



JULIA R. BATES

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November 10, 2025

Attorney General Dave Yost
Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
Via Email: OpinionsRequest@OhioAttorneyGeneral.gov

Re: *Formal Opinion Request-Lucas
County Prosecuting Attorney*

Dear Attorney General Yost:

The Lucas County Prosecutor requests an opinion regarding the appropriate statutory authority of a county treasurer and the county investment advisory committee (IAC) to determine policies and investments. Specifically, the Lucas County Prosecutor's Office seeks your opinion as to the following questions:

- (1) Does R.C. §135.341 authorize a county investment advisory committee to adopt a written policy that prohibits or restricts investments otherwise authorized by R.C. §135.35?
- (2) Does R.C. §135.341 authorize a county investment advisory committee to adopt a motion advising the Treasurer not to reinvest in foreign government bonds upon maturity that is legally binding on the Treasurer?
- (3) Do R.C. §135.34 or §135.341(E) authorize the removal of the Treasurer's investment authority for not following a county investment advisory committee policy that is unlawful or ultra vires?
- (4) Does R.C. §135.35(A)(10) permit investment in the sovereign debt of any foreign nation that satisfies the statutory criteria?
- (5) Would the County's non-reinvestment in Israeli Bonds upon maturity violate R.C. §9.76?

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CRIMINAL DIVISION
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FORECLOSURE UNIT
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BACKGROUND

The county treasurer is the custodian of all county money and is charged with responsibility for their lawful investment and is designated as the county's investing authority. R.C. §135.31(C). The treasurer may only invest funds in the types of securities and instruments expressly permitted under R.C. §135.35.

The Lucas County Investment Advisory Committee is composed of all three County Commissioners, together with the County Treasurer and the Clerk of the Court of Common Pleas. R.C. §135.341(A). The Committee is primarily advisory in nature. It must establish written county investment policies and advises the county treasurer (the investing authority) concerning the investment of county funds to ensure the best and safest return. R.C. §135.341(C). The IAC does not execute investments or direct specific transactions. Its authority is oversight and policy approval.

At a recent IAC meeting, a motion was adopted advising the Treasurer not to reinvest in any foreign nation investments upon the maturity of that investment.

LEGAL ISSUES

(1) Does R.C. 135.341 authorize a county investment advisory committee to adopt a written policy that prohibits or restricts investments otherwise authorized by R.C. §135.35?

The county investment advisory committee is required to establish written county investment policies and advise the county treasurer (the investing authority) concerning the investment of county funds to ensure the best and safest return. R.C. §135.341(C). The County's current investment policy, adopted by the IAC in 2022, states that the Investing Authority may invest in any instrument or security authorized by R.C. §135.35. (*Lucas County Ohio Investment Policy*, Section V)

R.C. §135.35(A)(10) permits investment in the sovereign debt of any foreign nation that satisfies the statutory criteria. The IAC is considering amending the policy to prohibit or restrict investments in the sovereign debt of any foreign nation.

Does R.C. §135.341 authorize a county investment advisory committee to adopt such a written policy?

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(2) Does R.C. §135.341 authorize a county investment advisory committee to adopt a motion advising the Treasurer not to reinvest in foreign government bonds upon maturity that is legally binding on the Treasurer?

As previously noted, under R.C. §135.31(C), the county treasurer is designated as the county's investing authority. The treasurer may only invest funds in the types of securities and instruments expressly permitted under R.C. §135.35.

The Lucas County Investment Advisory Committee must establish written county investment policies and advises the county treasurer (the investing authority) concerning the investment of county funds to ensure the best and safest return. R.C. §135.341(C).

The Lucas County Investment Advisory Committee adopted a motion that 'advised' the County Treasurer not to reinvest in any foreign nation investments upon the maturity of that investment. The State of Israel is the only foreign investment held by Lucas County.

Is such a motion by the IAC legally binding on the County Treasurer?

(3) Do R.C. §135.34 or §135.341(E) authorize the removal of the Treasurer's investment authority for not following a county investment advisory committee policy that is unlawful or ultra vires?

By default, under R.C. §135.31(C), the county treasurer serves as the investing authority of the county. However, R.C. §135.34 provides the board of county commissioners with oversight authority. It allows the commissioners to monitor the treasurer's investment practices through semiannual reviews.

If the commissioners determine that the treasurer has failed to invest as required by law or has acted in documented, substantial, and continuing disregard of the investment advisory committee's advice and policies, they must first provide written notice. If at the next semiannual review, those problems remain uncorrected, the commissioners may, by resolution, designate themselves, one member, or one employee as the county investing authority. Once designated, the new investing

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authority remains in place until the commissioners rescind the resolution.¹ R.C. §135.34 and §135.341.

However, it is well established that, if a government agency exceeds its authority, its actions are void. *Educational Service Institute v. Gallia-Educational Service Center*, 4th Dist. Case No. 03CA6, 2004-Ohio-874, ¶ 25.

If the IAC adopts a policy that is unlawful or ultra vires, do R.C. §135.34 or §135.341(E) authorize the removal of the Treasurer's investment authority for not following a county investment advisory committee policy that is unlawful or ultra vires?

(4) Does R.C. §135.35(A)(10) permit investment in the sovereign debt of any foreign nation that satisfies the statutory criteria?

R.C. §135.35(A)(10) authorizes investment in bonds issued by foreign nations diplomatically recognized by the U.S. government, if they meet specified statutory requirements. However, some members of the IAC believes that only the bonds issued by the State of Israel qualify.

Does R.C. §135.35(A)(10) permit investment in the sovereign debt of any foreign nation that satisfies the statutory criteria or is the statute limited to the bonds of the State of Israel?

(5) Would the County's non-reinvestment in Israeli Bonds upon maturity violate R.C. §9.76?

R.C. §9.76 prohibits state agencies, including state institutions of higher education, from entering into or renewing contracts for supplies, equipment, services, or construction unless the contract contains a representation that the contractor is not boycotting and will not boycott a jurisdiction with which Ohio can enjoy open trade, including Israel.

¹ Additionally, the IAC may, under limited circumstance specified in R.C. §321.46 and §321.47, act as the investing authority in place of the Treasurer. R.C. §135.341(E). These statutes are not at issue.



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"Boycott" means engaging in refusals to deal, terminating business activities, or taking other actions intended to limit commercial relations with persons or entities in a discriminatory manner. The definition expressly excludes actions taken for ordinary business or economic reasons, compliance with federal law, terms of a collective bargaining agreement, or compliance with the laws of the business's home jurisdiction. R.C. §9.76(A)(1).

R.C. §9.76 does not require investment in any foreign nation.

Lucas County is considering not reinvesting in Israeli bonds when they mature and not investing any additional funds in Israel. In June, 2024, you issued a letter to Cuyahoga County warning that divesting from Israeli bonds would "likely" violate R.C. §9.76.

Is R.C. §9.76 violated by a county investment advisory committee and/or county treasurer non-reinvesting in Israeli bonds upon maturity and not making any future investments in the State of Israel? Alternately, is R.C. §9.76 violated by a policy the prohibits all foreign investments.

If you need any further information from my office, please do not hesitate to contact Assistant Prosecutor John Borell, at (419) 213-4728 or JABorell@co.lucas.oh.us

We very much appreciate your assistance and opinions on this matter.

Very truly yours,

JULIA R. BATES
Prosecuting Attorney
Lucas County, Ohio