att'y Gen. No. 2010-012, at 2-82. Active deposits are public moneys necessary to meet current expenses

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[6] As a general matter R.C. 135.01-.22 govern subdivisions other than counties, while R.C. 135.31-.40 govern counties. A county, however, is a subdivision for the purposes specified in R.C. 135.14 and R.C. 135.181. *See* 2010 Op. Att'y Gen. No. 2010-012, at 2-83 n.6.

and must be deposited in either a commercial account payable on demand, a negotiable order of withdrawal account, or a money market deposit account. *See* R.C. 135.01(A)(1)-(3). Inactive deposits are public moneys other than active deposits or interim deposits, and these moneys must be deposited in time certificates of deposit or in a savings or deposit account. *See* R.C. 135.01(E); R.C. 135.07; R.C. 135.13. Interim deposits are public moneys not needed for immediate use and that are remaining after the award of inactive deposits pursuant to R.C. 135.07. *See* R.C. 135.01(F). Interim deposits may be invested, subject to various restrictions, in the following categories of obligations: (1) United States treasury bills and similar obligations; (2) bonds and similar obligations issued by a federal agency or instrumentality; (3) time certificates of deposit or savings or deposit accounts; (4) obligations of the State of Ohio; (5) no-load money market mutual funds consisting of federal obligations; (6) the Ohio subdivision's fund; (7) certain short-term, commercial paper notes; (8) bankers' acceptances of banks that are insured by the Federal Deposit Insurance Corporation; and (9) certain repurchase agreements. R.C. 135.14(B)(1)-(7), (E); *see also* R.C. 135.08; R.C. 135.09; R.C. 135.144(A); R.C. 135.18(B); R.C. 1705.01(D); 2010 Op. Att'y Gen. No. 2010-012, at 2-83.[7]

The first part of your second question asks about the authority of a regional council of county DD boards to invest in stocks and bonds. By investing in stocks, I presume you mean purchasing shares of stock in publicly-traded, for-profit corporations available through a securities exchange—for example, the New York Stock Exchange or NASDAQ. *See Black's Law Dictionary* 1428 (7th ed. 1999) (one of the meanings of "stock" is a "proportionate part of a corporation's capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company's general management and to share in its net profits or earnings").[8] As the preceding discussion makes clear, no provision in R.C. 135.01-.22 authorizes a subdivision to invest interim

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[7] R.C. 135.141 and R.C. 135.142 authorize municipal corporations and boards of education, respectively, to invest their interim moneys in other types of investments, but these statutes do not apply to a regional council of governments. *See* 2010 Op. Att'y Gen. No. 2010-012, at 2-83 n.5.

[8] Historically, the New York Stock Exchange was an unincorporated association of member firms, and NASDAQ (or the National Association of Securities Dealers Automated Quotation system) was a computerized system for recording and displaying prices for actively traded securities on the over-the-counter market. *See Black's Law Dictionary* 1045-46, 1065 (7th ed. 1999); *see also id.* at 1130 ("over-the-counter" refers to securities that are "[n]ot listed or traded on an organized securities exchange," but rather are "traded between buyers and sellers who negotiate directly"—traditionally through telephone or computer negotiations). Those distinctions have blurred in recent years. The New York Stock Exchange is now part of NYSE Euronext, a cross-border exchange group created by the merger of NYSE Group, Inc. and Euronext N.V. in 2007. *See* http://corporate.nyx.com/en/who-we-are/company-overview (last visited Apr. 24, 2012). NASDAQ now is a national securities exchange completely separate from the National Association of Securities Dealers and part of The NASDAQ OMX Group, which owns and operates numerous markets, clearing houses, and securities depositories internationally. *See* http://www.nasdaqomx.com/aboutus/whatisnasdaq (last visited Apr. 24, 2012).

deposits in stocks. *See, e.g.*, *State v. Elam*, 68 Ohio St. 3d 585, 587, 629 N.E.2d 442 (1994) ("[w]here the wording of a statute is clear and unambiguous, [the] only task is to give effect to the words used"); *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E. 2d 265 (1944) (syllabus, paragraph 8) ("[t]here is no authority under any rule of statutory construction to add to, enlarge, supply, expand, extend or improve the provisions of the statute to meet a situation not provided for"). Thus, a regional council of county DD boards may not invest its moneys in stocks issued by publicly-traded, for-profit corporations. *See* 1987 Op. Att'y Gen. No. 87-049, at 2-320 ("[i]n the absence of provisions granting [a] board of trustees of a joint ambulance district authority to make other deposits or investments, it must be concluded that the board may deposit and invest moneys of the district only as authorized by R.C. Chapter 135" (citations omitted)).[9]

In addition, R.C. 135.01-.22 do not expressly authorize investing in bonds. The closest analog is R.C. 135.14(B)(7)(a), which authorizes limited investments in commercial paper notes issued by a corporation, partnership, limited liability company, or similar entity if: (1) the entity has assets exceeding $500 million, (2) the notes received the highest rating available from two nationally-recognized rating services, (3) the aggregate value of the notes does not exceed ten percent of the outstanding commercial paper of the entity, and (4) the notes mature within 180 days of purchase. *See also* 1970 Op. Att'y Gen. No. 70-067, at 2-114 to 2-116 (addressing a prior version of R.C. 135.14(B)(7)(a) and concluding that commercial paper notes satisfying the statutory requirements are a legal investment by the Treasurer of State).

There is some ambiguity regarding the terms "commercial paper," "note," and "bond." The Revised Code sometimes uses these terms in an interchangeable or overlapping manner, but in other instances treats these terms as distinct investment categories. *Compare* R.C. 9.98(F) ("commercial paper" means "bonds with one or more maturities of three hundred sixty-five days or less which, under the bond proceedings, are expected to be funded by the issuance of additional bonds with maturities of three hundred sixty-five days or less, whether or not ultimately to be funded with long

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[9] A regional council of county DD boards investing in stocks also raises serious constitutional concerns. Article VIII, § 4 of the Ohio Constitution prohibits the state from becoming "a joint owner, or stockholder, in any company or association … formed for any purpose whatever," and Article VIII, § 6 of the Ohio Constitution states that "[n]o laws shall be passed authorizing any county, city, town or township … to become a stockholder in any joint stock company, corporation, or association whatever." *See also* 2010 Op. Att'y Gen. No. 2010-012, at 2-81 ("unless another constitutional provision directs otherwise … neither the state nor a county, city, town, or township may become the owner of securities issued by private, for-profit corporations"). It is also well established that a regional council of governments is subject to the same restrictions as its members and cannot perform any act that any individual member could not perform. *See, e.g.*, 2006 Op. Att'y Gen. No. 2006-008, at 2-69 to 2-70 n.1; 1998 Op. Att'y Gen. No. 98-004, at 2-25; 1989 Op. Att'y Gen. No. 89-063 at 2-274; 1982 Op. Att'y Gen. No. 82-103, at 2-283. Since we have concluded that a regional council of DD boards lacks statutory authority to invest in stocks issued by publicly-traded, for-profit corporations, we need not reach this constitutional issue.

term bonds"), *and* R.C. 5537.01(L) ("bonds" means "bonds, notes, including notes anticipating bonds or other notes, commercial paper, certificates of participation, or other evidences of obligation" issued by the Ohio Turnpike Commission), *with* R.C. 133.01(KK) ("securities" means "bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing"), *and* R.C. 5709.76(D)(L) ("public securities" means "bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing").

As commonly understood within the business and finance communities, however, "commercial paper" (or commercial paper notes) and "bonds" refer to two distinct investment categories. Commercial paper consists of short-term promissory notes with maturities of 270 days or less, issued in large denominations, used to fund current operations, and exempt from registration with the Securities and Exchange Commission under the Securities Act of 1933. *See* http://www.federalreserve.gov/releases/CP/about.htm (last visited Apr. 24, 2012) ("[c]ommercial paper (CP) consists of short-term, promissory notes issued primarily by corporations. Maturities range up to 270 days but average about 30 days. Many companies use CP to raise cash needed for current transactions, and many find it to be a lower-cost alternative to bank loans.… CP is exempt from SEC registration if its maturity does not exceed 270 days"); http://financial-dictionary.thefreedictionary.com/Commercial+paper (last visited Apr. 24, 2012) ("commercial paper" is a "short-term unsecured promissory note issued by a finance company or a relatively large industrial firm. The notes are generally sold at a discount from face value with maturities ranging from 30 to 270 days. Although the large denominations ($25,000 minimum) of these notes usually keep individual investors out of this market, the notes are popular investments for money market mutual funds"); *see also* 15 U.S.C.A. § 77c(a)(3) (West 2009) (exempting from registration "[a]ny note, draft, bill of exchange, or banker's acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months"); *Ruefenacht v. O'Halloran*, 737 F.2d 320, 325 n.15 (3d Cir. 1984) (the "SEC regards commercial paper as exempt from the registration provisions of the 1933 Act if the paper is: 'prime quality negotiable paper of a type not ordinarily purchased by the general public, that is, paper issued to facilitate well-recognized types of current operational business requirements and of a type eligible for discounting by Federal Reserve Banks'" (quoting Securities Act Release No. 4412, 26 Fed. Reg. 9158, 9159 (1961))).

By contrast, corporate bonds are securities with maturities measured in years, issued in smaller denominations, and registered with the SEC for public sale. *See Black's Law Dictionary* 172 (7th ed. 1999) (a "'bond' is a long term debt security while a 'note' is usually a shorter term obligation. Bonds are historically bearer instruments, negotiable by delivery, issued in multiples of $1,000 with interest payment represented by coupons" (quoting Robert W. Hamilton, *The Law of Corporations in a Nutshell* 128 (3d ed. 1991))); http://www.businessdictionary.com/definition/bond.html (last visited Apr. 24, 2012) (a bond is a "debt instrument that certifies a contract between the borrower (bond issuer) and the lender (bondholder) as spelled out in the bond indenture. The issuer (company, government, municipality) pledges to pay the loan principal (par value of the bond) to the bondholder on a fixed date (maturity date) as well as a fixed rate of interest for the life of the bond. Alternatively, some bonds are sold at a price lower than their par value in lieu of the periodic interest. On maturity the full par value is paid to the bondholder. Bonds are issued in multiples of $1,000, usually for

periods of five to twenty years. Most bonds are negotiable and are freely traded over stock exchanges"); *see also* Jerry W. Markham, *Mutual Fund Scandals—A Comparative Analysis Of The Role Of Corporate Governance In The Regulation Of Collective Investments*, 3 Hastings Bus. L.J. 67, 151 (Fall 2006) ("[u]nless exempted, corporate debt offerings to the public must be registered with the SEC under the Securities Act of 1933, bringing those securities into the SEC's full disclosure regime"); Felicia H. Kung, *The Regulation Of Corporate Bond Offerings: A Comparative Analysis*, 26 U. Pa. J. Int'l Econ. L. 409, 416, 418 (Fall 2005) ("[t]he vast majority of investment grade corporate bonds are registered for sale in the public markets. Secondary market trading in the corporate debt market occurs primarily among institutions in the over-the-counter market…. [However], the retail market is becoming increasingly important").

I construe your question as asking about the authority of a regional council of county DD boards to invest in traditional corporate bonds of the type described in the previous paragraph. As the preceding discussion indicates, R.C. 135 does not authorize a subdivision to invest in the publicly-traded bonds of a for-profit corporation. *See* 2010 Op. Att'y Gen. No. 2010-012, at 2-86 ("R.C. 135.01-.21 thus do not authorize a subdivision to use money derived from the sale or other disposition of an unrestricted gift or bequest of securities to purchase stocks and bonds of private, for-profit corporations").

The final part of your second question asks whether a regional council of county DD boards may retain for the benefit of an individual county DD board moneys the regional council has earned from investing in stocks and bonds. Since a regional council of county DD boards lacks the authority to invest in the publicly-traded stocks and bonds of for-profit corporations, the final part of your second question is moot and need not be addressed.

Conclusions

In sum, it is my opinion, and you are hereby advised as follows:

1. A regional council of county boards of developmental disabilities may receive and hold state moneys otherwise payable to a member county board of developmental disabilities that the member county board, pursuant to R.C. 5126.13, directs be disbursed directly to the regional council.

2. A regional council of county boards of developmental disabilities may invest the moneys of the regional council as authorized by the Uniform Depository Act, R.C. 135.01-.22. A regional council of county boards of developmental disabilities lacks statutory authority to invest its moneys in the publicly-traded stocks and bonds of for-profit corporations.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General