

**OPINION NO. 78-007**

**Syllabus**

1. The Ohio Building Authority may, pursuant to R.C. 152.08 (A) (13) and 152.21 (A), sell two floors of office space in the new Cleveland State Office Building to the Cleveland Regional Transit Authority.
2. The Ohio Building Authority may, pursuant to R.C. 152.08 (A) (13) and 152.24 (B), lease office space in the Cleveland State Office Building to the Regional Transit Authority.
3. The Ohio Building Authority may lease office space in the Cleveland State Office Building with the

Regional Transit Authority and grant said lessee an option to purchase such space.

4. The Ohio Building Authority must lease sufficient office space in the Cleveland State Office Building to the Department of Administrative Services for the use of state agencies. The Ohio Building Authority need not lease space not immediately necessary for state use to the Department of Administrative Services.

To: Daniel F. Shields, Executive Director, Ohio Building Authority, Columbus, Ohio  
 By: William J. Brown, Attorney General, February 23, 1978

I have before me your request for my opinion in which the following questions are asked:

1. Can the Ohio Building Authority (OBA) sell two floors of office space in the new State Office Building to the Cleveland Regional Transit Authority, a political subdivision of the State of Ohio?
2. Can the OBA lease office space in the Cleveland State Office Building to the Regional Transit Authority?
3. Can the OBA lease office space in the Cleveland State Office Building and also grant an option to purchase such space to the Cleveland Regional Transit Authority?
4. Must the OBA lease the entire amount of space in the Cleveland State Office Building to the Ohio Department of Administrative Services?

R.C. Chapter 152 generally provides for the establishment of the Ohio Building Authority (OBA). R.C. 152.08 (A) (13) states that the OBA may:

Sell, lease, release or otherwise dispose of property owned by the authority and not needed for the purpose of the authority and grant such easements across the property of the authority as will not interfere with its use of the property.

In addition, with regard to office buildings, the OBA is empowered by R.C. 152.21 (A) to ". . . dispose of real estate and interests in real estate . . ." It is my understanding that the OBA has determined that the two floors in question are not needed for the purpose of the authority. It is necessary therefore to determine whether the two floors of a state office building are "property" as contemplated by R.C. 152.08 (A) (13). Ohio law recognizes that parts or units of a building may be considered real property. See, e.g., R.C. Chapter 5311 (concerning condominium property). Even without statutory authorization, there is a common law basis for the proposition that a conveyable real property interest is contained therein. 1971 Op. Atty Gen. No. 71-031. Accordingly, a portion of a state office building is "property" for the purpose of R.C. 152.08 (A) (13).

The OBA's authority to dispose of property is not, however, absolute. This authority must be exercised in accordance with applicable constitutional

limitations. Ohio Const. art. VIII, §4, which prohibits the state from lending its credit to an individual, (and Article VIII, §6, concerning cities and counties, with which it is in pari materia) has been judicially interpreted to prevent the state from owning part of a property which is owned in part by a private individual or corporation where the parts are inextricably mixed and thus physically inseparable. See, State ex rel. Wilson v. Hance, 169 Ohio St. 457 (1959); Village of Brewster v. Shell, 128 Ohio St. 343 (1934); Alter v. City of Cincinnati, 56 Ohio St. 47 (1897); 1977 Op. Atty Gen. No. 77-047. This constitutional provision, therefore, limits the power of the OBA to divest itself of portions of a single property to the extent that such transaction constitutes the loaning of credit to or in aid of a private business enterprise or individual.

While it is important to note this constitutional constraint, it is not necessary for the purposes of this opinion to discuss in full its import. A regional transit authority is, pursuant to R.C. 307.31, a political subdivision of the state. Ohio Const. art. VIII, §4 does not prohibit the state from lending its credit to a public organization created for a public purpose. Bazell v. Cincinnati, 13 Ohio St.2d 63 (1968); State ex rel. Kaur v. Defenbacher, 153 Ohio St. 550 (1950).

It is, therefore, my opinion that the OBA may, pursuant to R.C. 152.08 (A) (13) and R.C. 152.21 (A), sell two floors of office space in the new state office building to the Cleveland Regional Transit Authority.

Your second inquiry poses the question of whether the OBA may lease the above-mentioned office space to the Cleveland Regional Transit Authority. As previously discussed, R.C. 152.08 (A) (13) provides the OBA with authority to, inter alia, lease property owned by it which is not needed for the purpose of the authority. However, with respect to office buildings owned by the OBA, this power is limited by R.C. 152.24 (B), which provides as follows:

(B) If the space is not immediately necessary for state use, the authority may lease excess space in any building or facility acquired or constructed by the authority for the use of state agencies to any local or federal agency.

Therefore, the OBA is authorized to lease such office space to governmental agencies only when the space is not immediately necessary for state use. In R.C. 152.24 (A), the director of the Department of Administrative Services is required to lease ". . . any building or facility acquired or constructed by the Ohio Building Authority for the use of any state agencies . . ." Accordingly, the director is responsible for determining whether the space is immediately necessary for state use. It is my understanding that the director of DAS has determined that the office space in question is not immediately necessary for state use. Thus, the first requirement of R.C. 152.24 is fulfilled.

The second requirement, that the lease be entered into with either a local or federal governmental agency, raises the question of whether the Regional Transit Authority is such an agency. The Authority was established pursuant to R.C. 306.31, which provides in pertinent part as follows:

A regional transit authority may be created in the manner provided in section 306.32 of the Revised Code, for any one or more of the following purposes: . . . A regional transit authority so created is a political subdivision of the state, and a body corporate with all the powers of a corporation . . . (Emphasis added.)

Since the term governmental agency, is not expressly defined for the purposes of R.C. Chapter 142, it must be construed according to common usage. R.C. 1.42. For the purposes of this opinion, it is sufficient to note that political subdivisions are generally held to be governmental agencies. Carroll v. Kittle, 203 Kan. 841, 457 P.2d 21 (1969) (county is a governmental agency); City of Bowling Green v. Board of Education, 443 S.W.2d 243 (Ky. 1969) (school district is a governmental

agency); Town of Falls Church v. Arlington County Board, 166 Va. 192, 184 S.E. 459 (1936) (municipal corporation is a governmental agency.) Therefore, it is my opinion that the OBA may, pursuant to R.C. 152.08 (A) (13) and 152.24 (B), lease office space in the Cleveland State Office Building to the Regional Transit Authority.

In answer to your third question, because the OBA has the authority to sell office space to the Regional Transit Authority as well as to lease it, it would necessarily have the authority to lease such space and grant the lessee an option to purchase.

Your last question relates to whether the OBA is required to lease the entire amount of office space in the Cleveland State Office Building to the DAS. As previously discussed, R.C. 152.24 (A) requires DAS to ". . . lease any building . . . constructed by the Ohio Building Authority for the use of any state agencies . . ." This provision does not, however, require that DAS lease office space not immediately necessary for state use. Rather, R.C. 152.24 (B) permits the OBA to directly lease such space to ". . . any local or federal agency." Accordingly, it is my opinion that the OBA must lease sufficient office space in the Cleveland State Office Building to DAS for the use of state agencies. It need not lease space not immediately necessary for state use, as determined by the director of DAS, to that department.

Therefore, it is my opinion, and you are so advised, that:

1. The Ohio Building Authority may, pursuant to R.C. 152.08 (A) (13) and 152.21 (A), sell two floors of office space in the new Cleveland State Office Building to the Cleveland Regional Transit Authority.
2. The Ohio Building Authority may, pursuant to R.C. 152.08 (A) (13) and 152.24 (B), lease office space in the Cleveland State Office Building to the Regional Transit Authority.
3. The Ohio Building Authority may lease office space in the Cleveland State Office Building with the Regional Transit Authority and grant said lessee an option to purchase such space.
4. The Ohio Building Authority must lease sufficient office space in the Cleveland State Office Building to the Department of Administrative Services for the use of state agencies. The Ohio Building Authority need not lease space not immediately necessary for state use to the Department of Administrative Services.