

**OPINION NO. 92-025****Syllabus:**

1. Subject to any charter provisions regulating the investment of the public moneys of a county and to any policies and limitations established by the county investment advisory committee, a county investing authority is authorized to invest the "inactive moneys" of a county in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1).
2. Subject to any statutes, rules, charter provisions, or other provisions of law regulating the investment of public funds authorized to be held by a department, official, or board of a county independently of such county's treasury, such department, official, or board may deliver such funds to the county investing authority for investment on behalf of such department, official, or board in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1).
3. Subject to any charter provisions regulating the investment of the public moneys of a county and to any policies and limitations

established by the county investment advisory committee, a board of county commissioners of a county may enter into an agreement, pursuant to R.C. 307.15, with the board of county commissioners of another county that authorizes the county investing authority of the first county to invest such county's "inactive moneys" in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority of the second county, in accordance with any contractual limitations set forth in such agreement.

4. Subject to the limitations set forth in R.C. 135.14 and any other statutes, ordinances, resolutions, or provisions of law regulating the investment of the public moneys of a governmental entity, the legislative authority of a "subdivision," as defined by R.C. 135.01(L), which is authorized to enter into an agreement pursuant to R.C. 307.15, may enter into such an agreement with a board of county commissioners of a county that authorizes the subdivision's treasurer or governing board to invest the subdivision's "interim moneys" in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority of such county, in accordance with any contractual limitations set forth in such agreement.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**

**By: Lee Fisher, Attorney General, June 26, 1992**

You have requested an opinion pertaining to the investment of public moneys by various governmental entities in the Secured Assets Fund Earnings ("SAFE") Program established by the Cuyahoga County Investment Advisory Committee. Information provided in connection with your opinion request states that the Cuyahoga County Investment Advisory Committee has established the SAFE Program to increase the county's return on its investments. Under policies established by the Cuyahoga County Investment Advisory Committee for the SAFE Program, the county treasurer is authorized to invest or deposit public moneys only in those instruments specified in R.C. 135.35 that are backed by the full faith and credit of the United States, including repurchase agreements relating to obligations backed by the full faith and credit of the United States.

Regarding this program, you ask the following:

1. Is the SAFE Program a permissible investment, pursuant to Chapter 135, Revised Code, of Cuyahoga County funds held by the Cuyahoga County treasurer?
2. If the answer to question number one is in the affirmative, would other Cuyahoga County departments, officials, boards, etc. that hold public funds independently of the county treasurer, be permitted to invest in the SAFE Program?
3. If the answer to question number one is in the affirmative, would other units of local government (such as counties, villages, school districts, libraries, regional transit authorities, etc.) be permitted to participate in the SAFE Program?

**I. The Investment of Moneys in the County Treasury**

Absent a charter provision regulating the investment of the public moneys of a county, the investment of moneys in a county treasury is governed by R.C. 135.31-.40. Under these provisions, the county treasurer is required to deposit in

public depositories<sup>1</sup> all "public moneys"<sup>2</sup> in his possession that he determines are not necessary to transact the business of his office. R.C. 135.40. Public moneys in a public depository are classified as either "active moneys" or "inactive moneys." See R.C. 135.31. The terms "active moneys" and "inactive moneys" are defined, for purposes of R.C. 135.31-40, as follows:

(A) "Active moneys" means an amount of public moneys in public depositories determined to be necessary to meet current demands upon a county treasury, and deposited in any of the following:

(1) A commercial account and withdrawable, in whole or in part, on demand;

(2) A negotiable order of withdrawal account as authorized in the "Consumer Checking Account Equity Act of 1986," 94 Stat. 146, 12 U.S.C. 1832(a);

(3) A money market deposit account as authorized in the "Garn-St. Germain Depository Institutions Act of 1982," 96 Stat. 1501, 12 U.S.C. 3503.

(B) "Inactive moneys" means all public moneys in public depositories in excess of the amount determined to be needed as active moneys. (Emphasis added.)

R.C. 135.31. The active moneys of the county are, thus, required to be held in public depositories in specified types of commercial accounts, negotiable order of withdrawal accounts, and money market accounts. R.C. 135.31(A). Because the investment of active moneys is limited to the accounts specified in R.C. 135.31(A), such moneys are not available for investment under the SAFE Program.

The definition of "inactive moneys" set forth in R.C. 135.31(B), however, does not specify the types of accounts into which inactive moneys must be deposited. Rather, the deposit or investment of the county's inactive moneys is generally governed by R.C. 135.35:

(A) The investing authority<sup>3</sup> shall deposit or invest any part or all of the county's inactive moneys and shall invest all of the money in the county library and local government support fund when required by section 135.352 of the Revised Code. The following classifications of securities and obligations are eligible for such deposit or investment:

(1) Bonds, notes, or other obligations of, or guaranteed by, the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon;

(2) Bonds, notes, debentures, or other obligations or securities issued by any federal government agency, including, but not limited to, federal national mortgage association debentures and discount notes,

<sup>1</sup> Subject to the restrictions of R.C. 135.31-40, any national bank located in this state, any bank as defined in R.C. 1101.01, subject to inspection by the superintendent of banks, or any domestic building and loan association as defined in R.C. 1151.01 authorized to accept deposits is eligible to become a public depository for the public moneys of a county. R.C. 135.32.

<sup>2</sup> The term "public moneys" is defined for purposes of R.C. 135.31-40 as "all moneys in the treasury of a county or moneys coming lawfully into the possession or custody of the [county] treasurer." R.C. 135.31(E).

<sup>3</sup> Except when (i) it is determined that the county treasurer has failed to invest the inactive moneys of the county as provided by law, or in documented substantial, material, and continuing disregard of the advice or written policies of the county investment advisory committee, and (ii) the board of county commissioners has designated itself, one of its members, or one of its employees as the investing authority, the county treasurer acts as the investing authority of the county. R.C. 135.31(C); see also R.C. 135.34.

or by the export-import bank of Washington, whether or not they are guaranteed by the United States;

(3) Time certificates of deposit or savings or deposit accounts, including, but not limited to, passbook accounts, in any eligible institution mentioned in section 135.32 of the Revised Code having an office located within the territorial limits of the county;

(4) Bonds and other obligations of this state, its political subdivisions, or other units or agencies of this state or its political subdivisions.

(B) The investing authority may also enter into a written repurchase agreement that sets forth the terms and conditions of the agreement between the parties, under the terms of which agreement the investing authority purchases and the seller agrees unconditionally to repurchase any of the securities listed in division (A)(1) or (2) of this section. The investing authority also may sell any of such securities owned by the county under the same terms and conditions for repurchase. The agreement shall contain the requirement that for each transaction pursuant to the agreement the participating institution shall provide all of the following information:

(1) The face amount of the securities;

(2) The type, rate, and maturity date of the securities;

(3) A numerical identifier generally accepted in the securities industry that designates the securities. (Emphasis and footnote added.)

The county investing authority is also authorized to deposit the inactive moneys of the county into (i) certificates of deposit at up to three percent below market rates with an eligible lending institution applying for the inactive moneys, *see* R.C. 135.353, or (ii) the Ohio subdivision's fund established in the custody of the Treasurer of the State of Ohio under R.C. 135.45.

The discretion of the county investing authority to invest or deposit the county's inactive moneys under R.C. 135.35, R.C. 135.353, and R.C. 135.45 is subject to the policies and limitations established by the county investment advisory committee. Pursuant to R.C. 135.341, each county is required to establish a county investment advisory committee, which is required, *inter alia*, to establish written county investment policies and to advise the investing authority on the county investments. The county investment advisory committee, accordingly, may restrict the types of instruments in which the county investing authority may invest or deposit the county's inactive moneys.

As the materials provided by you indicate, the investments under the SAFE Program, as established by the Cuyahoga County Investment Advisory Committee pursuant to R.C. 135.341, are limited to those instruments specified in R.C. 135.35 that are backed by the full faith and credit of the United States. Thus, under the SAFE Program, investments may be made only in (i) instruments authorized by R.C. 135.35(A)(1), or (ii) written repurchase agreements authorized by R.C. 135.35(B) with respect to securities listed in R.C. 135.35(A)(1). Insofar as a county investing authority is expressly authorized by R.C. 135.35(A) to invest or deposit "any part or all of the county's inactive moneys"<sup>4</sup> in the instruments listed in R.C. 135.35, and the SAFE Program invests or deposits moneys only in the instruments listed in R.C. 135.35(A)(1) and (B), it follows that the Cuyahoga County Treasurer, as the Cuyahoga County Investing Authority, may invest the inactive moneys of Cuyahoga County under the SAFE Program.

## II. The Investment of Moneys Held by Departments, Officials, and Boards of the County

Your second question asks, if the SAFE Program is a permissible investment for moneys held by a county treasurer, whether the departments, officials, and boards of such county that retain possession of public funds independently of the

<sup>4</sup> Conversely, moneys which constitute "active moneys" of a county would not be eligible for investment under the SAFE Program because investment of active moneys is limited to the accounts specified in R.C. 135.31(A).

county treasurer are permitted to invest those funds in the SAFE Program.<sup>5</sup> Your question does not identify any particular department, official, or board of the county, but asks only for general guidance. This opinion, therefore, assumes that, with respect to any such person or entity, there is no statute, rule, charter provision, or other legal requirement or provision binding on such person or entity expressly (i) requiring such funds to be deposited or invested in an investment that is not covered by the SAFE Program, or (ii) prohibiting the investment or deposit of such funds in the SAFE Program's investments.

As a general rule in Ohio, absent specific statutory authorization, public moneys cannot be loaned or invested by the officers in charge thereof. *See, e.g., Fidelity & Casualty Co. v. Union Sav. Bank Co.*, 119 Ohio St. 124, 162 N.E. 420 (1928); *State v. Buttles*, 3 Ohio St. 309 (1854); 1979 Op. Att'y Gen. No. 79-048. Rather, public moneys must generally be dealt with strictly in accordance with the statutory provisions governing their use. *See generally State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916) (authority of county commissioners to act in financial transactions must be clearly and distinctly granted).

However, as noted in a prior Attorney General opinion, "where public moneys come into the custody of a public official and there is no specific statute as to what is to be done with them, the official may deposit such moneys in accordance with prevailing custom in the business community." 1989 Op. Att'y Gen. No. 89-051 at 2-217; *accord Busher v. Fulton*, 128 Ohio St. 485, 496, 191 N.E. 752, 757 (1934) ("[w]here there is no express denial of the right, the practice of public officials in making general deposits of public or other trust funds coming into their official custody and control is customary and in accord with modern business usages"); 1984 Op. Att'y Gen. No. 84-075; 1982 Op. Att'y Gen. No. 82-054; 1961 Op. Att'y Gen. No. 2720, p. 748 (overruled, in part, on other grounds by Op. No. 82-054). The *Busher* court and these prior Attorney General opinions, thus, looked at then-current business practices in determining that, even without express statutory authorization, various governmental entities could deposit public funds in banks and other financial institutions. *See, e.g., Op. No. 89-051; Op. No. 84-075.*

It is clear that it is customary in the business community not only to deposit funds in banks and other financial institutions, but also to purchase (either directly or indirectly through banks, financial institutions and/or other financial agents) investment instruments such as treasury bills and similar obligations backed by the full faith and credit of the United States, in order to safeguard the principal of, and earn interest on, such funds. Accordingly, in light of such current customary business practices and the economic reality that the principal of a fund should be invested in order to maintain its economic value, it is reasonable to conclude that in those instances where the General Assembly has granted statutory authority to a department, official or board of a county to hold public funds independently of the county treasury, such authority also impliedly includes the authority to deposit and/or invest those funds in a manner which is reasonably calculated to safeguard such funds while maintaining and/or enhancing the principal, pending use of such funds in accordance with the statutes governing their application. *See, e.g., Busher v. Fulton*, 128 Ohio St. at 496, 191 N.E. at 757; 1961 Op. No. 2720. In the absence of a specific statute specifying the types of deposits or investments which may be made with such funds, it is also reasonable to conclude that any such investment of public funds should be limited to those generally authorized for public funds by R.C. 135.31-.40. *See* 1961 Op. Att'y Gen. No. 2648, p. 671.

The materials submitted in connection with your request indicate, that the permitted investments under the SAFE Program are limited to those which the General Assembly has determined provide sufficient safety for the deposit and/or investment of public funds generally, *see* R.C. 135.14; R.C. 135.35; *cf.* 1987 Op.

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<sup>5</sup> Because your second question is limited to the investment by the Cuyahoga County Treasurer of public funds authorized to be held independently of the Cuyahoga County Treasury by departments, officials, and boards of Cuyahoga County, this opinion does not address the investment of such funds by the county treasurer of another county.

Att'y Gen. No. 87-049, and that the instruments in which the SAFE Program invests (*i.e.*, those backed by the full faith and credit of the United States) are generally recognized in the business community as customary instruments for holding and investing money, while maintaining the maximum security for such funds. Such materials also indicate that the treasurer of Cuyahoga County will act in the capacity of an agent for those persons and entities which provide funds to him to invest on their behalf under the SAFE Program, and that separate accounts will be maintained with respect to the funds of each such person or entity. Under such circumstances, it is clear that by investing funds in the SAFE Program, a department, official or board would be acting prudently in accordance with prevailing custom in the business community to maintain the security of the principal of such funds and enhance the value thereof by earning interest, while at the same time following the statutory framework generally established for the investment of public funds by the General Assembly. It, therefore, follows that a department, official or board of Cuyahoga County which holds public funds independently of the Cuyahoga County Treasury may, by agreement with the Cuyahoga County Treasurer, invest such funds under the SAFE Program, in the absence of specific statutory provisions otherwise governing the investment of such funds.<sup>6</sup>

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<sup>6</sup> R.C. 9.38 states, in part: "A public official other than a state officer, employee, or agent shall deposit all public moneys received by him with the treasurer of the public office or properly designated depository once every twenty-four consecutive hours." *See also* R.C. 5705.10. Insofar as interest earned and paid on public funds invested by a county department, official, or board is "public money," *see* 1989 Op. Att'y Gen. No. 89-002 at 2-11; *see also* R.C. 117.01(C), it might appear that R.C. 9.38 requires that such interest be deposited with the county treasurer for deposit by him into the county treasury, *see* R.C. 135.40; R.C. 321.05.

However, as noted in your request letter, the departments, officials, and boards of the county in question are statutorily authorized to hold public funds independently of the county treasury. Furthermore, as determined in the text above, these departments, officials, and boards are authorized to deposit and/or invest those funds in a manner which is reasonably calculated to safeguard such funds while maintaining and/or enhancing the principal, pending use of such funds in accordance with the statutes governing their application. It is clear that the provisions authorizing a county department, official, or board to hold public funds independently of the county treasury are special provisions in that such provisions specifically authorize a person or entity to hold and disburse public funds that generally are required to be held and disbursed by the county treasurer. *Compare* R.C. 9.38 (set forth above); R.C. 321.16 (if there is money in the county treasury or depository to the credit of the fund on which a warrant is drawn, the county treasurer shall redeem such warrant); R.C. 325.31 (requiring certain county officers to "pay into the county treasury, to the credit of the general county fund, on the warrant of the county auditor, all fees, costs, penalties, percentages, allowances, and perquisites collected by [their] office") and R.C. 5705.10 (providing that all revenue derived from a source other than the general property tax shall be paid into either a special fund or the general fund) *with* R.C. 325.071 (county sheriff may hold and disburse his furtherance of justice funds); R.C. 325.12 (county prosecuting attorney may hold and disburse his furtherance of justice funds) and R.C. 2933.43(D)(1)(c) (providing for the establishment of law enforcement trust funds by law enforcement officials). The provisions of R.C. 9.38, in contrast, are general in that they concern the deposit of all public moneys received by a public official with the county treasurer.

It is a codified rule of statutory interpretation that a "special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." R.C. 1.51. Inasmuch as R.C. 9.38 is a general provision and there is no manifest intent that R.C. 9.38 prevail over the specific statutes authorizing a county department, official, or board to hold public funds independently of the county treasury, it may be concluded that these specific statutes create an exception to R.C. 9.38. *See* 1983 Op. Att'y Gen. No. 83-055 (interest earned on moneys invested directly by a county

### III. The Investment of Public Moneys of Other Political Subdivisions

Your third question asks, if the SAFE Program is a permissible investment for county moneys, whether other units of local government are permitted to invest their moneys by participating in the SAFE Program. Your final question does not identify any particular unit of local government, but asks only for general guidance. This opinion, therefore, assumes that, with respect to any such unit of local government, there is no statute, ordinance, resolution, charter provision or other legal requirement binding on such unit expressly (i) requiring such moneys to be deposited or invested in an investment that is not covered by the SAFE Program, or (ii) prohibiting the investment or deposit of such moneys in the SAFE Program's investments. See generally Ohio Const. art. X, §3; Ohio Const. art. XVIII, §7.

We have been provided copies of forms of the agreements proposed to be entered into by the Cuyahoga County Board of County Commissioners and the units of local government, which indicate that these agreements are entered into pursuant to R.C. 307.15. Therefore, it is also assumed that the phrase "units of local government," referenced in your request letter, refers to entities that are authorized to enter into agreements under R.C. 307.15.

Under R.C. 307.15,

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, health district, park district, soil and water conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, *whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render;....*

Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivisions directly;.... (Emphasis added.)

Accordingly, if a taxing district or county is empowered to exercise a particular power, then, pursuant to R.C. 307.15, a board of county commissioners may enter into an agreement with the legislative authority<sup>7</sup> of that taxing district or county

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children services board or a county department of welfare (now the county children services board and the county department of human services) is added to the principal sum for investment or expenditure pursuant to R.C. 5153.33 and related provisions). Therefore, when a county department, official, or board is statutorily authorized to hold public funds independently of the county treasury and such funds are invested or deposited by the department, official, or board, the interest earned and paid on those funds follows the principal with respect to which such interest was earned. See generally Op. No. 83-055 at 2-222 ("[i]n the absence of a statute prescribing the disposition of interest earned on [funds invested directly by a county children services board or department of welfare], I apply the common law rule that, absent statutory direction, interest should be allocated to the fund to which the principal belongs").

<sup>7</sup> "Legislative authority," for purposes of R.C. 307.15, "means the board of county commissioners, board of township trustees, or the board, council, or commission of a contracting subdivision." R.C. 307.14(A).

to exercise that power on behalf of that taxing district or county. *See, e.g.*, 1991 Op. Att'y Gen. No. 91-037; 1984 Op. Att'y Gen. No. 84-034; *see also* 1952 Op. Att'y Gen. No. 1330, p. 284 (the contracting authority provided by G.C. 2450-2, the statutory predecessor of R.C. 307.15, encompasses any power, function, or service that the contracting subdivision or its legislative authority may exercise, perform, or render).

#### A. Investment by Other Counties

As noted above, subject to the policies and limitations established by the county investment advisory committee, the inactive moneys of a county may be invested by the county investing authority in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1). Thus, since a county, through its investing authority, is authorized to invest or deposit its inactive moneys in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1), a board of county commissioners may enter into an agreement with another county, pursuant to R.C. 307.15, that authorizes its county investing authority to invest the county's inactive moneys in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority of another county. Accordingly, if a board of county commissioners has entered into an agreement, pursuant to R.C. 307.15, with another board of county commissioners that authorizes the county investing authority of the first county to invest the county's inactive moneys in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority of the second county, the county investing authority of the first county may invest that county's inactive moneys in the aforementioned investment program, subject to any contractual limitations set forth in such agreement and to any policies and limitations established by the county investment advisory committee of the county on whose behalf the county investing authority is investing. Insofar as the SAFE Program invests or deposits moneys only in the instruments listed in R.C. 135.35(A)(1) and (B), a board of county commissioners may enter into an agreement, pursuant to R.C. 307.15, with the Cuyahoga County Board of County Commissioners that authorizes its county investing authority to invest the county's inactive moneys in the SAFE Program, subject to any contractual limitations set forth in such agreement and to any policies and limitations established by the county investment advisory committee of the county on whose behalf the Cuyahoga County Treasurer, as the Cuyahoga County Investing Authority, is investing.

#### B. Investment by Political Subdivisions Other Than County

Similarly, pursuant to R.C. 135.14, the treasurer or governing board of a subdivision is expressly empowered to invest or deposit such subdivision's interim moneys.<sup>8</sup>

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<sup>8</sup> R.C. 135.01 defines, for purposes of R.C. 135.01-21, the terms "governing board," "interim moneys," "subdivision," and "treasurer" as follows:

(D) "Governing board" means, ... in the case of all school districts including county school districts except as otherwise provided in this section, the board of education, and when the case so requires, the board of commissioners of the sinking fund; in the case of a municipal corporation, the legislative authority, and when the case so requires, the board of trustees of the sinking fund; in the case of a township, the board of township trustees; in the case of a union or joint institution or enterprise of two or more subdivisions not having a treasurer, the board of directors or trustees thereof; and in the case of any other



The treasurer or governing board may invest or deposit any part or all of the *interim moneys*, provided that such investments will mature or are redeemable within two years from the date of purchase, except as otherwise limited in this section. The following classifications of obligations shall be eligible for such investment or deposit:

(A) *Bonds, notes, or other obligations of or guaranteed by the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon;*

subdivision electing or appointing a treasurer, the directors, trustees, or other similar officers of such subdivision. The governing board of a subdivision electing or appointing a treasurer shall be the governing board of all other subdivisions for which such treasurer is authorized by law to act. In the case of a county school financing district that levies a tax pursuant to section 5705.215 of the Revised Code, the county board of education that serves as its taxing authority shall operate as a governing board. Any other county board of education shall operate as a governing board unless it adopts a resolution designating the board of county commissioners as the governing board for the county school district.

....  
 (F) ... "Interim moneys" means public moneys in the treasury of ... any subdivision after the award of inactive deposits has been made in accordance with section 135.07 of the Revised Code, which moneys are in excess of the aggregate amount of the inactive deposits as estimated by the governing board prior to the period of designation and which the treasurer or governing board finds should not be deposited as active or inactive deposits for the reason that such moneys will not be needed for immediate use but will be needed before the end of the period of designation.

....  
 (L) "Subdivision" means any municipal corporation, except one which has adopted a charter under Article XVIII, Ohio Constitution, and the charter or ordinances of the chartered municipal corporation set forth special provisions respecting the deposit or investment of its public moneys, or any school district including a county school district, a county school financing district, township, municipal or school district sinking fund, special taxing or assessment district, or other district or local authority electing or appointing a treasurer, except a county. In the case of a school district, special taxing or assessment district, or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by law to act as ex officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the "subdivision." The term also includes a union or joint institution or enterprise of two or more subdivisions, that is not authorized to elect or appoint a treasurer, and for which no ex officio treasurer is provided by law.

(M) "Treasurer" means, ... in the case of any subdivision, the treasurer, or officer exercising the functions of a treasurer, of such subdivision. In the case of a board of trustees of the sinking fund of a municipal corporation, the board of commissioners of the sinking fund of a school district, or a board of directors or trustees of any union or joint institution or enterprise of two or more subdivisions not having a treasurer, such term means such board of trustees of the sinking fund, board of commissioners of the sinking fund, or board of directors or trustees.

(B) Bonds, notes, debentures, or other obligations or securities issued by any federal government agency, or the export-import bank of Washington;

(C) Interim deposits in the eligible institutions applying for interim moneys as provided in section 135.08 of the Revised Code. The award of interim deposits shall be made in accordance with section 135.09 of the Revised Code and the treasurer or the governing board shall determine the periods for which such interim deposits are to be made and shall award such interim deposits for such periods, provided that any eligible institution receiving an interim deposit award may, upon notification that the award has been made, decline to accept the interim deposit in which event the award shall be made as though such institution had not applied for such interim deposit.

(D) Bonds and other obligations of this state.

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The treasurer or governing board may also enter into a *written repurchase agreement* that sets forth the terms and conditions of the agreement between the parties for a period not to exceed thirty days with any eligible institution mentioned in section 135.03 of the Revised Code, under the terms of which agreement the treasurer or governing board purchases, and such institution agrees unconditionally to *repurchase any of the securities listed in division (A) or (B) of this section that will mature or are redeemable within five years from the date of purchase*. The agreement shall contain the requirement that for each transaction pursuant to the agreement the participating institution shall provide all of the following information:

- (1) The face amount of the securities;
- (2) The type, rate, and maturity date of the securities;
- (3) A numerical identifier generally accepted in the securities industry that designates the securities. (Emphasis added.)

See also R.C. 135.09 (providing for the deposit of interim moneys into eligible institutions); R.C. 135.141 (a municipal corporation may also invest its interim moneys in linked deposits); R.C. 135.142 (a board of education may also invest its interim moneys in commercial paper notes and bankers' acceptances); R.C. 135.45 (subdivisions are also authorized to deposit their interim moneys in the Ohio subdivision's fund).

R.C. 135.14 thus authorizes the treasurer or governing board of a subdivision to invest or deposit the "interim moneys" of the subdivision in instruments of or guaranteed by the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon, R.C. 135.14(A), and repurchase agreements relating to the repurchase of the instruments listed in R.C. 135.14(A), R.C. 135.14(D). Insofar as the treasurer or governing board of a "subdivision," as defined by R.C. 135.01(L), is authorized to invest or deposit the subdivision's interim moneys in the instruments listed in R.C. 135.14(A) and (D), a board of county commissioners may enter into an agreement, pursuant to R.C. 307.15, with the legislative authority of any subdivision, which is authorized to enter into such an agreement, that authorizes the county investing authority to invest the interim moneys of that subdivision in an investment program consisting of the types of instruments specified in R.C. 135.14(A), and repurchase agreements authorized by R.C. 135.14(D) with respect to the instruments listed in R.C. 135.14(A) that is managed by the county investing authority. Hence, if a board of county commissioners has entered into an agreement, pursuant to R.C. 307.15, with the legislative authority of a "subdivision," as defined by R.C. 135.01(L), which is authorized to enter into such an agreement, that authorizes the treasurer or governing board of the subdivision to invest the subdivision's interim moneys in an investment program consisting of the types of instruments specified in R.C. 135.14(A), and repurchase agreements authorized by R.C. 135.14(D) with respect to the instruments listed in R.C. 135.14(A) that is managed by the county investing authority, the treasurer or governing board of the subdivision may invest the subdivision's interim moneys in the aforementioned investment program, subject to any contractual limitations set forth in such agreement and to the limitations set forth in R.C. 135.14.

As indicated above, the investments of the SAFE Program are limited to those instruments listed in R.C. 135.35(A)(1) and (B). Except for the two year

limitation concerning maturity or redemption of those instruments purchased under R.C. 135.14, and the time limitations concerning repurchase agreements imposed by R.C. 135.14, the provisions of R.C. 135.14(A) and (D) relating to the investment of "interim moneys" of a subdivision are substantively identical to the corresponding provisions of R.C. 135.35(A)(1) and (B) relating to the investment of "inactive moneys" of a county. The investment or deposit of moneys in an instrument specified in R.C. 135.35(A)(1), or a repurchase agreement authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1), is thus, as a general matter, an investment or deposit of moneys that is sanctioned by the provisions of R.C. 135.14(A) and (D). Accordingly, because the investments permitted under the SAFE Program are limited to those instruments listed in R.C. 135.35(A)(1) and (B), the SAFE Program's investments are the type of investments provided for by R.C. 135.14(A) and (D).<sup>9</sup> Since under the SAFE Program, funds are invested or deposited only in those instruments listed in R.C. 135.35(A)(1) and (B), the legislative authority of a "subdivision," as defined by R.C. 135.01(L), which is authorized to enter into an agreement under R.C. 307.15, may enter into such an agreement with the Cuyahoga County Board of County Commissioners that authorizes the subdivision's treasurer or governing board to invest the subdivision's interim moneys in the SAFE Program, subject to any contractual limitations set forth in such agreement and to the limitations set forth in R.C. 135.14.

#### IV. Conclusion

Based upon the foregoing, it is my opinion, and you are hereby advised, that:

1. Subject to any charter provisions regulating the investment of the public moneys of a county and to any policies and limitations established by the county investment advisory committee, a county investing authority is authorized to invest the "inactive moneys" of a county in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1).
2. Subject to any statutes, rules, charter provisions, or other provisions of law regulating the investment of public funds authorized to be held by a department, official, or board of a county independently of such county's treasury, such department, official, or board may deliver such funds to the county investing authority for investment on behalf of such department, official, or board in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1).
3. Subject to any charter provisions regulating the investment of the public moneys of a county and to any policies and limitations established by the county investment advisory committee, a board of county commissioners of a county may enter into an

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<sup>9</sup> As stated in the text, except for the two year limitation concerning maturity or redemption of those instruments purchased under R.C. 135.14, and the time limitations concerning repurchase agreements imposed by R.C. 135.14, the provisions of R.C. 135.14(A) and (D) are substantively identical to the corresponding provisions of R.C. 135.35(A)(1) and (B). Nevertheless, it is still possible for an investment to be permissible under R.C. 135.35(A)(1) or (B), but not be permissible under R.C. 135.14(A) or (D) because such investment does not mature or is not redeemable within the time limitations of R.C. 135.14. You have provided copies of forms of the agreements, however, which make it clear that the investment of a subdivision's funds will be limited to those investments under the SAFE Program that also satisfy any additional requirements with respect to the investment of such subdivision's interim moneys.

agreement, pursuant to R.C. 307.15, with the board of county commissioners of another county that authorizes the county investing authority of the first county to invest such county's "inactive moneys" in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority of the second county, in accordance with any contractual limitations set forth in such agreement.

4. Subject to the limitations set forth in R.C. 135.14 and any other statutes, ordinances, resolutions, or other provisions of law regulating the investment of the public moneys of a governmental entity, the legislative authority of a "subdivision," as defined by R.C. 135.01(L), which is authorized to enter into an agreement pursuant to R.C. 307.15, may enter into such an agreement with a board of county commissioners that authorizes the subdivision's treasurer or governing board to invest the subdivision's "interim moneys" in an investment program consisting of the types of instruments specified in R.C. 135.35(A)(1), and repurchase agreements authorized by R.C. 135.35(B) with respect to instruments listed in R.C. 135.35(A)(1) that is managed by the county investing authority, in accordance with any contractual limitations set forth in such agreement.