

OPINION NO. 78-034**Syllabus:**

1. R.C. 3354.09 authorizes a board of trustees of a community college district to purchase or otherwise acquire real property for the purpose of drilling for natural gas or other energy resources necessary to the operation of district programs and facilities where such an acquisition enables the board to obtain such resources more cheaply than through a direct purchase.
2. Where a board of trustees of a community college district is authorized under the terms of R.C. 3354.09 to acquire land for the purpose of drilling for natural gas or other energy resources, public funds may be expended for such an acquisition and for the extraction of resources.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, June 9, 1978

I have before me your request for my opinion which poses the following questions:

1. May a community college, created under the authority of Chapter 3354 of the Revised Code, purchase or lease property for the purpose of drilling its own natural gas wells?
2. May a community college, created under the authority of Chapter 3354 of the Revised Code, expend

public funds for the purpose of drilling its own natural gas wells?

It has been the position of the Attorneys General of Ohio for a number of years that when the legislature intends to authorize a public body or official to dispose of state owned minerals, it does so in very specific terms and that such authority will not be inferred from general authority to acquire or dispose of real property. 1975 Op. Att'y Gen. No. 75-093; 1958 Informal Op. Att'y Gen. No. 92; 1953 Op. Att'y Gen. No. 3099. However, under the express terms of R.C. 3354.02, a community college district is a political subdivision of the state. Moreover, R.C. 3354.13 specifies that ownership of a community college, including all right, title and interest in and to all property thereof, shall be vested in the board of trustees of such district. It is apparent, therefore, that minerals or mineral rights in the hands of such a board of trustees are the property of the board rather than being state owned. The answers to your questions, therefore, require an analysis of the general powers and duties of the board of trustees of a community college district.

R.C. 3354.01 *et seq.* provides for the creation of community college districts and for the establishment and operation of community colleges within such districts. R.C. 3354.09 specifies the powers of a board of trustees of a community college district and confers upon such board a broad grant of authority to own, operate and manage a community college. In pertinent part, that section provides that a board may:

(A) Own and operate a community college . . .

. . . .

(B) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use and sell real and personal property as is necessary for the conduct of the program of the community college on whatever terms and for whatever consideration may be appropriate for the purpose of the college;

. . . .

(E) Provide for a community college, necessary lands, buildings or other structures, equipment, means, and appliances;

. . . .

(J) Prescribe rules and regulations for the effective operation of a community college and exercise such other powers as are necessary for the efficient management of such college;

R.C. 3354.13 further provides that a board of trustees of a community college district may acquire by appropriation any land, rights, rights of way, franchises, easements or other property necessary or proper for the efficient operation of any facility of the district.

It is a long-standing principle of Ohio law that where an officer or body is directed by statute 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. State ex rel. Hunt v. Hildebrant, 93 Ohio St. 1 (1915); State, ex rel. Copland v. State Medical Bd., 107 Ohio St. 20, 29 (1923); State, ex rel. Byrd v. Sherwood, 140 Ohio St. 173, 181 (1942). It is apparent, therefore, that the provisions of R.C. 3354.09 and 3354.13 repose in the board of trustees of a community college district the authority to do all acts necessary for the operation of community college facilities programs within the district.

The use of energy resources to provide heat, light and water is, of course, essential to the operation of institutions of higher learning. Thus, under the provisions of R.C. 3354.09, it is apparent that a board of trustees of a community college district is authorized to purchase and consume the energy resources necessary to meet its needs. I am, therefore, of the opinion that if a board of trustees is able to obtain natural gas or other vital energy resources necessary to the operation of its programs and facilities more cheaply by drilling its own wells than by purchasing through commercial suppliers, the provisions of R.C. 3354.09 authorize the board to purchase or lease land in order that it may drill to obtain such resources.

The conclusion that a board of trustees has the authority, under the circumstances discussed above, to acquire land for the purpose of drilling for natural gas does not, however, imply that such a board is authorized to embark upon such a venture jointly with a commercial gas company or other private enterprise. Business partnerships between the state or subdivisions thereof and individuals, associations or private corporations are prohibited under the terms of art. VIII, §§4, 5, Ohio Constitution. *Walker v. Cincinnati*, 21 Ohio St. 14 (1871). The purpose of these constitutional provisions is to impose a broad prohibition against the intermingling of public and private funds. *State, ex rel. Saxbe v. Brand*, 176 Ohio St. 44 (1964). See, also, 1977 Op. Att'y Gen. No. 77-049; 1977 Op. Att'y Gen. No. 77-047. While I am unaware of any cases which discuss the applicability of art. VIII, §§4, 5, Ohio Constitution, to a community college district created under R.C. 3354.01 et seq., the conclusion that such a district is subject thereto may be reasonably inferred from the evident meaning and spirit of these constitutional provisions. Consequently, I am of the opinion that a board of trustees of a community college district is not authorized to undertake a project involving drilling for natural gas as a joint venture.

Turning now to your second question, it should be noted that the General Assembly has provided several alternatives for the funding of a community college district. R.C. 3354.11 specifies that a community college district may submit to the electors of the district the question of issuing bonds for the purpose of paying all or part of the cost of purchasing sites for the erection and furnishing of buildings and for the acquisition or construction of any property which the board of trustees is authorized to acquire or construct, provided that such property has an estimated useful life of five years or more. Thus, where a board of trustees seeks to acquire or construct property by means of bonds issued pursuant to R.C. 3354.11, the purpose of the acquisition or construction must be one authorized by law. As discussed above, it is my conclusion that a board of trustees is authorized under the terms of R.C. 3354.09 to acquire land for the purpose of drilling its own natural gas wells, provided that such an acquisition enables the board to obtain natural gas or other necessary resources more cheaply than a purchase through commercial suppliers. It follows that a board of trustees, under the terms of R.C. 3354.11, is authorized to use funds generated pursuant thereto for the acquisition of land for the purposes of drilling natural gas where such a purpose is authorized under the terms of R.C. 3354.09 and where the estimated useful life of any property acquired is at least five years.

In addition, the board of trustees of a community college district is defined as a taxing authority by R.C. 5705.01. R.C. 5705.03 provides that such a taxing authority may, in accordance with the provisions of R.C. Chapter 5705, levy taxes annually for the purpose of paying the current operating expenses of the subdivision or the cost of constructing permanent improvements. R.C. 5705.05 specifies that the purpose of a general levy for current expenses must be for carrying into effect any of the general or special powers granted by law to a subdivision. Since, pursuant to R.C. 3354.09, a board of trustees of a community college district is empowered to acquire land for the purpose of drilling its own natural gas wells where such drilling enables the board of trustees to obtain natural gas more cheaply than through direct purchase, it follows that an expenditure of funds generated pursuant to R.C. 5705.05 may properly be made for such purpose.

R.C. 5705.10 specifies that monies derived from a special levy shall be credited to a special fund for the purpose for which the levy was made. That

section further requires that all money paid into a special fund so created shall be used only for the purposes for which such fund is established. Consequently, where a tax has been levied for purposes encompassing the operation and continuance of programs of a community college district, expenditure of funds generated thereby for the purpose of acquiring natural gas which is necessary to the operation of community college district programs and facilities is proper.

In summary, therefore, it is my opinion, and you are so advised that:

1. R.C. 3354.09 authorizes a board of trustees of a community college district to purchase or otherwise acquire real property for the purpose of drilling for natural gas or other energy resources necessary to the operation of district programs and facilities where such an acquisition enables the board to obtain such resources more cheaply than through a direct purchase.
2. Where a board of trustees of a community college district is authorized under the terms of R.C. 3354.09 to acquire land for the purpose of drilling for natural gas or other energy resources, public funds may be expended for such an acquisition and for the extraction of resources.