

**OPINION NO. 73-119****Syllabus:**

1. A regional tax collection agency, formed under R.C. Chapter 167, is authorized by R.C. Chapter 135, the Uniform Depository Act, to enter into so-called repurchase transactions in the handling of its interim funds. Opinion No. 72-017, Opinions of the Attorney General for 1972, followed.

2. The contractual language approved in Opinion No. 72-017, Opinions of the Attorney General for 1972, is also proper in the repurchase transactions of a regional tax collection agency.

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**To: Joseph T. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, November 29, 1973**

I have your request for my opinion which reads as follows:

Recently, your office rendered a formal opinion, number 72-017 dated March 14, 1972, indicating that the Treasurer of State is authorized to enter into repurchase transactions involving the purchase and/or repurchase of certain securities indicated in Section 135.14, Revised Code.

The question has arisen as to the applicability of this opinion to the Regional Income Tax Agency, as agent of numerous municipalities in the Cleveland area for the purpose of collecting

and distributing the member municipalities' income taxes.

Thus, your advise as to the following questions would be greatly appreciated:

(1) Does the aforementioned recent opinion apply to the Regional Income Tax Agency (R.I.T.A.)?

(2) If applicable would the same contractual language considered in the recent opinion, i.e. the creation of an irrevocable offer by the seller open to acceptance of R.I.T.A. on a specified date by tender back of the securities in exchange for the total of the prescribed consideration, be proper?

You have provided me with a copy of the agreement under which the regional tax collection agency was set up. In pertinent part it provides as follows:

This Agreement is made and entered into by and between certain municipal corporations in Cuyahoga County, Ohio, and counties adjacent thereto, who have become parties to this Agreement by causing either this Agreement or an identical copy of it to be signed by an officer duly authorized by the legislative authority of such municipal corporation.

\* \* \* \* \*

The parties to this Agreement, wishing to establish a Regional Council of Governments pursuant to Chapter 167 of the Ohio Revised Code, consisting of the municipal corporations who are parties to this Agreement, agree as follows:

I. NAME. The name of the Regional Council shall be "Regional Council of Governments."

II. PURPOSE. The purpose of the Council hereby established is to foster cooperation between municipalities through sharing of facilities for their common benefit. This shall include the establishment of a central collection facility for the purpose of administering the income tax laws of the various municipal corporations who are parties hereto and for the purpose of collecting income taxes on behalf of each such municipal corporation, doing all things allowed by law to accomplish such purpose.

\* \* \* \* \*

IV. MUNICIPAL TAX COLLECTION AGENCY. The Council shall establish a "Municipal Tax Collection Agency" for the collection of municipal income tax revenues on behalf of the member municipalities.

A. The agency hereby established shall be administered by a Board of Trustees composed of

nine (9) persons. \* \* \*

\* \* \* \* \* \* \* \*

The Board of Trustees shall be authorized to administer and enforce the income tax laws of each of the participating municipal corporations, party to this agreement, as its agent as set forth in the various ordinances. Each municipal corporation, however, retains its right to administer and enforce its own income tax laws coincidentally with the Board.

E. Said Board shall employ an Administrator \* \* \*. [T] he Board of Trustees, through its Administrator, shall be responsible for, \* \* \*

\* \* \* \* \* \* \* \*

3. Billing of taxpayers, except that accounts which are delinquent for a period of more than one (1) year shall also be forwarded to the participating government, which has jurisdiction of the subject matter for further action. Upon a request from such participating government, any extraordinary costs incurred by it in collecting delinquent accounts may be charged against the distribution of each participating government which benefits from said collection.

4. Examining and auditing income tax returns and records.

5. Notifying taxpayers of payments due and delinquencies.

6. Disbursing income tax collection to the various participants, as hereinafter provided.

\* \* \* \* \* \* \* \*

VII. DISTRIBUTION OF MONEY

A. The Board of Trustees shall keep all monies collected hereunder in the manner provided by law in a segregated and separate bank account. They shall keep records showing the amount of all income tax monies received by them together with all increments, additions and investment interest thereto. The Board of Trustees shall so far as practicable, invest all monies received by them and the interest thereby received shall apply to reduce the total cost of operation of the Agency without regard to any allocation of such interest to participating municipalities.

\* \* \* \* \* \* \* \*

The provisions of the Revised Code allowing political subdivisions to cooperate to achieve common aims are set forth in Chapter 167. The original authority to unite in such a joint enterprise appears in R.C. 167.01 which provides:

That governing bodies of any two or more

counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may enter into an agreement with each other, or with the governing bodies of any counties, municipal corporations, townships, special districts, school districts or other political subdivisions of any other state to the extent that laws of such other state permit, for establishment of a regional council consisting of such political subdivisions.

Essentially the same authority is specifically granted to two or more municipalities under R.C. 715.02.

Some of the pertinent powers of a regional council, as set forth in RR.C. 167.03, read as follows:

(A) The council shall have the power to:

(1) Study such area governmental problems common to two or more members of the council as it deems appropriate, including but not limited to matters affecting health, safety, welfare, education, economic conditions, and regional development;

(2) Promote cooperative arrangements and coordinate action among its members, and between its members and other agencies of local or state governments, whether or not within Ohio, and the federal government;

\* \* \* \* \*

(C) The council may, by appropriate action of the governing bodies of the members, perform such other functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern.

\* \* \* \* \*

The council is required to enact by-laws which, among other things, are to provide for appointment of a fiscal officer. In pertinent part, R.C. 167.04 reads:

\* \* \* \* \*

(B) The by-laws of the council shall provide for the appointment of a fiscal officer who may hold any other office or employment with the council, and who shall receive, deposit, invest, and disburse the funds of the council in the manner authorized by the by-laws or action by the council.

Finally, R.C. 167.08 provides that the council may contract with its constituent subdivisions to provide services for them. That Section is as follows:

The appropriate officials, authorities, boards, or bodies of counties, municipal corporations, townships, special districts, school

districts, or other political subdivisions may contract with any council established pursuant to sections 167.01 to 167.07, inclusive, of the Revised Code to receive any service from such council or to provide any service to such council. Such contracts may also authorize the council to perform any function or render any service in behalf of such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions, which such counties, municipal corporations, townships, special districts, school districts, or other political subdivisions may perform or render.

I am satisfied that the regional council, established by the agreement here, comes within the requirements of R.C. Chap. 167. It is true that the regional tax collection agency was set up as an agency of the council under the original agreement, instead of by a separate contract between the council and its constituent subdivisions as is arguably required under the language of R.C. 167.08. I think that argument is without merit, since, under the original agreement between the municipalities, the regional council was set up for the very purpose of organizing the tax collection agency. It should also be noted that, under R.C. 167.04, the regional council is required to appoint a fiscal officer to handle and invest the council's funds, whereas, under the agreement, the regional tax collection agency's funds are to be handled and invested by its own Board of Trustees.

The deposit and investment of public moneys of the state or any of its subdivisions is governed by the Uniform Depository Act. R.C. Chap. 135. In a recent Opinion (No. 73-111) I referred to the fact that that Act includes joint enterprises comprised of two or more subdivisions when specifically authorized by statute. This clearly appears from the following language of R.C. 135.01 (G):

"Governing board" means, \* \* \*in the case of a union or joint institution or enterprise of two or more subdivisions not having a treasurer, the board of directors or trustees thereof; \* \* \*

Similar language is used in subsections (L) and (M) of R.C. 135.01. I conclude, therefore, that the funds of the regional tax collection agency to which you refer, which is a joint enterprise of numerous municipalities, are to be deposited or invested in accordance with the Uniform Depository Act. Since the agency has no treasurer, its "governing board", as defined in the Act, is its Board of Trustees.

You ask whether the regional tax collection agency may, in the handling of its funds, enter into the type of repurchase agreement which was recently approved in Opinion No. 72-017, Opinions of the Attorney General for 1972. That Opinion was concerned with the deposit or investment of "interim funds" as defined by the Uniform Depository Act, and I assume that the moneys which the regional agency desires to invest here fall within the same category. From the statutory material set forth above, it follows as a corollary that the regional agency has the same authority as the Treasurer of State under the provisions of the Act. As already noted, both are included on equal terms in the definition section of the Act.

.See R.C. 135.01 (D), (L) and (M).

In specific answer to your questions it is my opinion, and you are so advised, that:

1. A regional tax collection agency, formed under R.C. Chapter 167, is authorized by R.C. Chapter 135, the Uniform Depository Act, to enter into so-called repurchase transactions in the handling of its interim funds. Opinion No. 72-017, Opinions of the Attorney General for 1972, followed.

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