tax revenues may not be used by a township to make additional modifications to the driveway and parking lot for the purpose of ensuring proper access to the township hall, but the cost of such modifications may be allocated among other funds of the township that are comprised of revenues that lawfully may be expended for that purpose, and that have not been appropriated or encumbered for other purposes.

OPINION NO. 93-058

Syllabus:

The obligations of the Ohio Student Aid Commission, including guarantees incurred with respect to student loans, do not constitute debts of the State of Ohio and are not backed by the full faith and credit of the State of Ohio; rather, they are payable solely out of the moneys of the Commission.

To: Donna Pope, Director, Ohio Student Aid Commission, Columbus, Ohio
By: Lee Fisher, Attorney General, December 20, 1993

Your predecessor requested an opinion concerning various issues relating to the possible restructuring of the Ohio Student Aid Commission ("OSAC").[1] In accordance with subsequent conversations between our offices, this opinion is intended to address the principal threshold issue raised by the request, with the remainder of the issues to be addressed in a supplemental opinion if necessary.

In particular, your predecessor's letter states:

O.R.C. Section 3351.07(A)(2) provides in part:

The commission may acquire property or moneys for its purposes by the acceptance of gifts, grants, bequests, devises, or loans, provided that no obligation of the commission shall be a debt of the state, and the commission shall have no power to make its debts payable out of moneys except those of the commission.

This language has been considered by some to mean that the guarantee obligations of the [OSAC] to lenders making educational loans under the guaranteed student loan program are not backed by the full faith and credit of the State of Ohio.

However, Ohio Const. art. VI, section 5 provides that it is in the public interest and a proper public purpose for the state to guarantee the repayment of educational loans made to Ohio residents. It further exempts laws passed to carry section 5 into effect, and the guarantees themselves, from the debt creation and credit extension limitations of Ohio Const. Art. VIII, and validates, ratifies, confirms and approves in all respects the enactments which, then and now, contain the limiting language of 3351.07(A)(2) quoted above.

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[1] The OSAC was formerly called the Ohio Student Loan Commission. It was renamed the Ohio Student Aid Commission by virtue of the amendments made by Sub. S.B. 359, 119th Gen. A. (1992) (eff., in part, Dec. 22, 1992).

> Are the guarantee debts of [OSAC] debts of the State of Ohio and backed by the full faith and credit of the State? Are some debts of [OSAC] debts of the State while others are not, and if so, what debts are not debts of the State? Can the answers to these questions be ascertained with certainty without further clarification from the General Assembly?

The essence of these questions is whether the obligations incurred by the OSAC in the form of guarantees, debts[2] or otherwise are payable solely from moneys held as part of the funds of the OSAC, or whether such obligations are also backed by the full faith and credit of the State of Ohio,[3] so that the obligee thereof would have recourse to other funds of the State of Ohio for the payment of such obligations.

Constitutional Authority For Establishment of OSAC

Article VI, §5 of the Ohio Constitution provides as follows:

> To increase opportunities to the residents of this state for higher education, it is hereby determined to be in the public interest and a proper public purpose for the state to guarantee the repayment of loans made to residents of this state to assist them in meeting the expenses of attending an institution of higher education. Laws may be passed to carry into effect such purpose including the payment, when required, of any such guarantee from moneys available for such payment after first providing the moneys necessary to meet the requirements of any bonds or other obligations heretofore or hereafter authorized by any section of the Constitution. *Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the*

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[2] The terms "debt" and "indebtedness" are synonymous and are generally used interchangeably. *See* Black's Law Dictionary (6th ed. 1990) 403-04 (definition of "debt"); 768 (definition of "indebtedness").

[3] Obligations backed by the full faith and credit of the State of Ohio are generally viewed as obligations which constitute general indebtedness of the state and are, therefore, payable out of any and all revenues of the state, including tax revenues. In addition, full faith and credit obligations generally constitute "bonded indebtedness" under Ohio Const. art. XII, §11, which requires that the legislation creating such indebtedness make provision for levying and collecting annually by taxation an amount sufficient to pay interest on such obligations and to provide a sinking fund for their final redemption at maturity. In contrast to full faith and credit obligations, "limited" or "special" obligations of the state are generally those that are payable only from a specific revenue source, and for which there is no pledge of other revenue or of the taxing power of the state. *But cf. State ex rel. Ryan v. City Council of Gahanna*, 9 Ohio St. 3d 126, 459 N.E.2d 208 (1984), in which the Ohio Supreme Court concluded that there could be a pledge of the full faith and credit of a governmental entity where no tax revenue was pledged. Although the precise meaning of "full faith and credit" in Ohio is unclear in light of the *Ryan* decision, the definitional distinctions that the *Ryan* court appears to have made are not relevant to your question in view of the conclusion reached herein that the obligations of the OSAC are limited obligations of the OSAC payable solely out of the OSAC's own moneys in accordance with R.C. 3351.07(A)(2) and do not constitute obligations of the State of Ohio.

> *Constitution.*[4] Amended Substitute House Bill No. 618[5] enacted by the General Assembly on July 11, 1961, and Amended Senate Bill No. 284[6] enacted by the General Assembly on May 23, 1963, and all appropriations of moneys made for the purpose of such enactments, are hereby validated, ratified, confirmed, and approved in all respects, and they shall be in full force and effect from and after the effective date of this section, as laws of this state until amended or repealed by law. (Emphasis and footnotes added.)

Thus, by the adoption of Ohio Const. art. VI, §5, the State of Ohio recognized as a proper public purpose the state's guarantee of the repayment of loans made to Ohio residents to assist them in meeting the expenses of higher education, and authorized the General Assembly to enact laws to carry out the purposes of that constitutional provision. Such laws may provide for, among other things, "the payment, when required, of any such guarantee from moneys available for such payment," after first providing the moneys necessary to meet the requirements of other obligations authorized by the constitution. Ohio Const. art. VI, §5. However, the precise nature of any such laws or guarantees is left for the General Assembly to determine.

With respect to the laws passed by the General Assembly to carry out its mandate, art. VI, §5 expressly states that: "Such laws and guarantees shall not be subject to the limitations or requirements of Article VIII or of Section 11 of Article XII of the Constitution." The amendment goes on to validate, ratify, confirm, and approve the legislative scheme creating the Ohio Higher Education Assistance Commission (the predecessor to OSAC), as enacted in 1961 and amended in 1963.

Powers and Duties of OSAC Generally

R.C. 3351.05 provides for the creation of the OSAC:

> for the purposes of making available to residents and qualified nonresidents, improved opportunities for education, and improving the general health and welfare by raising the educational levels of such residents and qualified nonresidents both by guaranteeing loans made to persons who are attending or plan to attend eligible institutions of education and their parents in accordance with [R.C. 3351.05-.14]....

Pursuant to R.C. 3351.06, the OSAC consists of nine members who are appointed by the Governor with the advice and consent of the Senate. Each member serves a term of office as

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[4] The provisions of Article VIII set forth the constitutional limitations on the authority of the state and its agencies and instrumentalities to incur indebtedness, as well as the prohibitions against the state's giving or lending of its credit to private individuals and entities. Section 11 of Article XII provides that whenever the state incurs bonded indebtedness, it must establish a sinking fund and pledge sufficient tax revenue to insure the retirement of such bonded indebtedness in accordance with its terms. Since article VI, §5 of the Constitution provides that the limitations and requirements of such provisions are not applicable to OSAC debt, only the statutory restrictions established by the General Assembly need to be examined to determine the nature of the obligations issued by the OSAC.

[5] 1961 Ohio Laws 1538 (Am. Sub. H.B. 618, eff. Oct. 27, 1961).

[6] 1963 Ohio Laws 1519 (Am. S.B. 284, eff. Sept. 2, 1963).

specified in R.C. 3351.06. Further, members receive no compensation for their services, but are reimbursed for their necessary expenses.

The powers and duties of the OSAC are set forth primarily in R.C. 3351.07 and include, inter alia, the authority: to guarantee the loan of money for educational purposes; to acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans; to contract with approved eligible educational institutions for the administration of any loan or loan plan guaranteed by the OSAC; to contract with "approved lenders," as defined in R.C. 3351.07(C), for the administration of a loan or loan plan guaranteed by the OSAC and "to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan," R.C. 3351.07(A)(4); to sue and be sued; to collect loans guaranteed by the OSAC on which the commission has met its guarantee obligations; and to "[p]erform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission," R.C. 3351.07(A)(10). Further, pursuant to R.C. 3351.13, the Ohio Student Aid Commission "is the state agency authorized to enter into contracts concerning the programs established" by those federal educational loan programs specified in that statute. The OSAC also has authority to "accept any contributions, grants, advances, or subsidies made to it from state or federal funds and shall use the funds to meet administrative expenses and provide a reserve fund to guarantee loans made pursuant to [R.C. 3351.05-.14]." R.C. 3351.13.

Pursuant to R.C. 3351.08(F), the OSAC may collect certain special loan insurance premiums and deposit such premiums into a fund in the custody of the treasurer of Ohio. R.C. 3351.08(F) expressly provides that such fund is not a part of the state treasury and may be used only to guarantee loans and to make payments to the student aid commission operating fund created by R.C. 3351.131. Money in the student aid commission operating fund, which consists of money paid into it by the OSAC under R.C. 3351.08(F) and R.C. 3351.13 and any funds appropriated by the General Assembly for administration of student aid programs, is required to be used solely to pay expenses of the Commission, and R.C. 3351.131 further requires that "[a]ll expenses of the [OSAC] shall be paid from the [student aid commission operating] fund." Although the activities of the OSAC are, in large part, related to its role in the various federal programs set forth in R.C. 3351.13, the OSAC has additional duties, unrelated to the federal programs.

OSAC Guarantees Do Not Constitute Obligations of, and Are Not Backed by the Full Faith and Credit of, the State of Ohio

The statutory scheme pursuant to which the OSAC enters into guarantee agreements places express restrictions on the OSAC's power to enter into guarantee agreements. R.C. 3351.07 states in relevant part:

> (A) The Ohio student aid commission may:
>
> (1) Guarantee the loan of money, subject to [R.C. 3351.08] and upon such other terms and conditions as the commission may prescribe, to persons and parents of persons attending or planning to attend eligible institutions to assist them in meeting educational expenses;
>
> (2) Reject or take, hold, and administer, on behalf of the commission and for any of its purposes, real property, personal property, and moneys, or any interest therein, and the income therefrom, either absolutely or in trust, for any purpose of the commission.... The commission may acquire property or money for its purposes by the acceptance of gifts, grants, bequests, devises, or loans, *provided that no obligation of the commission shall be a debt of the state, and the*

> *commission shall have no power to make its debts payable out of moneys except those of the commission.*
>
> ....
>
> (4) Enter into contracts with any approved lender,[7] upon such terms as may be agreed upon between the commission and the approved lender, to provide for the administration by such approved lender of any loan or loan plan guaranteed by the commission including applications therefor and terms and repayment thereof and to establish the conditions for payment by the commission to the approved lender of the guarantee on any loan.... A loan shall be defaulted when, after the expiration of a prescribed period of nonpayment and reasonable collection efforts, the approved lender makes application to the commission for payment on the loan stating that such loan is in default in accordance with the terms of the federal law, contract, or regulations of the commission, executed under this division. In accordance with the "Higher Education Amendments of 1968," 82 Stat. 1020, 20 U.S.C.A. 1087, as amended, if a borrower dies, becomes permanently and totally disabled, or is adjudged bankrupt, the commission shall discharge the borrower's liability on his debt by repaying the unpaid principal and interest due thereon.
>
> ....
>
> (10) Perform such other acts as may be necessary or appropriate to carry out effectively the objects and purposes of the commission. (Emphasis and footnote added.)

Certain express limitations and conditions with respect to OSAC's guarantee of loans to students of eligible institutions and to their parents are contained in R.C. 3351.08. However, R.C. 3351.08 also provides that: "Guarantees made in violation of the conditions and limitations set forth in this section are not invalid by reason of such violation."

In enacting R.C. 3351.07(A) and establishing the OSAC, the General Assembly expressly limited the authority of the OSAC to make guarantees and other obligations by providing that "*no obligation of the [OSAC] shall be a debt of the state, and the [OSAC] shall have no power to make its debts payable out of moneys except those of the commission.*" R.C. 3351.07(A)(2) (emphasis added). While the placement of such language in R.C. 3351.07(A)(2) rather than in a separate provision may appear unusual, the statutory language is nevertheless clear and unambiguous: OSAC has no power to incur obligations which constitute *a debt of the state* or which would be payable out of moneys *except those of the OSAC.*

In this regard, the language of R.C. 3351.07(A)(2) also recognizes a distinction between debts "of the *state*," on the one hand, and "*its* debts," *i.e.*, debts of the OSAC, on the other hand. Since under the express language of this provision, debts of the OSAC may be made payable only out of the moneys of the OSAC, it is clear that OSAC has no authority to create obligations which are "debts of the state" or which are in any way backed by the full faith and credit of the State of Ohio. Rather, the General Assembly has expressly determined that the power of the OSAC to incur obligations, including obligations in the nature of guarantees, is limited to obligations that are payable out of the OSAC's own moneys.

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[7] The term "approved lender," as used in R.C. Chapter 3351, is defined in R.C. 3351.07(C).

This conclusion is further supported by the fact that R.C. 3351.08(F) and R.C. 3351.131 establish specific funds to be used solely to maintain the money available to the OSAC to guarantee loans and to pay its expenses. The OSAC is also required by R.C. 3351.08(B) to hold and maintain, on deposit with the Treasurer of State, funds or negotiable securities having a market value of not less than six and two-thirds per cent of the aggregate amount of unpaid principal and interest of all notes guaranteed by the OSAC, exclusive of such portion that is reinsured or guaranteed by the United States or its agencies, departments or instrumentalities. These funds were clearly created by the General Assembly to provide the moneys necessary for the OSAC to meet its guarantee obligations and pay any expenses incurred by it in operations. Had the General Assembly intended that the obligations of OSAC be backed by the full faith and credit of the State of Ohio or otherwise be general obligations of the State of Ohio, the establishment of such special funds under the OSAC would have been unnecessary.

As noted above, an obligation which is backed by the full faith and credit of the State of Ohio would by definition be payable out of moneys coming into the hands of the state in addition to those of the OSAC. Accordingly, the answer to your threshold question is that the obligations of OSAC, including guarantee obligations relating to student loans, do not in any case constitute debts of the State of Ohio, and, therefore, the full faith and credit of the State of Ohio is not pledged to their payment. Rather, any obligations incurred by the OSAC are payable solely out of the moneys of the OSAC.

Conclusion

It is, therefore, my opinion, and you are hereby advised that the obligations of the Ohio Student Aid Commission, including guarantees incurred with respect to student loans, do not constitute debts of the State of Ohio and are not backed by the full faith and credit of the State of Ohio; rather, they are payable solely out of the moneys of the Commission.

OPINION NO. 93-059

Syllabus:

The judge of a single-judge municipal court is not entitled to receive the additional compensation provided for in R.C. 1901.11(B)(3).

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, December 20, 1993

You have requested an opinion on the following question: "Is a full-time municipal judge of a single-judge court, pursuant to [R.C. 1901.11(B)(3)], entitled to additional compensation of One Thousand Five Hundred Dollars ($1,500.00) for duties performed as an administrative judge?" Your opinion request states that R.C. 1901.11(B)(3) is not being applied uniformly throughout the state. A particular judge of a single-judge municipal court claims that, based upon M.C. Sup. R. 12, he is entitled to receive the additional compensation prescribed by R.C. 1901.11(B)(3) for service as the presiding judge, as well as the administrative judge, of the court. The staff of the Supreme Court, however, has taken the position that, based upon R.C. 1901.09 and M.C. Sup. R. 2, a judge of a single-judge municipal court is not entitled to such additional compensation.

Compensation of Full-Time Municipal Court Judges

R.C. 1901.11 establishes compensation for municipal court judges, in part, as follows: