

OPINION NO. 88-079**Syllabus:**

1. R.C. 165.07(D) does not confer upon the Director of Development the authority to issue refunding bonds of the State of Ohio for the purpose of refunding bonds previously issued in accordance with the provisions of R.C. Chapter 165 by a county or a municipal corporation.
2. The requirement set forth in R.C. 165.07(D) that refunding bonds issued pursuant thereto shall bear interest at a lower rate than the bonds to be refunded must prevail for the duration of the term for which the refunding bonds are issued.

To: David J. Baker, Director, Department of Development, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

You have requested my opinion regarding the authority of the Director of Development to issue refunding bonds under R.C. Chapter 165 (industrial development bonds). Specifically, you have asked whether the Director of Development may issue refunding bonds pursuant to R.C. 165.07(D), in accordance with the conditions specified therein, on behalf of any issuer, whether the issuer is a county, a municipality, or the state. In addition, you wish to know whether the conditions enumerated in R.C. 165.07(D) with respect to the issuance of refunding bonds must prevail only at the time such bonds are issued, or whether such conditions must prevail for the duration of the term for which the bonds are issued.

Article VIII, §13 of the Ohio Constitution, adopted as an exception to the lending aid and credit prohibitions that appear in Ohio Const. art. VIII, §§4 and 6

respectively,¹ provides generally for public aid to private enterprise for the purpose of improving the economy of the State of Ohio through the creation of new business and employment opportunities. *State ex rel. Burton v. Greater Portsmouth Growth Corporation*, 7 Ohio St. 2d 34, 36-37, 218 N.E.2d 446, 449 (1966) (Ohio Const. art. VIII, §13 "has a single purpose, to allow the state and governmental subdivisions to give financial assistance to private industry or to other governmental units in order to create new employment within this state"). Ohio Const. art. VIII, §13 states, in pertinent part, as follows:

To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities.

It further provides that, "[l]aws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities," and pursuant thereto the General Assembly has, in R.C. Chapter 165, established a mechanism for the issuance of industrial development bonds by the state and certain of its political subdivisions. See generally 1985 Op. Att'y Gen. No. 85-011; 1984 Op. Att'y Gen. No. 84-032; 1983 Op. Att'y Gen. No. 83-087.

Thus, R.C. 165.02 provides, in pertinent part, as follows:

Section 13 of Article VIII, Ohio Constitution, is in part implemented by this chapter in furtherance of the public purposes of the state to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state. An issuer acting through its issuing authority may in accordance with Section 13 of Article VIII, Ohio Constitution:

¹ Article VIII, §4 of the Ohio Constitution reads as follows:

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

Article VIII, §6 of the Ohio Constitution similarly states as follows:

No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit.

....
 (C) *Issue its bonds to provide funds, by loans or otherwise, for acquiring, constructing, reconstructing, enlarging, improving, furnishing, or equipping one or more projects or parts thereof.* (Emphasis added.)

R.C. 165.01 further defines several different terms as used in R.C. Chapter 165, including the terms, "[i]ssuer," "[i]ssuing authority," and "[p]roject":

(D) *"Issuer" means the state, or a county or municipal corporation of this state which county or municipal corporation has, pursuant to section 1724.10 of the Revised Code, designated a community improvement corporation as its agency for industrial, commercial, distribution, and research development and for which a plan has been prepared by such community improvement corporation and confirmed by its issuing authority.*

(E) *"Issuing authority" means in the case of the state, the director of development; in the case of a municipal corporation, the legislative authority thereof; and in the case of a county, the board of county commissioners or whatever officers, board, commission, council, or other body might succeed to the legislative powers of the commissioners.*

....
 (H) *"Project" means real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer, or by others in whole or in part from the proceeds of a loan made by an issuer, for industry, commerce, distribution, or research and located within the boundaries of the issuer. A project as defined in this division is hereby determined to qualify as facilities described in Section 13 of Article VIII, Ohio Constitution.* (Emphasis added.)

Accordingly, a county acting through the board of county commissioners, a municipal corporation acting through its legislative authority, and the state acting through the Director of Development may "issue revenue bonds to provide funds for, *inter alia*, acquisition, construction, or improvement of real or personal property located within the boundaries of the issuer for industry, commerce, distribution or research," in order to "create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state," R.C. 165.02. Op. No. 84-032 at 2-93 and 2-94. See also R.C. 165.03 (purposes for which bonds may be issued; form of bonds; authority of issuer); R.C. 165.04 (provisions of bond proceedings); R.C. 165.05 (securance of bonds by trust agreements); R.C. 165.06 (rights of bond holders); R.C. 165.12 (funds from which bonds are payable).

In addition to the authority conferred by R.C. 165.02, R.C. 165.07 further vests in the issuing authorities described in R.C. 165.01(E) the power to refund bonds previously issued by a county, a municipal corporation, or the state, in accordance with the conditions specified therein. See R.C. 165.07(A)-(D). As pertains to your particular questions, R.C. 165.07(D) provides as follows:

The issuing authority may issue refunding bonds of the issuer to refund any bonds previously issued under Chapter 165. or 761.² of the Revised Code, for any of the following purposes:

....
 Refunding any bonds of the issuer previously issued when the refunding bonds will bear interest at a lower rate than the bonds to be refunded, when the interest cost of the refunding bonds computed to the absolute maturity

² R.C. Chapter 761 addresses the issuance of bonds by a municipal corporation for the purpose of funding the sale, purchase, or lease of real or personal property to be used in connection with certain economic development projects, and contains provisions similar to those in R.C. Chapter 165.

will be less than the interest cost of the bonds to be refunded, or when the average life of the refunding bonds will be greater than the remaining average life of the bonds to be refunded. (Footnote added.)

R.C. 165.07 further states that refunding bonds issued pursuant thereto "shall mature not later than thirty years from date of issue," and that, except as provided therein, the terms of the sale and issuance of such bonds "shall be as provided in [R.C. Chapter 165] for an original issue of bonds." Finally, R.C. 165.07(A)-(C) enumerate other instances in which refunding bonds may be sold and issued by an issuing authority.³

In your first question you have asked about the authority of the Director of Development under R.C. 165.07(D) to issue refunding bonds of any issuer, whether the issuer is a county, a municipality, or the state. In particular, you wish to know whether the Director of Development, acting as issuing authority for the state, may, pursuant to R.C. 165.07(D), issue state bonds for the purpose of refunding bonds previously issued by a county or a municipal corporation.

R.C. 165.07 provides an express grant of power to the issuing authorities enumerated in R.C. 165.01(E) to issue refunding bonds of their respective issuers, for the purposes specified in R.C. 165.07(A)-(D). Thus, for example, under R.C. 165.07(D) the Director of Development may, in accordance with the conditions stated therein, issue refunding bonds of the state for the purpose of refunding bonds previously issued thereby. Similarly, the legislative authority of a municipal corporation may issue refunding bonds of the municipal corporation, and a board of county commissioners may issue refunding bonds of the county, for the purpose of refunding bonds previously issued by the respective municipal corporation and county.

It does not appear, however, that R.C. 165.07(D) confers upon the Director of Development the authority to issue refunding bonds of the state for the purpose of refunding bonds previously issued by a county or a municipal corporation. On this point, I am persuaded that R.C. 165.07(D) is not reasonably amenable to such an interpretation. I reach this conclusion as a result of the specific language used in that section with respect to the issuance of refunding bonds by the pertinent issuing authorities, the designation therein of the particular purposes for which such bonds may be issued, and certain rules of statutory construction that apply in this instance. The first paragraph of R.C. 165.07 states, in pertinent part, that, "[t]he issuing authority may issue refunding bonds of the issuer to refund any bonds previously issued under [R.C. Chapter 165]" for any of the purposes enumerated thereafter, and subdivision (D) of R.C. 165.07 includes among such purposes, "[r]efunding any bonds of the issuer previously issued," upon the conditions stated therein. (Emphasis added.) It is a long-established principle of statutory construction that statutes or sections of statutes that refer to each other, or that relate to the same subject matter or object, are to be regarded as *in pari materia*, and thus construed in a similar manner. *State ex rel. Pratt v. Weyandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956); *Volan v. Keller*, 20 Ohio App. 2d 204, 253 N.E.2d 309 (Jefferson County 1969); *Beach v. Beach*, 99 Ohio App. 428, 134 N.E.2d 162 (Montgomery County 1955). Thus, application of this principle requires that identical or similar words within a statute be construed in a like manner, and as a whole. See, e.g., *State v. Tarrant*, 83 Ohio App. 199, 201, 80 N.E.2d 509, 510 (Franklin County 1958) ("[w]here a term is used in a statute it is a rule of construction that the court will give to it that meaning which is consistent with the entire context of the statute"); *Ramsdell v. Bonser*, 34 Ohio Law Abs. 48, 52, 34 N.E.2d 460, 463 (App. Hamilton County 1936) (an entire statutory section "must be read as a whole. No isolated phrase or clause may be separated from its setting and so considered"); *In Re Estate of Clark*, 74 Ohio Law Abs. 460, 465, 141 N.E.2d 259, 263 (Prob. Ct. Ross County 1955) ("[t]o overemphasize any one word or phrase of [a] statute at the expense of the others would be to give the statute a stunted meaning").

³ A refunding bond has been defined as a bond "which replaces or pays off [an] outstanding bond which [the] holder surrenders in exchange for new security." *Black's Law Dictionary* 1152 (5th ed. 1979).

It is clear that the foregoing principles of statutory construction apply to the various provisions of R.C. 165.07. In particular, this means that the term, "issuer," as used in subdivision (D) of R.C. 165.07, shall be interpreted as having the same referent as that term has as used within the first paragraph of R.C. 165.07. Thus, for example, substituting, where appropriate, the terms defined in R.C. 165.01 that pertain to the State of Ohio, R.C. 165.07(D) properly reads as follows:

The [director of development] may issue refunding bonds of the [state] to refund any bonds previously issued under Chapter 165. or 761. of the Revised Code, for any of the following purposes:

....
 (D) Refunding any bonds of the [state] previously issued when the refunding bonds will bear interest at a lower rate than the bonds to be refunded, when the interest cost of the refunding bonds computed to the absolute maturity will be less than the interest cost of the bonds to be refunded, or when the average life of the refunding bonds will be greater than the remaining average life of the bonds to be refunded.

Accordingly, under R.C. 165.07 the Director of Development may issue refunding bonds of the state for the expressly authorized purpose of refunding bonds previously issued by *the state*, the "issuer" for which he serves as "issuing authority." The language of R.C. 165.07(D) is quite clear and unequivocal with respect to the nature and extent of the authority conferred upon the Director of Development in this regard. Consequently, I discern no basis for inferring therefrom additional authority on the part of the Director of Development to issue refunding bonds of the state for the purpose of refunding bonds previously issued by either a county or a municipal corporation. I am of the opinion, therefore, that R.C. 165.07(D) does not grant such authority to the Director of Development.

In your second question you have asked whether the conditions enumerated in R.C. 165.07(D) with respect to the issuance of refunding bonds must prevail only at the time such bonds are issued, or whether those conditions must prevail for the duration of the term for which the bonds are issued, until the bonds reach maturity. R.C. 165.07(D) states that an issuing authority may issue refunding bonds of the issuer (1) when the refunding bonds will bear interest at a lower rate than the bonds to be refunded; (2) when the interest cost of the refunding bonds computed to the absolute maturity will be less than the interest cost of the bonds to be refunded; or, (3) when the average life of the refunding bonds will be greater than the remaining average life of the bonds to be refunded. You have specifically inquired about the first condition set forth above, which requires that the refunding bonds bear interest at a lower rate than the bonds that are being refunded.

R.C. 165.07(D) does not expressly state that the lower interest rate applicable to refunding bonds must prevail throughout the entire term for which the bonds are issued. Nonetheless, given the particular economic considerations that favor the issuance of refunding bonds, I am of the opinion that such a qualification may reasonably be inferred under R.C. 165.07(D). Among such considerations are the important cost advantages that ordinarily accrue to the responsible governmental entity as a result of a bond refunding. As one work in the municipal bond area notes, a bond refunding often is undertaken precisely because older bonds can be redeemed and refinanced prior to their maturity date with new bonds at significantly lower rates of interest:

Still another reason for issuers to refund municipal bonds is to reduce their interest payment expenses. Typically, substantial interest cost savings can occur when interest rates decline approximately 200 to 300 basis points from the levels when the bonds were originally issued. By refunding the outstanding bonds with a new issue, the bond issuer in effect is refinancing the loan at a lower interest rate. Additionally, based upon certain interpretations of Internal Revenue Service arbitrage procedures, some refundings that save money for the issuer can even take place in an interest-rate environment that has not dramatically declined.

II *The Municipal Bond Handbook* 338-39 (1983). See also Gelfand, *State & Local Government Debt Financing* §7:42 at 112 (1986) ("[i]n most refundings, the

interest rate on the refunded bonds is higher than the interest rate on the refunding bonds (a 'high-to-low' refunding) and the refunded bonds will be called at the earliest call date").

Certainly, R.C. 165.07(D)'s recitation that refunding bonds may be issued "when the refunding bonds will bear interest at a lower rate than the bonds to be refunded" reflects an awareness on the part of the General Assembly of the savings in interest payments that may be achieved through a bond refunding. More importantly, the foregoing language also reflects the General Assembly's intent that such savings must, in fact, be an integral component of certain bond refundings undertaken pursuant to that statute. It follows, therefore, that the lower interest rates mandated by the first condition in R.C. 165.07(D) must prevail for the duration of the term for which the refunding bonds are issued if the desired savings in this regard are to be realized.

The foregoing conclusion finds additional support in what I consider is an important, material distinction between the first and second conditions enumerated in R.C. 165.07(D). The first condition set forth in R.C. 165.07(D) addresses the lower interest rate that refunding bonds are to bear in relation to the interest rate borne by the refunded bonds, whereas the second condition addresses the lower "interest cost of the refunding bonds computed to the absolute maturity" (emphasis added) as compared to the analogous interest cost of the bonds being refunded. In this regard, it appears that the concept of "interest cost...computed to the absolute maturity" expressed by the second condition is intended to take into account the final, actual cost of a bond refunding, as determined and affected by a variety of financial contingencies that may occur at either random or regular intervals throughout the entire term for which the bonds are sold and issued. An example of the foregoing that most readily comes to mind is the situation in which the annual interest rate applied to the refunding bonds is variable or floating, rather than fixed, such that the annual interest rate may, depending upon the circumstances, fluctuate above or below the annual interest rate borne by the refunded bonds. In that case, the second condition specified in R.C. 165.07(D) will permit the use of a variable interest rate with respect to the refunding bonds so long as the final, actual cost incurred thereby is less than the similar cost of the bonds being refunded.⁴

Conversely, the first condition stated in R.C. 165.07(D) appears to contemplate a situation in which the interest rate of the refunding bonds is an annual fixed rate, below that of the refunded bonds, or is so closely analogous to a fixed rate that there is little likelihood that such rate, once established, will equal or exceed the interest rate applicable to the bonds being refunded. As a practical matter, therefore, the question whether the conditions specified in R.C. 165.07(D) must prevail throughout the entire term for which the refunding bonds are issued is germane to this first condition only. Thus, insofar as the first condition, in contrast to the second, addresses a fixed annual rate of interest on refunding bonds, it appears reasonably implicit that such rate shall continue to be lower than that of the rate applicable to the refunded bonds throughout the entire term for which the refunding bonds are issued.

In light of the foregoing discussion, it appears that the particular type of refunding bond described in your letter may, in the proper circumstances, qualify as a validly issued instrument under R.C. Chapter 165 pursuant to the second condition set forth in R.C. 165.07(D). You have stated that the Department contemplates the issuance under R.C. 165.07(D) of a newly developed financial instrument known as floating rate securities, which shall be subject to a variable or floating rate of interest. To the extent that the interest cost of such securities computed to their absolute maturity is determined to be less than the interest cost of the bonds being refunded, then such securities may properly be issued under R.C. 165.07(D), notwithstanding that the variable interest rate applicable to such securities may fluctuate above the interest rate applicable to the bonds being refunded.

⁴ This assumes, however, that the principal amount of the refunding bonds is equal to the principal amount of the bonds being refunded, and that the interest cost of both types of bonds is calculated over identical time periods (*i.e.*, from the date of issuance until the final maturity date).

Accordingly, it is my opinion, and you are advised that:

1. R.C. 165.07(D) does not confer upon the Director of Development the authority to issue refunding bonds of the State of Ohio for the purpose of refunding bonds previously issued in accordance with the provisions of R.C. Chapter 165 by a county or a municipal corporation.
2. The requirement set forth in R.C. 165.07(D) that refunding bonds issued pursuant thereto shall bear interest at a lower rate than the bonds to be refunded must prevail for the duration of the term for which the refunding bonds are issued.