

OPINION NO. 98-015

Syllabus:

A convention facilities authority established pursuant to R.C. 351.02, and acting pursuant to its revenue raising authority under R.C. Chapters 351 and 5739, may finance the construction and operation of a multi-use meeting and convention center that includes a recreation center composed of a fitness and activity center with a swimming pool. Pursuant to R.C. 351.06, a convention facilities authority may lease such recreation center to the county to be available for use by the general public, with discounts offered to guests at local hotels and motels.

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Betty D. Montgomery, Attorney General, April 23, 1998

You have requested an opinion regarding the uses that may be made of convention facilities constructed, operated, and financed pursuant to R.C. Chapters 351 (convention facilities authorities) and 5739 (sales tax). Your specific question is as follows:

May a convention facilities authority established pursuant to R.C. 351.02 and acting pursuant to its revenue raising authority under R.C. Chapters 351 and 5739, finance the construction and operation of a multi-use meeting and convention center that includes a recreation center composed of a fitness and activity center with a swimming pool?

It is contemplated that the recreation center will be leased to the county to be available for use by the general public, with discounts offered to guests at local hotels and motels. You state that the purpose of the proposed convention center is "the enhancement of the tourist industry in the region by serving as an additional feature of Erie County during off-season months." You are aware that, pursuant to R.C. 351.021(B), the taxing authority of convention facilities authorities has expired.¹ Before seeking a renewal of this authority from the General Assembly, however, you wish to ascertain whether a center such as that described in your question is permissible under R.C. Chapter 351 and the provisions of R.C. Chapter 5739 incorporated in R.C. Chapter 351.

A convention facilities authority is created by a board of county commissioners and exercises the powers and jurisdiction enumerated in R.C. Chapter 351. R.C. 351.02; *see also* R.C. 351.01(A) (as used in R.C. Chapter 351, "[c]onvention facilities authority' means a body corporate and politic created pursuant to section 351.02 of the Revised Code"). The purpose of these powers is designated in R.C. 351.12, which states that "[t]he exercise of the powers granted by this chapter will be for the benefit of the people of the state, for the improvement of their health, safety, convenience, and welfare, and for the enhancement of their convention and *recreational opportunities* and is a public purpose." (Emphasis added.)

The powers of a convention facilities authority may include, if so authorized by the board of county commissioners, the power to levy excise taxes, *see note one, supra*, for

¹R.C. 351.021(A) provides that a board of county commissioners may authorize the board of directors of a convention facilities authority to finance one or more facilities by levying excise taxes on hotel lodging transactions, as authorized by the provisions of R.C. 351.021(B). R.C. 351.021(B), however, states that the board of directors may levy such taxes only "by resolution adopted on or before December 31, 1988."

certain specified purposes. *See* R.C. 351.021. These purposes include “to pay the cost of one or more *facilities*” and “to pay operating and maintenance costs of those *facilities*.” R.C. 351.021(A) (emphasis added). Accordingly, your question involves the interpretation and application of the definition of the terms “[f]acility” and “facilities” in R.C. 351.01(D), which states:

“Facility” or “facilities” means *any convention, entertainment, or sports facility, or combination of them, located within the territory of the convention facilities authority, together with all parking facilities, walkways, and other auxiliary facilities, real and personal property, property rights, easements and interests that may be appropriate for, or used in connection with, the operation of the facility.* (Emphasis added).

The terms “convention facility,” “entertainment facility,” and “auxiliary facilities” are not separately defined for purposes of R.C. Chapter 351.² Accordingly, these terms should be construed according to their common usage. *See* R.C. 1.42. The common understanding of a convention facility, as reflected in definitions elsewhere in the Revised Code, is that it is a facility for “presenting conventions, public meetings, and exhibitions.” *See* R.C. 4303.201(A)(1) (defining “[c]onvention facility” for purposes of liquor permit law); *see also* R.C. 307.695(A) (defining “convention center” for purposes of an agreement between a board of county commissioners and a county convention and visitors’ bureau). *See generally Webster’s Third New International Dictionary* 498 (unabridged ed. 1993) (defining convention as “a body or assembly of persons met for some common purpose”).

The term “entertainment facility” does not appear elsewhere in the Revised Code. It may be noted, however, that a prepaid contract for the services of a health spa, including exercising, reducing, figure development, and similar activities, is considered a “prepaid entertainment contract.” *See* R.C. 1345.41(A)(4). Further, the concept of entertainment, while sometimes limited to “a public performance,” is also more generally and broadly understood to be “something that diverts, amuses, or occupies the attention agreeably.” *Webster’s Third New International Dictionary* at 757.

The concept of an auxiliary facility is equally broad, referring to a facility whose function is “providing help, assistance or support” or “augmenting or available to augment a basic power, potential, or ability.” *Id.* at 149. To the extent that the availability of a recreation center might serve to attract organizations looking for an appropriate convention, meeting, or exhibition site, it is reasonable to consider it as supporting or augmenting the potential of the main convention facility. The only express limitation on an “auxiliary facility” is that it “be appropriate for, or used in connection with, the operation of the facility.” R.C. 351.01(D). The determination of propriety is a matter for the discretion of the convention facilities authority.

In light of the above definitions, a “multi-use meeting and convention center that includes a recreation center” may be characterized either as a combination convention and entertainment center or as a convention center with an auxiliary recreation facility. However characterized, such a facility satisfies the purpose of enhancing the “convention and

²The term “[s]ports facility” is defined, for purposes of R.C. Chapter 351, as “a facility intended to house major league professional athletic teams.” R.C. 351.01(Q). Accordingly, this term does not apply to the facility you have described.

recreational opportunities” of the people of the state, as required by R.C. 351.12. It may additionally be noted that the General Assembly has provided that resolutions of a convention facilities authority authorizing the issuance of bonds or notes may include provisions as to “the use, lease, sale, or other disposition of any recreational facility ... of the authority.” R.C. 351.14. It is thus apparent that the General Assembly contemplated that “facilities” as defined at R.C. 351.01(D) could include recreational facilities.

It is further apparent from the provisions of R.C. 351.14 quoted above that leasing a recreational facility is within the power of a convention facilities authority. The specific grant of power in this respect, is found in R.C. 351.06, which states, in pertinent part:

A convention facilities authority may do all of the following:

...

(D) Acquire, purchase, construct, reconstruct, enlarge, furnish, equip, maintain, repair, sell, exchange, *lease or rent to*, lease or rent from, operate, or *contract for the operation by others of, facilities within its territory*, and make charges for the use of the facilities;

(E) Make available the use or services of *any facility to persons or governmental agencies on such terms and conditions as the authority shall determine*;

...

(R) Charge, alter, and *collect rentals* and other charges for the use or services of *any facility* as provided in section 351.09 of the Revised Code.... (Emphasis added.)

See also R.C. 351.09. Accordingly, it is permissible for a convention facilities authority to lease to the county a recreation center such as you have described.

It is, therefore, my opinion, and you are hereby advised that a convention facilities authority established pursuant to R.C. 351.02, and acting pursuant to its revenue raising authority under R.C. Chapters 351 and 5739, may finance the construction and operation of a multi-use meeting and convention center that includes a recreation center composed of a fitness and activity center with a swimming pool. Pursuant to R.C. 351.06, a convention facilities authority may lease such recreation center to the county to be available for use by the general public, with discounts offered to guests at local hotels and motels.