

OPINION NO. 67-052

Syllabus:

A Community Improvement Corporation may, under the powers granted in Chapter 1724, Revised Code, obtain a lease from the city that has designated it as the city's agent, and may construct a building using the lease as security, and then retire the debt through rental payments received from the city.

To: Robert G. Rawson, Washington County Pros. Atty., Marietta, Ohio
By: William B. Saxbe, Attorney General, June 2, 1967

Your request for my opinion reads in pertinent part as follows:

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"Can our Community Improvement Corporation, legally constituted and organized under Ohio Revised Code Chapter 1724, and which has been designated by the City of Belpre as its agent for industrial development, (R.C. 1724.03) enter into a contract with the City of Belpre?

"Our particular problem is: Can we obtain a lease from the City, construct a building using the lease as security, and then retire the debt through the rental payments from the city?

* * * * * * * * *"

Section 13, Article VIII, Ohio Constitution, provides in part as follows:

"To create jobs and employment opportunities and to improve the economic welfare of the people of the state, 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 other-

wise 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. Laws may be passed to carry into effect such purposes and to authorize for such purpose 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, or corporations not for profit designated by any of them as such agencies or instrumentalities and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under or ratified, validated, confirmed, and approved by this section.

" * * * * * * * * "

For the purposes of this opinion, it is assumed that the city will meet the constitutional and statutory requirements relating to the leasing and rental of property and that the project which you have under consideration is for industry, commerce, distribution, and research.

The Community Improvement Corporation may obtain a lease of land from the city and construct a building using the lease as security. Section 1724.02, Revised Code, provides in part as follows:

"In furtherance of the purposes set forth in section 1724.01 of the Revised Code, the corporation shall have the following powers:

" * * * * * * * * "

"(C) To purchase, receive, hold,

lease, or otherwise acquire and to sell, convey, transfer, lease, sublease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof,
* * *

"(D) * * *to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon * * * and to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, sublease, or otherwise dispose of industrial plants or business establishments;

* * * * * * * *

"(F) To mortgage, pledge, or otherwise encumber any property acquired pursuant to the powers contained in divisions (C), (D), or (E), of this section;

* * * * * * * *

Section 1724.10, Revised Code, provides in part as follows:

* * * *Any political subdivision which has designated a community improvement corporation as such agency may enter into an agreement with it to provide any one or more of the following:

"(A) That the community improvement corporation shall prepare a plan for the political subdivision of industrial, commercial, distribution, and research development, and such plan shall provide therein the extent to which the community improvement corporation shall participate as the agency of the political subdivision in carrying out such plan. Such plan shall be confirmed by the legislative authority of the political subdivision. * * * A community improvement corporation may incur debt, mortgage its property acquired under this section or otherwise, and issue its obligations, for the purpose of acquiring, constructing, improving, and equipping buildings, structures, and other properties, and acquiring sites therefor, for

lease or sale by the community improvement corporation in order to carry out its participation in such plan. Any such debt shall be solely that of the corporation and shall not be secured by the pledge of any moneys received or to be received from any political subdivision. * * *

* * * * * * * * *

"(C) That the political subdivision executing the agreement will convey to the community improvement corporation lands and interests in lands owned by the political subdivision and determined by the legislative authority thereof not to be required by the political subdivision for its purposes and that such conveyance of such land or interests in land will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision and provide additional opportunities for their gainful employment, for the consideration and upon the terms established in the agreement, * * *."

The building which the Community Improvement Corporation has constructed may be rented to the city under the powers given in Section 1724.02 (C) and (D), and the debt incurred in the construction of the building may be retired through the rental payments from the city. It is to be noted, however, that Section 1724.10 (A), Revised Code, provides that "any such debt shall be solely that of the corporation and shall not be secured by the pledge of any moneys received or to be received from any political subdivision." This would preclude a "pledging" of the rental moneys from the city as security for the debt.

In conclusion, it is my opinion that a Community Improvement Corporation may, under the powers granted in Chapter 1724, Revised Code, obtain a lease from the city that has designated it as the city's agent, and may construct a building using the lease as security, and then retire the debt through rental payments received from the city.