

## OPINION NO. 75-071

**Syllabus:**

The lease entered on January 12, 1975 between the Ohio Building Authority and the Department of Administrative Services for space in the State Office Tower is a lawful and valid agreement.

**To: Howard L. Collier, Director, Office of Budget and Management, Columbus, Ohio**

**By: William J. Brown, Attorney General, October 6, 1975**

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

"Pursuant to Section 109.12, Ohio Revised Code, I hereby request your legal advice regarding the validity of the enclosed document purporting to be a lease agreement entered January 12, 1975, between the Ohio Building Authority and the Department of Administrative Services and governing the lease of the Ohio State Office Tower. The Ohio Building Authority is presently attempting to collect rent for FY 1976 based upon the terms and conditions of this document and under the assumption that the same is valid and binding upon the parties. We seriously question, for several reasons, the legality of this 'agreement' and consequently seek your counsel."

Subsequent to your written request, members of your staff discussed with my office the specific nature of your questions concerning the legality of the State Office Tower lease, entered January 12, 1975 between the Ohio Building Authority and the Department of Administrative Services (hereinafter referred to as "SOT Lease"). Your questions may be summarized as follows:

1. Was review by the Attorney General of the SOT Lease necessary and, if so, was the review properly obtained? The Ohio Building Authority has requested my opinion on this same question.
2. Did the individuals signing the SOT Lease have the authority to execute it upon behalf of the Authority and the Department?
3. Did the Authority's failure to comply with a clause in the lease requiring it to provide the Department by December 15, 1974, with a written estimate of rent for fiscal years 1976-1977 make the SOT Lease void or otherwise illegal?
4. Is the provision in the SOT Lease which automatically renews the term for successive two year periods until the

bonds or notes are paid legal and valid, or did the lease terminate June 30, 1975 in the absence of the Department's affirmative request to renew the initial term?

With respect to your first question, it is not a prerequisite to the legality of the SOT Lease that either the Department or the Authority should have submitted the SOT Lease to the Attorney General for review as to form or substance before they executed the lease. Under R.C. 152.24, the Department of Administrative Services is required to lease the State Office Tower from the Ohio Building Authority. Neither the Department nor the Authority is required under R.C. Chapter 152 or any other applicable provision of the Revised Code to submit any lease by the Authority to the Department of office space in its building to the Attorney General for his review. Accordingly, the fact that I did not review the SOT Lease before it was executed does not affect the legality of the lease.

Second, you have questioned the authority or standing on January 12, 1975, of the individuals who signed the lease upon behalf of the Department and Authority. A review of the pertinent documents furnished this office indicates that Mr. Daniel F. Shields, who signed for the Authority, did so pursuant to a resolution adopted by all members of the Authority on January 9, 1975. Because Joseph J. Sommer had resigned as director of the Department effective January 10, 1975, its assistant director, Mr. Charles E. Mauger, was authorized, pursuant to R.C. 121.05, to act as the Director. In his capacity as acting director, Mr. Mauger signed the lease upon behalf of the Department. Accordingly, both Mr. Shields and Mr. Mauger had the legal authority to sign the SOT Lease upon behalf of the Authority and the Department.

Third, you questioned the legality of the SOT Lease because when the lease was executed on January 12, 1975 it was "impossible to perform" since the Authority had not, as required by section 2.2 of the SOT Lease, submitted to the Department by December 15, 1974, a report of estimated rent for the next biennium. The Authority did not provide the Department an estimate of rents until after July 1, 1975. Further, I am advised by the Department that it did pay rent to the Authority for the initial term which ended June 30, 1975.

Although the Authority's failure to provide the estimate of rent in a timely manner may have been inconsistent with its covenants under the lease, and may have hindered the Department, the Governor and you from including the full amounts of the estimated rents in the State budget, as required under section 3.3 of the lease, the Authority's failure to provide the rent estimates by December 15, 1974 does not render the entire SOT Lease impossible to perform or illegal. Even if the Authority had provided the rent estimates in a timely manner, the total amount of funds available to pay the rent is determined not by the Authority's rent estimate or the Governor's State budget, but is determined, pursuant to law and section 2.4 of the lease, by the funds appropriated by the General Assembly for such purpose and available for that purpose.

Finally, you ask whether the provision in the SOT Lease automatically renewing the term for successive two year terms until the Authority's notes and bonds are paid is lawful.

With respect to the term of the lease, R.C. 152.24 states in pertinent part:

"[A] lease between the authority and the department of administrative services shall be for a period not exceeding the then current two-year period for which appropriations have been made by the general assembly to the department of administrative services and the state agencies which will occupy the building or facility being leased. An agreement between the authority and the department may provide for renewal of a lease at the end of each term for another term, not exceeding two years."

Section 2.2 of the SOT Lease defines the term of the lease and reads in pertinent part:

"Except as may be otherwise provided in any amendment to or renewal of this Lease Agreement with respect thereto, the term of the Lease of the Demised Premises to the Department, and of any sub-lease of all or part of the Demised Premises by the Department, shall commence as of January 12, 1975, shall continue until twelve o'clock midnight on June 30, 1975, and shall thereafter be renewed automatically for consecutive and successive periods of two years each, commencing on July 1 and ending on the second June 30 thereafter until the Authority shall have paid and retired, or shall have made due and adequate provision for the payment of all of the principal of and interest on the Bonds when and as the same fall due and of the principal of and interest on all Interim Notes issued in anticipation of the issuance of the Bonds; provided, that the term hereof or of any renewal hereof shall, in any event, expire as of the date when the Authority shall have paid and retired, or shall have made adequate provisions to pay and retire, all of the Bonds and all Interim Notes. . . ."

This provision appears clear and unambiguous: the Authority and Department intended, as permitted under R.C. 152.24, to renew the term of the lease for successive two year terms, that the renewal would be automatic, and that each two year term shall be renewed until the Authority shall have paid all bonds and notes issued to finance the building.

Your staff has suggested, however, that the lease terminated at the end of its initial term on June 30, 1975. It is suggested that the prohibition in Article II, Section 22, Constitution of Ohio, limiting all appropriations to two years as well as public policy limited the power of the former Director of Administrative Services to enter into a lease only for the balance of the then current biennium. Therefore, it is suggested R.C. 152.24 should be read to prohibit automatic renewals of the SOT Lease as clearly intended by the parties in section 2.2, and to require an affirmative request for renewal by the Department.

A careful reading of R.C. 152.24, however, does not permit this conclusion. The critical provision in R.C. 152.24 states:

"An agreement between the authority and the department may provide for renewal of a lease at

the end of each term for another term, not exceeding two years." (Emphasis added.)

There is no indication that the lease agreement may not provide for automatic renewal of successive two year terms. Even assuming arguendo that R.C. 152.24 were considered ambiguous, it must be construed so as to make the entire Chapter 152 effective. See R.C. 1.45. Chapter 152 clearly contemplates that the permanent financing of the State Office Tower shall be accomplished by the Authority issuing revenue bonds. The principal and interest of these bonds would be paid by the Authority from the Department's rental payments.

To read R.C. 152.24 to prohibit the automatic renewal of the lease for successive two year terms and to require the Department to take affirmative action to renew the lease for an additional two year term would reduce drastically the security which the holders of the Authority's bonds would require. Under such a construction, because the Department did not request renewal before June 30, 1975, the lease and therefore the source of payment for outstanding interim notes expired June 30, 1975. This construction would practically preclude the Authority's ability to issue permanent revenue bonds.

Such a reading of R.C. 152.24 is not required to avoid the constitutional limitation, found in Article II, Section 22 of two years upon appropriations. The SOT Lease, consistent with the provisions of R.C. Chapter 152, expressly provides in section 3.4 that all rental payments are limited to the funds appropriated for that purpose by the General Assembly and available for that purpose.

In summary, upon analysis I do not believe the questions you have raised affect the legality of the SOT Lease. In specific answer to your questions it is my opinion, and you are so advised that the lease entered on January 12, 1975 between the Ohio Building Authority and the Department of Administrative Services for space in the State Office Tower is a lawful and valid agreement.