

**OPINION NO. 85-040**

**Syllabus:**

A county has no authority to enter into an agreement with a financial institution whereby the county places a certificate of deposit with the financial institution at an interest rate below the current market rate on the condition that the financial institution agree to lend funds to eligible businesses at an interest rate below the current borrowing rate.

**To: Andrew Hutjera, Harrison County Prosecuting Attorney, Cadiz, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, August 8, 1985**

I have before me your request for my opinion concerning whether the county treasurer may invest inactive county funds pursuant to a linked deposit program similar to that established by R.C. 135.61-.67. The county wishes to implement a program whereby the treasurer would place certificates of deposit with eligible financial institutions at an interest rate which is a specified percentage below the current market rate on the condition that the institutions agree to lend the value of the deposits to eligible businesses at the same specified percentage below the current borrowing rate. The county treasurer and board of commissioners believe that such a program would attract new business into the area and expand employment opportunities with existing businesses.

I note first that a county is a creature of statute and has only those powers which are expressly granted by statute or which may be necessarily implied therefrom. See State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Thus, in order to implement the program described above, the county must have the statutory authority, express or implied, to do so.

The provisions of R.C. 135.31-.40 direct the manner in which a county must deposit and invest its public moneys. R.C. 135.35 governs the deposit and investment of a county's inactive moneys, and permits the county to purchase bonds and other obligations of the United States, of any federal government agency and of this state and its political subdivisions. The county may also place inactive funds in "[t]ime certificates of deposit or savings or deposit accounts, including, but not limited to, pass book accounts, in any eligible institution mentioned in [R.C. 135.32] having an office located within the territorial limits of the county." R.C. 135.35(A)(3).

Although R.C. 135.35(A)(3) authorizes a county to invest its inactive moneys in certificates of deposit, there is no statutory authority for a county to enter into an agreement with a financial institution whereby the county places certificates of deposit with the financial institution at below current interest rates in return for the institution's promise to lend moneys at below current borrowing rates to eligible businesses. Indeed, R.C. 135.341 indicates that the county is to establish and follow investment policies which "ensure the best return on funds available to the county for deposit or investment."<sup>1</sup> If the county were to place its funds in certificates of deposit at an interest rate which is lower than market rate, then the best return would not be realized on county funds. Thus, in light of the absence of statutory authority for a county to establish a linked deposit program, I must conclude that the county may not enter into an agreement with a financial

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<sup>1</sup> "Inactive moneys" are "all public moneys in public depositories in excess of the amount determined to be needed as active moneys." R.C.135.31(B). See R.C. 135.31(A) (defining "active moneys" as "an amount of public moneys in public depositories determined to be necessary to meet current demands upon a county treasury, and deposited in a commercial account and withdrawable, in whole or in part, on demand or deposited in a negotiable order of withdrawal account"); R.C. 135.31(E) (defining "public moneys" as "all moneys in the treasury of a county or moneys coming lawfully into the possession or custody of the treasurer").

<sup>2</sup> R.C. 135.341 reads:

There shall be a county investment advisory committee consisting of three members: the chairman of the board of county commissioners, another county commissioner to be designated by the chairman, and the county treasurer. . . .The committee shall meet at least once every six months at the call of its chairman, to advise the investing authority on county investment policies in order to ensure the best return on funds available to the county for deposit or investment.

institution whereby the county places certificates of deposit with the institution at an interest rate which is below the current market rate in exchange for the institution's promise to loan funds to eligible businesses at an interest rate which is below the current borrowing rate.

My conclusion is supported by the fact that, unlike counties, the state has the specific statutory authority to operate a linked deposit program. Prior to the enactment of Sub. H.B. 342, 115th Gen. A. (1983) (eff. Oct. 13, 1983), the state had the power to invest its interim moneys in a manner similar to that which a county possesses with regard to its inactive moneys. See R.C. 135.14; 1973 Ohio Laws, Part I, 1042 (Am. S.B. 384, eff. Nov. 21, 1973). Sub. H.B. 342, however, enacted R.C. 135.61-.67, specifically enabling the state to participate in such a program as you have described. By enacting R.C. 135.61-.67, the General Assembly has indicated that express statutory authority is needed in order to establish a linked deposit plan. If the General Assembly had intended to authorize the counties to participate in a linked deposit program, it could have done so in clear statutory language, as it has done with the state. See generally 1985 Op. Att'y Gen. No. 85-009; 1984 Op. Att'y Gen. No. 84-093.

In conclusion, it is my opinion, and you are advised, that a county has no authority to enter into an agreement with a financial institution whereby the county places a certificate of deposit with the financial institution at an interest rate below the current market rate on the condition that the financial institution agree to lend funds to eligible businesses at an interest rate below the current borrowing rate.