

May 8, 2026

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
700 Adams Street, Suite 250
Toledo, Ohio 43604

SYLLABUS:

2026-004

1. R.C. 135.35(A)(10) permits investment in the sovereign debt of any foreign nation that satisfies the statutory criteria.
2. A county investment advisory committee may adopt a policy that limits investments otherwise authorized by R.C. 135.35 if that policy ensures the best and safest return of county funds. County officials must not make investment decisions “with the primary purpose of influencing any environmental, social, personal, or ideological policy.” R.C. 135.35(O).
3. A county treasurer ordinarily must follow county investment policies set by the investment advisory committee, but the treasurer is not bound to an investment policy that has the primary purpose of influencing environmental, social, personal, or ideological policy.

4. County commissioners lack authority to remove a county treasurer's investment authority when the treasurer refuses to follow a county investment advisory committee policy that is unlawful or *ultra vires*.
5. Actions that constitute a "boycott" of a foreign jurisdiction under R.C. 9.76 would also violate R.C. 135.35(O)'s prohibition on making investment decisions based primarily on ideological reasons.



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OPINION NO. 2026-004

The Honorable Julia R. Bates
Lucas County Prosecuting Attorney
700 Adams Street, Suite 250
Toledo, Ohio 43604

Dear Prosecutor Bates:

You have requested my opinion regarding the county's investment in foreign debt. Specifically, you ask:

1. Does R.C. 135.35(A)(10) permit investment in the sovereign debt of any foreign nation that satisfies the statutory criteria?
2. Does R.C. 135.341 authorize a county investment advisory committee to adopt a written policy that prohibits or restricts investments otherwise authorized by R.C. 135.35?
3. Does R.C. 135.341 authorize a county investment advisory committee to adopt a motion advising the county treasurer not to reinvest in foreign government bonds upon maturity that is legally binding on the treasurer?

4. Does R.C. 135.34 or 135.341(E) authorize the removal of the county treasurer's investment authority for not following a county investment advisory committee policy that is unlawful or *ultra vires*?
5. Would the county's non-reinvestment in Israeli bonds upon maturity violate R.C. 9.76?

Two key principles inform my analysis that follows. First, county policies for investing public funds must be designed "to ensure the best and safest return." R.C. 135.341(C). Second, county investment decisions must not be driven by goals to "influenc[e] any environmental, social, personal, or ideological policy." 135.35(O). Simply put, "the goal of investing public money is to protect the public money while trying to maximize returns using eligible investments purchased in compliance with the law." Auditor of State, *Ohio County Treasurer's Manual* (Nov. 2018), <https://ohioauditor.gov/publications/docs/FinalVersion%2010-24-18.pdf> (accessed May 7, 2026) [<https://perma.cc/CS66-Y33P>].

I

A

I will begin with a brief review of the general law governing a county's investment of inactive funds. First,

consider the role of the county treasurer. The treasurer is the county's custodian of public funds. *See generally* R.C. Ch. 321; 2016 Ohio Atty.Gen.Ops. No. 2016-028, Slip Op. at 3; 2-324; 1997 Ohio Atty.Gen.Ops. No. 97-043, at 2-263. In that capacity, the treasurer is also the county's investing authority. R.C. 135.31(C).

The county treasurer must "deposit or invest any part or all of the county's inactive moneys." R.C. 135.35(A). In doing so, the treasurer ordinarily must follow investment policies set by the county's investment advisory committee. *See* R.C. 135.34 and 135.341(C). That committee consists of either two county commissioners and the treasurer, or all three of the county commissioners, the treasurer, and the clerk of the court of common pleas. R.C. 135.341(A). As the name implies, the committee's role is advisory. Its job is to "establish written county investment policies," meet quarterly "to review or revise its policies," and "advise the investing authority on the county investments in order to ensure the best and safest return of funds available to the county for deposit or investment." R.C. 135.341(C). The committee may "retain the services of an investment advisor" to inform its actions. R.C. 135.341(D).

R.C. 135.35 lists the categories of securities and obligations that are eligible for deposit or investment. This includes, for example, United States treasury bonds; certificates of deposit or savings accounts; state or municipal bonds that mature within ten years;

commercial paper of certain private corporations; and money market mutual funds. R.C. 135.35(A). “The qualitative standards” set by R.C. 135.35 “define the character of the investment risk permitted by the General Assembly.” *State v. Herbert*, 49 Ohio St.2d 88, 110 (1976). Most relevant here, a county may invest up to two percent of its average portfolio in foreign debt interests that satisfy the following conditions:

1. The foreign nation’s bonds are “rated at the time of purchase in the three highest categories by two nationally recognized statistical rating organizations.”
2. The foreign nation is diplomatically recognized by the U.S. government.
3. All interest and principal is denominated and payable in United States funds.
4. “[T]he debt interest is backed by the full faith and credit of that foreign nation, there is no prior history of default, and the debt interest matures not later than five years after purchase.”

R.C. 135.35(A)(10).

B

Turn back to the first question. You asked: whether the law permits investment in the sovereign debt of any foreign nation that satisfies the statutory criteria.

The answer is “yes.” R.C. 135.35(A)(10) does not reference any particular foreign nation. The statute allows investments into the most secure, highly rated foreign bonds on the market. In distinguishing between general and special legislation, the Ohio Supreme Court has held that “a statute is deemed to be uniform despite applying to only one case so long as its terms are uniform and it may apply to cases similarly situated in the future.” *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 138 (1991); *Kelleys Island Caddy Shack, Inc. v. Zaino*, 2002-Ohio-4930, ¶16-17. R.C. 135.35(A)(10) readily satisfies that test.

II

Next, you ask whether a county investment advisory committee may adopt a written policy that prohibits or restricts investments otherwise authorized by R.C. 135.35. The answer depends on the rationale for restricting an investment.

R.C. 135.341 allows the investment advisory committee to “establish a limit on the period of time that moneys may be invested in any particular type of investment.” *Id.* In this way, the committee could restrict investment in any of the types of securities or obligations described in R.C. 135.35. *See, e.g.*, 1992 Ohio Atty.Gen.Ops. No. 92-025, at 2-88. However, the investment advisory committee may adopt policies that restrict investments for only one purpose: “to ensure

the best and safest return of funds available to the county for deposit or investment.” R.C. 135.341(C).

In any investment decision, including the decision to prohibit or restrict certain investments, the committee should consider “the amount of the proposed investment in such securities, the marketability or lack of marketability of such securities, the investing authority’s need for liquidity, the size and diversity of the investing authority’s portfolio, the investment authority’s investment policies, and a variety of other possible factors, such as the contingent nature of the income stream and the risks associated with such investments, including the potential loss of principal.” 1994 Ohio Atty.Gen.Ops. No. 94-048, at 2-241; *accord* 1993 Ohio Atty.Gen.Ops. No. 93-054, at 2-259.

Non-economic factors, however, should not enter the equation. Ohio law prohibits a county from making investment decisions “with the primary purpose of influencing any environmental, social, personal, or ideological policy.” R.C. 135.35(O). This prohibition applies to both the county investing authority and any third-party that manages the county’s investments. *Id.*¹ Put another way, the county must be able to identify a bona

¹ A similar rule applies to municipalities, the state treasurer, the state board of deposit, state retirement systems, the state bureau of workers’ compensation, and state institutions of higher education. See [R.C. 135.143\(B\)\(3\) and \(M\)](#), [135.1411](#), [145.11](#), [742.11](#), [3307.15](#), [3309.15](#), [3345.161](#), [4123.44](#), [4123.442](#), and [5505.06](#).

vide economic reason for its decision to divest or to decline reinvestment.

The prohibition in R.C. 135.35(O) does not expressly reference the investment advisory committee; however, “a county may not do indirectly that which it may not do directly.” 1985 Ohio Atty.Gen.Ops. No. 85-016, at 2-64, fn. 3; *see also* 1992 Ohio Atty.Gen.Ops. No. 92-069, at 2-287; *Cass v. Dillon*, 2 Ohio St. 607, 636 (1853). Thus, the committee may not adopt investment policies that conflict with this prohibition. An investment policy or decision that is principally designed to influence the course of foreign affairs, such as conflicts in the Middle East, would violate this law.

The county treasurer and the investment advisory committee also have fiduciary duties to the public. *See* 1994 Ohio Atty.Gen.Ops. No. 94-048, at 2-241; *State ex rel. Village of Linndale v. Masten*, 18 Ohio St.3d 228, 229 (1985). This means that the treasurer and members of the committee must “exercise the same degree of care, skill, and judgment with respect to investment decisions as are consistent with the fiduciary responsibility to preserve and safeguard the financial integrity and soundness of such funds.” 1993 Ohio Atty.Gen.Ops. No. 93-054, at 2-258. Thus, the investment advisory committee may restrict investments otherwise authorized by R.C. 135.35 only if such a policy is consistent with its fiduciary obligation to

safeguard public funds and to “ensure the best and safest return.” R.C. 135.341(C).

In summary, if the investment advisory committee or the treasurer determines not to reinvest in a foreign debt instrument that otherwise satisfies R.C. 135.35(A)(10), that decision must rest on a bona fide economic rationale and should be expressly identified. Absent such an economic basis, a decision to divest or to decline reinvestment would, *prima facie*, be inconsistent with the statutory directive to ensure the “best and safest return,” unless it falls within a specific statutory exception. R.C. 135.341(C).

III

You related that the investment advisory committee in Lucas County recently adopted a motion advising the county treasurer not to reinvest in any foreign nation’s bonds upon maturity of the investment. Your next question, then, is whether the treasurer must comply with such a motion.

Ordinarily, the county treasurer must follow the investment advisory committee’s policies. Otherwise, “the board of county commissioners” may “remove the treasurer from his [or her] role as investing authority for failing to act within the scope of the county’s investment policies.” 2018 Ohio Atty.Gen.Ops. No. 2018-008, Slip Op. at 9; 2-74; *see also* 2014 Ohio Atty.Gen.Ops.

No. 2014-039, Slip Op. at 7; 2-352; R.C. 135.34. However, as discussed in Part II of this Opinion, the committee's policies and advice to the treasurer must be designed "to ensure the best and safest return of funds." R.C. 135.341(C); *see* 1985 Ohio Atty.Gen.Ops. No. 85-040, at 2-142. The county cannot make investment decisions "with the primary purpose of influencing any environmental, social, personal, or ideological policy." R.C. 135.35(O). If the investment advisory committee's policy runs counter to these conditions in law, the treasurer is not bound to follow it. Doing so could expose the treasurer to civil liability for violating fiduciary duties to the public and even greater liability for following an investment policy expressly forbidden by R.C. 135.35(O). *See* R.C. 9.39 and 2921.44; *but see State v. Gaul*, 117 Ohio App.3d 839, 852 (8th Dist. 1997) (charges of dereliction of duty cannot be based on "merely implied" fiduciary duties).

On the other hand, if the policy to restrict certain investments is driven by economic concerns, such as an unstable international bond market, it would be appropriate for the county treasurer to comply with the policy. This determination depends on questions of fact beyond the scope of an attorney general opinion. *See* 1999 Ohio Atty.Gen.Ops. No. 99-002, at 2-16 ("As a practical matter, whether a particular investment is reasonable and prudent . . . presents questions of fact that can only be resolved on a case-by-case basis.").

IV

You also ask whether R.C. 135.34 or 135.341(E) authorize the board of county commissioners to remove the county treasurer's investment authority if the treasurer refuses to follow a policy of the investment advisory committee that is unlawful or *ultra vires*. The short answer is "no."

Your question references two statutory bases for removing a treasurer's investment authority: R.C. 135.34 and 135.341(E). The latter statute allows the advisory committee to take over as investing authority only if a treasurer has failed to comply with initial or continuing education programs required by R.C. 321.46. To my knowledge, that is not your present concern, and R.C. 135.341(E) has no connection to the county's investment policies.

R.C. 135.34 is more relevant. This statute permits the board of county commissioners to review the treasurer's investment procedures semiannually. The commissioners must inform the treasurer if they determine that the treasurer has either failed to invest inactive funds as required by law, or acted "in documented substantial, material, and continuing disregard" of the investment advisory committee's advice and policies. If, at the next semiannual review, those problems remain uncorrected, the commissioners may,

by resolution, designate themselves, one member, or one employee as the county investing authority. *Id.*

This authority to remove the county treasurer's investment authority for the "substantial, material, and continuing disregard" of the advisory committee's advice exists only if the committee's advice or investment policies were made "pursuant to" R.C. 135.341. *See* R.C. 135.34. And as a rule, when a government agency adopts a policy or otherwise acts contrary to law, that act has no force or effect. *See, e.g.*, 2017 Ohio Atty.Gen.Ops. No. 2017-044, Slip Op. at 7-8; 2-426 to 2-427; 1949 Ohio Atty.Gen.Ops. No. 1212, p. 848, at 851. Such acts are *ultra vires*, meaning "beyond the scope of power allowed or granted . . . by law." Black's Law Dictionary (12th Ed. 2024). Thus, if the committee's investment policy is not intended "to ensure the best and safest return of funds" for the county, and, as particularly relevant here, if its primary purpose is to influence "any environmental, social, personal, or ideological policy," the treasurer may disregard the policy without fault. The county commissioners would lack a proper basis to remove the treasurer's investment authority. *See* R.C. 135.34, 135.341, and 135.35(O).

V

Finally, I turn to your last question: whether a county's decision not to reinvest in Israeli bonds upon maturity would violate R.C. 9.76. It does not.

R.C. 9.76 prohibits state agencies from entering or renewing contracts for supplies, equipment, services, or construction unless the contract declares that the contractor is not boycotting a jurisdiction with which Ohio can enjoy open trade, including Israel, and will not do so during the contract period. Because it concerns only state agencies and procurement contracts, the statute is not directly on point. Nevertheless, it illustrates the kind of actions that may violate the applicable statute, R.C. 135.35. Under R.C. 9.76(A)(1), “boycott” means engaging in refusals to deal, terminating business activities, or taking other actions intended to limit commercial relations with persons or entities in a discriminatory manner.

A county investment policy that prohibits further investment in Israeli bonds that satisfy the investment criteria in R.C. 135.35(A)(10), without any economic justification, would resemble a “boycott,” within the meaning of R.C. 9.76. It also would be a prohibited investment decision under R.C. 135.35(O) because its “primary purpose” would be to influence foreign policy. So, the directly applicable “primary purpose” test of R.C. 135.35(O) is informed by the “boycott” prohibition in R.C. 9.76.

Ultimately, the legality of a county investment policy depends on questions of fact beyond the scope of an attorney general opinion. *See, e.g.,* 1999 Ohio Atty.Gen.Ops. No. 99-002, at 2-16. However, one thing

is clear: county investment decisions must not be driven by ideology, and an economic justification must not be offered as a pretext.

Before concluding, I emphasize that the requirements discussed in this opinion are matters of state law—not discretionary policy choices. Compliance with them is mandatory. The county investment advisory committee and the county treasurer should therefore remain mindful that failure to follow the governing statutes could expose the county and its officials to legal challenge and potential liability.

Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

1. R.C. 135.35(A)(10) permits investment in the sovereign debt of any foreign nation that satisfies the statutory criteria.
2. A county investment advisory committee may adopt a policy that limits investments otherwise authorized by R.C. 135.35 if that policy ensures the best and safest return of county funds. County officials must not make investment decisions “with the primary purpose of influencing any environmental, social, personal, or ideological policy.” R.C. 135.35(O).

3. A county treasurer ordinarily must follow county investment policies set by the investment advisory committee, but the treasurer is not bound to an investment policy that has the primary purpose of influencing environmental, social, personal, or ideological policy.
4. County commissioners lack authority to remove a county treasurer's investment authority when the treasurer refuses to follow a county investment advisory committee policy that is unlawful or *ultra vires*.
5. Actions that constitute a "boycott" of a foreign jurisdiction under R.C. 9.76 would also violate R.C. 135.35(O)'s prohibition on making investment decisions based primarily on ideological reasons.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style with a large initial "D" and a long, sweeping tail.

DAVE YOST
Ohio Attorney General