

OPINION NO. 73-110

Syllabus:

1. A county may issue bonds pursuant to R.C. Chapter 165.
for projects located in incorporated, as well as unincorporated,

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areas of the county.

2. Tax benefits accorded by R.C. Chapter 165. are a proper consideration in determining whether to issue bonds pursuant to that Chapter.

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, November 7, 1973

You have requested my opinion as to whether a board of county commissioners can issue industrial bonds under R.C. Chapter 165 for a project within the territory of a municipal corporation, or if the commissioners can issue bonds only for projects located in the unincorporated areas of the county. You also ask whether a determination to issue bonds under R.C. Chapter 165, instead of R.C. Chapter 1724, in order to receive tax benefits accorded to such bonds, would be against the public policy of the state.

A county's status as an "issuer" is established in R.C. 165.01 which reads in pertinent part as follows:

As used in sections 165.01 to 165.14,
inclusive, of the Revised Code:

* * * * *

(C) "Issuer" means the state, or a county or municipal corporation of this state which county or municipal corporation has, pursuant to section 1724.10 of the Revised Code, designated a community improvement corporation as its agency for industrial, commercial, distribution, and research development and for which a plan has been prepared by such community improvement corporation and confirmed by its issuing authority.

(D) "Issuing authority" means in the case of the state, the Ohio development financing commission; in the case of a municipal corporation, the legislative authority thereof; and in the case of a county, the county commissioners or whatever officers, board, commission, council, or other body might succeed to the legislative powers of the commissioners.

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(G) "Project" means real or personal property, or both, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer for lease, sale, exchange, or other disposition for industry, commerce, distribution, or research and located within the boundaries of the issuer.

(Emphasis added.)

R.C. 1724.10 reads in part:

A community improvement corporation may be designated by a county, one or more municipal corporations, two or more adjoining counties, or any combination of the foregoing, as the agency of each such political subdivision for the industrial, commercial, distribution, and research development in such political subdivision when the legislative authority of such political subdivision has determined that the policy of the political subdivision is to promote the health, safety, morals, and general welfare of its inhabitants through the designation of a community improvement corporation as such agency. Such designation shall be made by the legislative authority of the political subdivision by resolution or ordinance. Any political subdivision which has designated a community improvement corporation as such agency may enter into an agreement with it to provide any one or more of the following:

(A) That the community improvement corporation shall prepare a plan for the political subdivision of industrial, commercial, distribution, and research development, and such plan shall provide therein the extent to which the community improvement corporation shall participate as the agency of the political subdivision in carrying out such plan. Such plan shall be confirmed by the legislative authority of the political subdivision.

It should be noted that R.C. 165.01 (D), set out above, recognizes the county commissioners as the "issuing authority" where a county is the issuer, and R.C. 165.01 (G) defines a "project" as being "located within the boundaries of the issuer." Given the foregoing, R.C. 165.02 (C) states that an issuer, acting through its issuing authority, may "issue bonds to provide funds for acquiring, constructing, reconstructing, enlarging, improving, furnishing, or equipping one or more projects or parts thereof." I find nothing which distinguishes incorporated from unincorporated areas of the county in describing the territory in which a county may finance projects by the issuance of industrial revenue bonds.

In the present situation, a municipal corporation within the county has designated a separate community improvement corporation as its own agent pursuant to R.C. 1724.10. Your letter suggests that because of this fact, R.C. 165.03 requires a certification from the agency of the municipal corporation that the project, for which the bonds are to be issued, is in accordance with its plan. R.C. 165.03 reads in part as follows:

(C) If the issuer is a county or municipal corporation, then, prior to the delivery of bonds issued under authority of section 165.03 of the Revised Code, the issuing authority shall first have received from its agency a certification that a project to be financed by the issuance of such bonds is in accordance with the plan. If the state is the issuer, then prior to the authorization

of the bonds, the issuing authority of the state shall have received a written request for the issuance of the bonds from the issuing authority of the municipal corporation, if the project is within the boundaries of a municipal corporation, or of the county, if the project is within the unincorporated portion of the county, and if the project is to be located within a municipal corporation with a plan, then prior to the delivery of bonds issued under section 165.03 of the Revised Code, the issuing authority shall first have received from the agency of the municipal corporation if within its limits, or from the agency of the county if in unincorporated territory, a certification that such project is in accordance with its plan.
(Emphasis added.)

It should be noted that, while R.C. 165.03 provides that where the state is the issuer such a certification shall be required, a county as an issuer needs only the certification of its own agency that the project is in accordance with its plan.

Furthermore a review of other statutes reveals that where the General Assembly has intended to restrict a county's authority to unincorporated areas, it has so provided. See, for example, R.C. 307.71 which authorizes a board of county commissioners to adopt a curfew for persons under 18 in "unincorporated areas of the county" and R.C. 307.73, under which the county commissioners may approve private construction of water and sewer lines in any "unincorporated portion of the county." See also R.C. 5555.97 and R.C. 6117.01 in which comparable language operates to restrict the exercise of powers granted a county to unincorporated areas of the county.

By way of contrast see R.C. 307.01 and 307.02 which provide that a county may construct or acquire certain county buildings and facilities. These Sections contain no qualification with respect to incorporated areas, which would preclude such construction or acquisition within a municipal corporation. In addition a board of county commissioners is granted authority under R.C. 307.23 to appropriate funds to be used for the promotion of historical work "within the borders of the county." Again no language is included which would restrict the use of these funds or projects located in a municipal corporation within the county.

Projects financed pursuant to R.C. Chapter 165 are, of course, subject to zoning regulations which may be enacted by a municipal corporation. R.C. 165.09 states in part that:

Any real or personal property, or both, of an issuer which is acquired, constructed, reconstructed, enlarged, improved, furnished or equipped, or any combination thereof, and leased or subleased under authority of either Chapter 165. or 761. of the Revised Code shall be subject to ad valorem, sales, use, and franchise taxes and to zoning, planning, and building regulations and fees, to the same extent and in the same manner as if the lessee-user or sublessee-user thereof, rather than the

issuer, had acquired, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, such real or personal property, and title thereto was in the name of such lessee-user or sublessee-user.

In addition R.C. 165.01 (C) states that an issuer must designate a community improvement corporation as its agency under R.C. 1724.10. That Section, which provides for a plan of improvements to be prepared by the community improvement corporation, also stipulates that "actions taken under this section shall be in accordance with any applicable planning or zoning regulations."

I must conclude, therefore, that, subject to the qualifications noted above, a county may issue bonds pursuant to R.C. Chapter 165. for projects located in incorporated, as well as unincorporated, areas of the county.

You have also asked whether a determination to issue bonds under R.C. Chapter 165. instead of R.C. Chapter 1724, in order to receive tax benefits accorded R.C. Chapter 165. bonds, would be against the public policy of the state. Article VIII, Section 13, Ohio Constitution, pursuant to which R.C. Chapter 165. was enacted, specifically provides that to create jobs and improve the welfare of the state is a proper public purpose for a political subdivision of the state to issue bonds. To this end the General Assembly has itself provided certain tax incentives. See R.C. 165.09. It necessarily follows that tax benefits are a proper consideration in determining the kind of bonds to be issued.

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

1. A county may issue bonds pursuant to R.C. Chapter 165. for projects located in incorporated, as well as unincorporated, areas of the county.
2. Tax benefits accorded by R.C. Chapter 165. are a proper consideration in determining whether to issue bonds pursuant to that Chapter.