

September 6, 2012

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

SYLLABUS:

2012-026

1. A board of county commissioners of a county that is a member of a regional council of governments may authorize the council to enter into a contract under R.C. 167.03(C) with a county land reutilization corporation whereby the council will perform for the corporation specific administrative functions, provided the services furnished by the council under the contract are capable of performance by the county and are necessary or desirable for dealing with problems of mutual concern.
2. A board of county commissioners may enter into a contract under R.C. 167.08 with a regional council of governments for the purpose of authorizing the council to perform on behalf of the county administrative functions for a county land reutilization corporation.
3. Neither a county treasurer nor a county auditor may contract with a county land reutilization corporation to provide services to or employees to work for the corporation.



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OPINION NO. 2012-026

The Honorable Paul J. Gains
Mahoning County Prosecuting Attorney
21 West Boardman Street, 6th Floor
Youngstown, Ohio 44503

Dear Prosecutor Gains:

You have requested an opinion whether a contract between a county land reutilization corporation and any of several other public entities is permitted under Ohio law. Specifically, you wish to know whether a regional council of governments, a county treasurer, or a county auditor may contract to perform the administrative functions of a county land reutilization corporation. You also ask whether any issues of compatibility of public offices or conflicts of interest arise as a result of such contracts. We will begin by reviewing the laws governing county land reutilization corporations and then address in turn the pertinent authority of a regional council of governments, a county treasurer, and a county auditor. Finally, we will address the issues of compatibility and conflict of interest.

Statutory Frameworks Governing County Land Reutilization Corporations

You have informed us that the Mahoning County Land Reutilization Corporation is a private non-profit corporation formed in accordance with R.C. Chapters 1724, 5722, and 323. R.C. Chapter 1724 concerns community improvement corporations, which include economic development corporations and county land reutilization corporations.¹ R.C. 1724.01(A)(1). R.C. 1724.01(A)(3) defines a “county land reutilization corporation” as a corporation organized under R.C. 1724.04 for the following purposes set forth in R.C. 1724.01(B)(2):

- (a) Facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized, but not limited to the purposes described in [R.C. 1724.01(B)(2)];

¹ County land reutilization corporations are commonly referred to as county land banks. *Rokakis v. Circle Dev. Group, Inc.*, Case Nos. CV 10 729690 and CV 10 729846, 2011 Ohio Misc. LEXIS 698 (C.P. Cuyahoga County Oct. 12, 2011), *5, at n.10 (“[I]and bank’ is the colloquial appellation for a county land reutilization corporation”).

- (b) Efficiently holding and managing vacant, abandoned, or tax-foreclosed real property pending its reclamation, rehabilitation, and reutilization;
- (c) Assisting governmental entities and other nonprofit or for-profit persons to assemble, clear, and clear the title of property described in this division in a coordinated manner; or
- (d) Promoting economic and housing development in the county or region.

Pursuant to R.C. 1724.04, a county land reutilization corporation may be organized by any county with a population of more than 60,000 that elects under R.C. 5722.02 to adopt and implement the procedures set forth in R.C. 5722.02-.15. Such an election must be made by a resolution stating that “the existence of nonproductive land within [the county’s] boundaries is such as to necessitate the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.” R.C. 5722.02(A). The procedures set forth in R.C. 5722.02-.15 are meant to facilitate the effective reutilization of nonproductive land situated within the boundaries of any municipal corporation, county, or township that adopts them. *Id.*

R.C. Chapter 323 concerns the collection of taxes in counties and details how properties may come within the purview of a county land reutilization corporation and how such properties are treated for taxation purposes. *See, e.g.*, R.C. 323.121(B)(2) (how interest is computed and charged for delinquent taxes on properties under the control of a county land reutilization corporation); R.C. 323.28(D) (“[p]remises ordered to be sold under this section but remaining unsold for want of bidders after being offered for sale on two separate occasions, not less than two weeks apart, shall be forfeited to the state or to a political subdivision, school district, or county land reutilization corporation”); R.C. 323.49(F) (county treasurer who is appointed receiver for tax-delinquent real property may contract with county land reutilization corporation to allow the county land reutilization corporation to act as the treasurer’s agent and exercise powers granted to the treasurer under this section).

Authority of County Land Reutilization Corporation to Enter into Contracts for the Performance of Its Administrative Functions

R.C. 1724.02 sets forth several of the numerous powers of a county land reutilization corporation. R.C. 1724.02(O) provides the authority for a county land reutilization corporation “[t]o do all acts and things necessary or convenient to carry out the purposes of [R.C. 1724.01] ... including, but not limited to, contracting with the federal government, the state or any political subdivision, and any other party, whether nonprofit or for-profit.” This general power, which includes the power to contract, may be exercised in furtherance of the stated purposes of a county land reutilization corporation as set forth in R.C. 1724.01(B)(2). R.C. 1724.02. The authorized purposes include: (1) “[f]acilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized,” (2) “[e]fficiently holding and managing vacant, abandoned, or tax-foreclosed real property pending its reclamation, rehabilitation, and reutilization,” (3) “[a]ssisting governmental entities and other nonprofit or for-profit persons to assemble, clear, and clear the title of property described in this

division in a coordinated manner,” and (4) “[p]romoting economic and housing development in the county or region.” R.C. 1724.01(B)(2)(a)-(d). Thus, pursuant to the terms of R.C. 1724.02(O) and R.C. 1724.01(B)(2), a county land reutilization corporation has the statutory authority to contract with any party for the purpose of having that party perform any functions of the corporation that further the corporation’s authorized purposes.

Statutory Framework Governing Regional Councils of Governments

We now turn to whether a regional council of governments may contract with a county land reutilization corporation to perform the corporation’s administrative functions. A regional council of governments is formed of various political subdivisions that participate in its establishment, *see* R.C. 167.01, and thus it is not a county board or an agency or department of county government. As a result, a county prosecutor is under no duty to advise such a council. *See* R.C. 309.09; 2004 Op. Att’y Gen. No. 2004-032, at 2-288 n.3; *cf.*, *e.g.*, 1985 Op. Att’y Gen. No. 85-071 (county prosecuting attorney is not legal adviser to joint fire district); 1985 Op. Att’y Gen. No. 85-012 (county prosecuting attorney is not legal adviser to regional organization for civil defense); 1981 Op. Att’y Gen. No. 81-059 (county prosecuting attorney is not legal adviser to joint recreation district or joint recreation board); 1979 Op. Att’y Gen. No. 79-019 (county prosecuting attorney is not legal adviser to multicounty felony bureau); 1961 Op. Att’y Gen. No. 2383, p. 366 (county prosecuting attorney is not legal adviser to regional planning commission). It follows that the Attorney General generally refrains from advising a county prosecutor with respect to the powers of a regional council of governments. *See* R.C. 109.14; *see also* 1989 Op. Att’y Gen. No. 89-063; 1986 Op. Att’y Gen. No. 86-084; 1986 Op. Att’y Gen. No. 86-068.

In this instance, however, Lien Forward Ohio, the regional council of governments you have asked about, is composed of Mahoning County and the City of Youngstown. Your question thus partly concerns the authority of the board of county commissioners, which is explicitly entitled to your legal counsel under R.C. 309.09. We find, therefore, that your question involves duties of your office about which we may, under R.C. 109.14, advise you.² The Attorney General reached the same conclusion in 1986 Op. Att’y Gen. No. 86-068:

A regional council of governments is formed of the various political subdivisions that participate in its establishment, and is, therefore, not a county board. It appears, as a result, that a county prosecutor is under no duty to advise such a council. It follows that I am not generally able to advise a county prosecutor with respect to the powers of a regional council of governments.

² The Attorney General will advise a county prosecuting attorney in a matter relating to his official duties. R.C. 109.14; 1995 Op. Att’y Gen. No. 95-011, at 2-56 n.1. Because a county prosecuting attorney has no duty to provide legal advice to municipal corporations or their officials, we are unable to provide you an opinion concerning the contracting authority of the City of Youngstown. *See id.*; R.C. 309.09; R.C. 705.11.

In the instant case, however, your second question concerns the authority of the county sheriff, who is clearly a county officer entitled to your legal counsel under R.C. 309.09. Further, your first question reflects the concerns of the county commissioner who, pursuant to the provisions of the agreement establishing the council of governments, serves as the county's representative on the council. I find, therefore, that the questions raised in your request involve duties of your office about which I may, under R.C. 109.14, issue a formal legal opinion.

1986 Op. Att'y Gen. No. 86-068, at 2-374 (citations omitted); *see* 1989 Op. Att'y Gen. No. 89-063; *cf.* 1985 Op. Att'y Gen. No. 85-071 (syllabus, paragraph 2) (“[a] county prosecuting attorney has a duty to act as legal adviser to a township trustee who serves as a representative to a board of fire district trustees on matters relating to the activities of the joint fire district which arise from such individual’s position as township trustee”). *But see generally* 1983 Op. Att’y Gen. No. 83-064 (syllabus, paragraph 1) (“[w]here a joint board of county commissioners is created for the purpose of constructing and maintaining a multicounty detention and treatment facility . . . , the county prosecuting attorneys of the participating counties have no duty to provide legal counsel for the joint board of county commissioners”).

R.C. Chapter 167 governs regional councils of governments. Regional councils may be established pursuant to R.C. 167.01, which provides “[t]hat governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other . . . for establishment of a regional council consisting of such political subdivisions.” Regional councils are required to adopt by-laws designating the officers of the council and the method of their 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’s powers are listed in R.C. 167.03 and include making studies and recommendations, promoting and coordinating cooperative arrangements and contracts, and planning. *See* R.C. 167.03(A)(1)-(4), (6); *see also* R.C. 167.03(B)(1)-(3); 1982 Op. Att’y Gen. No. 82-103, at 2-282. Additionally, R.C. 167.03(C) permits a regional council, “by appropriate action of the governing bodies of the members, [to] 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.” *See* 2012 Op. Att’y Gen. No. 2012-013, slip op. at 4 (“[a] regional council of governments may also, when authorized, step into the shoes, and perform the duties, of its members”). This means that a regional council of governments may take any action that any of its individual members are permitted by law to take if the individual members’ governing bodies authorize such action.

R.C. 167.03(C) should be read in conjunction with R.C. 167.08:

The appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may contract with any council established pursuant to [R.C. 167.01-.07] to receive any service from such council or to provide any service to such council. Such contracts may also authorize the council to perform any function or render any service in behalf of such counties, municipal corporations, townships, special districts,

school districts, or other political subdivisions, which such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may perform or render.

R.C. 167.08; *see* 1982 Op. Att’y Gen. No. 82-103, at 2-282 (“[R.C. 167.03(C)] should be read in conjunction with R.C. 167.08”). The first sentence of R.C. 167.08 authorizes political subdivisions, including counties and municipal corporations, to contract with a regional council of governments to receive any service from the council or to provide any service to the council. The second sentence of R.C. 167.08 further permits a contract authorizing a regional council of governments to perform any function or render any service on behalf of the political subdivision as long as such function or service is one that the political subdivision otherwise may perform or render of its own accord. In other words, political subdivisions, including the member political subdivisions of a regional council of governments, may contract with the council for the purpose of having the council perform any function or render any service that the political subdivision may perform or render. *See* 2012 Op. Att’y Gen. No. 2012-013, slip op. at 4. Thus, if a political subdivision, including a county or municipal corporation, is authorized to perform the administrative functions of a county land reutilization corporation, then the political subdivision may contract with a regional council of governments for the purpose of having the council perform the administrative functions of a county land reutilization corporation on behalf of the political subdivision.

Several prior opinions of the Attorney General similarly have concluded that R.C. 167.03(C) and R.C. 167.08 grant comparable authority and should be read together. *E.g.*, 1989 Op. Att’y Gen. No. 89-063 (syllabus, paragraph 2); 1982 Op. Att’y Gen. No. 82-103 (syllabus); 1979 Op. Att’y Gen. No. 79-018, at 2-57; 1969 Op. Att’y Gen. No. 69-013, at 2-15 to 2-16. In sum, a regional council of governments established pursuant to R.C. 167.01 may contract to perform the administrative functions of a county land reutilization corporation if (1) such a contract is capable of performance by the members of the council and necessary or desirable for dealing with problems of mutual concern, pursuant to R.C. 167.03(C), or (2) the council has been authorized via a contract pursuant to R.C. 167.08 to perform such administrative functions on behalf of a political subdivision for a county land reutilization corporation.

Thus, to determine whether a regional council of governments may contract with a county land reutilization corporation to perform the corporation’s administrative functions, we must consider whether any of the members of the regional council of governments may enter into such a contract.³

³ R.C. 167.08 contemplates that “counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may contract with any” regional council of governments. The provision does not require that the contracting political subdivision be a member political subdivision of the council. We cannot possibly consider in a single opinion the authority of every type of political subdivision to contract with a regional council; however, because you ask specifically about the authority of Lien Forward Ohio to contract with a county land reutilization corporation, we will limit our analysis to those political subdivisions that Lien Forward Ohio comprises. We will not consider the situation in which some other political subdivision, not a member

The member subdivisions of Lien Forward Ohio, the regional council of governments you have asked about, are Mahoning County and the City of Youngstown. If either the county or the city is permitted to contract with a county land reutilization corporation to perform the corporation's administrative functions, then Lien Forward Ohio, if properly authorized, may take the same action on behalf of the county or city. *See* R.C. 167.03(C); R.C. 167.08. We first will consider Mahoning County.

Authority of Board of County Commissioners to Contract with County Land Reutilization Corporation

It is firmly established that a board of county commissioners possesses only such powers as are granted to it by statute, either expressly or by necessary implication. *See State ex rel. Shriver v. Bd. of Comm'rs*, 148 Ohio St. 277, 280, 74 N.E.2d 248 (1947); 2006 Op. Att'y Gen. No. 2006-008, at 2-70; 2004 Op. Att'y Gen. No. 2004-005, at 2-44; 2001 Op. Att'y Gen. No. 2001-022, at 2-125; 1995 Op. Att'y Gen. No. 95-004, at 2-15. We therefore turn to R.C. Chapter 307 to examine the powers statutorily granted to a board of county commissioners. R.C. 307.01, R.C. 307.64, R.C. 307.698, and R.C. 307.78 permit a board of county commissioners to act for the benefit of a county land reutilization corporation. In particular, these statutes authorize a board of county commissioners to (1) "provide offices for or lease offices to a county land reutilization corporation," R.C. 307.01(D); (2) appropriate R.C. 5705.19(EE) tax levy moneys to "provide for the establishment and operation of a program of economic development," specifically including a county land reutilization corporation, R.C. 307.64; (3) "spend moneys from the general fund for housing purposes, including the housing purposes of a county land reutilization corporation," R.C. 307.698; and (4) "make contributions of moneys, supplies, equipment, office facilities, and other personal property or services to any community improvement corporation organized pursuant to [R.C. Chapter 1724] to defray the expenses of the corporation," R.C. 307.78(A). *See also* 1991 Op. Att'y Gen. No. 91-071 (syllabus, paragraph 2) ("[p]ursuant to R.C. 307.78, a county has authority to make contributions of public money to a community improvement corporation organized pursuant to R.C. Chapter 1724, in order to defray expenses of the community improvement corporation incurred in connection with its functions under R.C. Chapter 1724").

You have provided examples of the types of administrative functions of a county land reutilization corporation that may be undertaken by Lien Forward Ohio, if the law permits. You list "run[ning] the office, identify[ing] parcels for foreclosure, interact[ing] with the various non-profit and political subdivisions that may wish to acquire property, and providing fiscal responsibilities."

For the specific purpose of "running the office," the Revised Code permits the provision of office space, R.C. 307.01(D), and the contribution of supplies, equipment, office facilities, and other services, R.C. 307.78(A). The other provisions of R.C. Chapter 307 authorizing a county to act for the benefit of a county land reutilization corporation use broad terms and plainly encompass the tasks you have identified. For example, R.C. 307.64 and R.C. 307.698 authorize the expenditure of money to

political subdivision of Lien Forward Ohio, may contract with Lien Forward Ohio to perform the administrative functions of a county land reutilization corporation.

fund the establishment and operation of a county land reutilization corporation and to support the housing purposes of a county land reutilization corporation. Identifying parcels for foreclosure and interacting with those entities that wish to acquire property are housing purposes and constitute the operation of a county land reutilization corporation. You finally mention the fiscal responsibilities of a county land reutilization corporation. The several provisions of R.C. Chapter 307 we have identified each contemplate providing resources to a county land reutilization corporation, whether directly by way of monetary support or indirectly through the donation of supplies and services. These provisions thus authorize a county to give fiscal support to a county land reutilization corporation.

In that R.C. 307.01, R.C. 307.64, R.C. 307.698, and R.C. 307.78 explicitly permit the provision of office space, the appropriation of moneys to *establish* and *operate* a county land bank, the expenditure of moneys for the housing purposes of a county land bank, and the donation of supplies, equipment, and services to a county land bank, these provisions authorize counties to support the administrative functions of a county land reutilization corporation. Furthermore, the county *is* establishing and operating a county land reutilization corporation by virtue of its role in the creation and representation on the board of a county land reutilization corporation. *See* R.C. 1724.03(B) (the county treasurer and at least two county commissioners are statutorily required members of the board of directors of a county land reutilization corporation); R.C. 1724.04 (the county treasurer is the incorporator of a county land reutilization corporation).

When statutes grant authority to do a certain thing, without directing or placing limitations on the means of doing it, the grantee of such authority is necessarily vested with the discretion and implied power to perform the task in whatever manner is reasonably calculated to achieve that end. *See Fed. Gas & Fuel Co. v. City of Columbus*, 96 Ohio St. 530, 541, 118 N.E. 103 (1917) (“[w]hen a statute clearly confers a grant of power to do a certain a thing, without placing any limitations as to the manner or means of doing it, certainly the grantee of such power is naturally and necessarily vested with a wide discretion to do such incidental things as are reasonably and manifestly in the grantee’s interests”), *appeal dismissed*, 248 U.S. 547 (1919); *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) (“[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed”), *aff’d sub nom. Ohio ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916). Thus, we conclude that a county may enter into a contract with a county land reutilization corporation for the purpose of performing for the county land reutilization corporation those functions authorized by R.C. 307.01, R.C. 307.64, R.C. 307.698, and R.C. 307.78.

Authority of Regional Council of Governments to Contract with County Land Reutilization Corporation

Because the county may contract to perform administrative functions for a county land reutilization corporation, a regional council of governments of which the county is a member also may

contract to perform administrative functions for a county land reutilization corporation.⁴ See R.C. 167.03(C); R.C. 167.08. Specifically, a board of county commissioners of a county that is a member of a regional council of governments may authorize the council to enter into a contract under R.C. 167.03(C) with a county land reutilization corporation to perform for the corporation specific administrative functions, provided the services furnished by the council under the contract also are capable of performance by the county and are necessary or desirable for dealing with problems of mutual concern. Additionally, a board of county commissioners may enter into a contract under R.C. 167.08 with a regional council of governments for the purpose of authorizing the council to perform on behalf of the county administrative functions for a county land reutilization corporation. Thus, we need not consider whether a city has the authority to perform the same functions. See note 1, *supra*.

Authority of County Treasurer and County Auditor to Contract with County Land Reutilization Corporation

Next, you ask us to consider whether a county treasurer or county auditor may contract with a county land reutilization corporation to provide services to or employees to work for the land reutilization corporation. The offices of county treasurer and county auditor are established by R.C. 321.01 and R.C. 319.01, respectively. These officers have only those powers and duties expressly granted by statute or necessarily implied by such express grants. *State ex rel. Kuntz v. Zangerle*, 130 Ohio St. 84, 89, 197 N.E. 112 (1935) (“[t]he County Auditor and County Treasurer of a county are creatures of statute. They can exercise only such powers as are expressly delegated by statute, together with such implied powers as are necessary to carry into effect the powers expressly delegated”); *Hopple v. Trs. of Brown Twp.*, 13 Ohio St. 311, 324-25 (1862) (“[t]he validity ... as contracts, must, then necessarily depend upon the general principle governing all contracts. There must, in the first place, have been parties capable to contract ... in order to constitute a valid contract. ... [I]n this case, ... it is denied that there appears to have been parties capable of contracting in the matter. Whatever powers to contract are possessed by either of the parties to this contract, they being mere bodies politic and corporate, are necessarily conferred upon them by the legislature. ... They, in like manner, only possess the powers expressly conferred upon them, as such body and officers respectively, by the statute, and, perhaps, where the statute is silent upon the subject, the authority, by necessary implication, which is requisite to execute the duties so imposed upon them. In the exercise of their powers, as trustees of the township, the trustees can take nothing by implication, therefore,

⁴ In response to your specific questions concerning contracting authority, we conclude that a board of county commissioners may contract to perform administrative functions for a county land reutilization corporation, and thus a regional council of governments of which the county is a member also may contract to perform administrative functions for a county land reutilization corporation; however, pursuant to the authority granted by R.C. 307.01, R.C. 307.64, R.C. 307.698, and R.C. 307.78, a contract is not necessary in order for a county to perform those functions for a county land reutilization corporation. Furthermore, while R.C. 167.08 intends a contract, R.C. 167.03(C) does not require a contract in order for a regional council of governments to act on behalf of its member subdivisions.

beyond the authority thus conferred by the statute”); 2004 Op. Att’y Gen. No. 2004-022, at 2-187; 1994 Op. Att’y Gen. No. 94-066, at 2-324.

Among those duties required of a county treasurer are keeping an accurate account of all moneys received by the treasurer, R.C. 321.07, making a daily statement to the county auditor showing the taxes received and credited to various funds, R.C. 321.09, and redeeming warrants issued by the county auditor, R.C. 321.16. Duties of a county auditor include, for example, preparing a financial report for the county for each fiscal year, R.C. 319.11, certifying all moneys into the county treasury, R.C. 319.13, keeping an accurate account current with the county treasurer, R.C. 319.14, and issuing warrants on the county treasurer for all moneys payable from the county treasury, R.C. 319.16. In no instance has the General Assembly granted a county treasurer or county auditor permission to enter into a contract with a county land reutilization corporation for the purpose of providing services to or employees to work for the corporation.

While there are several statutes requiring or permitting interactions between a county treasurer and a county land reutilization corporation, these statutes are specific to the treasury fund of the county land reutilization corporation, its ability to receive an advance payment of the current year’s unpaid taxes, and available lines of credit. *See, e.g.*, R.C. 321.263; R.C. 321.341; R.C. 321.36. Additionally, R.C. 323.49(F) authorizes a county treasurer to enter into a contract with a county land reutilization corporation to allow the corporation to exercise the powers granted to the county treasurer under R.C. 323.49. The General Assembly has authorized only specific interactions between a county treasurer and a county land reutilization corporation, and none of these authorized actions carries with it an implied power that would encompass the contractual arrangement you have asked about.

Similarly, while several statutes mention interactions between a county auditor and a county land reutilization corporation, these provisions typically concern the auditor’s valuation of real property, warrants issued by the auditor, the auditor’s computation and allocation of various fees, and the corresponding receipt of properties and fees by the county land reutilization corporation or its corresponding treasury fund. *See, e.g.*, R.C. 319.54(G)(4); R.C. 321.261(A)(2); R.C. 321.263; R.C. 5721.20. The General Assembly has authorized only specific interactions between a county auditor and a county land reutilization corporation, and none of these authorized actions carries with it an implied power that would encompass the contractual arrangement you have asked about.

We find no statute authorizing a county treasurer or a county auditor to contract with a county land reutilization corporation to provide services to or employees to work for the corporation. In the absence of an authorizing statute, pursuant to the reasoning above, a county treasurer or county auditor may not take a given action. Thus, in response to your question, neither a county treasurer nor a county auditor may contract with a county land reutilization corporation to provide services to or employees to work for the corporation.

Compatibility and Conflicts of Interest

We now turn to your final question. You ask whether a contract between a county land reutilization corporation and a regional council of governments raises any issues of compatibility or conflict of interest. You further ask whether “a public official [may] sit on the board of a council of

governments or county land bank created by the office of the public official,” “a public official [may] vote to approve contracts or funding for a council of governments or county land bank created by the office of the public official,” “a council of governments and county land bank created by some of the [same public officials may] contract with each other,” and “employees of the office of a public official [may] contemporaneously work for the office of the public official and either a council of governments or county land bank.” You assert that “some of the same individuals serve on the Lien Forward council of governments’ Board and the Mahoning County Land Bank Board. Additionally, members of the County Land Bank also serve” other political subdivisions as county commissioners, township trustees, and public officers of municipalities. “These relationships may create multiple potential conflicts that need [to] be addressed.”

The ethical issues that may confront county officers as a result of the various agreements and interactions of public offices you have asked about reach beyond considerations of compatibility. In previous opinions, the Attorneys General have declined to speak on issues of compatibility when there also are presented issues arising under the ethics laws. (As you are aware, a finding of incompatibility does not bring with it an imposition of civil or criminal penalties. Actions that create an unlawful interest in public contracts have more serious consequences than those presented by issues of compatibility alone.) The Ohio Ethics Commission is empowered to render advisory opinions on questions arising under the ethics statutes, R.C. Chapter 102 and R.C. 2921.42-.43, concerning matters of ethics, conflicts of interest, or financial disclosure as they relate to positions in public service. R.C. 102.08; 1991 Op. Att’y Gen. No. 91-007, at 2-36. Therefore, it has been our custom to decline to provide advice on compatibility questions when the situation presented also concerns issues under the ethics statutes. 1991 Op. Att’y Gen. No. 91-007, at 2-36. *See, e.g.*, 2011 Op. Att’y Gen. No. 2011-043, at 2-352 n.2 (“[t]he Ohio Ethics Commission, rather than the office of the Attorney General, is required by R.C. 102.08 to address the application of the ethics and conflict of interest provisions of R.C. Chapter 102 and R.C. 2921.42-.43. We will, therefore, refrain from interpreting and applying these provisions by way of a formal opinion. Questions concerning the interpretation and application of these provisions in your particular situation should instead be directed to the Ohio Ethics Commission” (citations omitted)); 1990 Op. Att’y Gen. No. 90-005, at 2-21; 1987 Op. Att’y Gen. No. 87-025, at 2-179 (“[t]his policy respects the jurisdiction of the Ethics Commission and prevents the possibility that the Attorney General and the Ethics Commission would render conflicting opinions on the same question”). *See also, e.g.*, Ohio Ethics Comm’n, Advisory Op. No. 88-005, slip op. at 3 (R.C. 1724.10, which requires a city official to serve on the governing board of a community improvement corporation designated as an agency by the city, does not exempt the official from the provisions of R.C. Chapter 102).

In your letter you acknowledge that of paramount importance in this matter are those provisions of the Ohio ethics laws that may be implicated, and you state that your questions were submitted to the Ohio Ethics Commission for consideration. In response to a letter from your county treasurer, the Chief Advisory Attorney for the Ethics Commission has advised that under the pertinent ethics statutes (1) a public official who is a member of the boards of both a county land reutilization corporation and a regional council of governments may vote on a contract between the two entities, and (2) a county land reutilization corporation may enter into a contract with a county office for the

county office to provide services or employees to perform administrative functions for the corporation.⁵

The general nature of your inquiry about compatibility, without identifying specific county land reutilization corporation positions that might be held simultaneously by a county officer, does not permit us to address this topic in a meaningful way for you. However, we recently received an opinion request that asks the Attorney General whether county or township officers may, at the same time, hold certain positions in the service of a county land reutilization corporation. We intend to address those questions in several opinions that will be applicable to your situation.

On the basis of the foregoing, it is my opinion, and you are hereby advised that:

1. A board of county commissioners of a county that is a member of a regional council of governments may authorize the council to enter into a contract under R.C. 167.03(C) with a county land reutilization corporation whereby the council will perform for the corporation specific administrative functions, provided the services furnished by the council under the contract are capable of performance by the county and are necessary or desirable for dealing with problems of mutual concern.
2. A board of county commissioners may enter into a contract under R.C. 167.08 with a regional council of governments for the purpose of authorizing the council to perform on behalf of the county administrative functions for a county land reutilization corporation.
3. Neither a county treasurer nor a county auditor may contract with a county land reutilization corporation to provide services to or employees to work for the corporation.

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

⁵ In this second conclusion, the Ethics Commission's Chief Advisory Attorney acknowledges there may be laws, other than those in the ethics statutes, that prohibit the contractual arrangement you have described.