

**OPINION NO. 71-058****Syllabus:**

Money appropriated by the State toward the purchase of Civil Defense equipment by a local subdivision constituted an outright grant to the subdivision, subject only to the condition that the equipment be used for the required period for Civil Defense purposes.

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**To: Dana L. Stewart, Adjutant General, Columbus, Ohio**  
**By: William J. Brown, Attorney General, October 1, 1971**

Your request for my opinion poses several questions relating to the ownership of property, much of which must now be disposed of, which was acquired through the use of federal funds in connection with the Civil Defense program. Your questions are as follows:

"1. Did the money provided by the State toward the purchase of such [Civil Defense] equipment constitute an outright grant, without reservation of any State interest, or did the State acquire equity in any equipment so purchased?

"2. If the State acquired equity, what is the nature and extent of the equity and of control over use and disposition of such equipment?

"3. If the State acquired equity, what time limit, if any, would apply?

"4. If your decision is that the State of Ohio maintains equity, what percentage of equity would the State of Ohio have in the equipment, in view of the fact, the Federal Office of Civil Defense divested all interest?

"5. For those items which do not constitute real property, such as siren land lines, telephone lines and maintenance costs, how can any State equity be valued or recovered?"

Your letter states that all of the Civil Defense equipment in question was purchased by political subdivisions of the State; that the funds for such purchases were provided, 50 percent by the Federal Government, 25 percent by the State, and 25 percent by the purchasing subdivision; and that the State participated in the program from 1951 until June 30, 1964. I am also informed that title to all the property purchases under this program was taken by the purchasing subdivision. Since I am satisfied that the answer to your first question is that the State did not acquire any equity in the equipment so purchased, it will be unnecessary to deal with your four remaining questions.

The Federal Civil Defense Act of 1950, as amended, now provides (50 U.S.C. App. 2251):

"\* \* \* It is the policy and intent of the Congress that the responsibility for civil defense shall be vested jointly in the Federal Government and the several States and their political subdivisions. The Federal Government shall provide necessary direction, coordination, and guidance; \* \* \* and shall provide necessary assistance as herein authorized."

The Federal Civil Defense Administrator, established by 50 U.S.C. App. 2271(a), is authorized "to prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this act \* \* \*," 50 U.S.C. App. 2253(g), and "when \* \* \* there is a failure [by a State] to expend funds in accordance with the regulations \* \* \* the Administrator shall either withhold the payment of any financial contribution to such State \* \* \*, or limit payments to those programs or projects with respect to which there is substantial compliance with the regulations, \* \* \*." 50 U.S.C. App. 2253(h).

The Administrator is authorized to perform numerous functions to carry out the purposes of the Act, among them the following (50 U.S.C. App. 2281):

"(i) Make financial contributions, on the basis of programs or projects approved by the Administrator, to the States for civil defense purposes \* \* \* on such terms as the Administrator shall prescribe \* \* \*: Provided further, that the amounts to be contributed by the Administrator to each State for organizational equipment shall be equally matched by such State from any source it determines is consistent with its laws: \* \* \* Provided further, that the amounts paid to any State under this subsection shall be expended solely in carrying out the purposes set forth herein and in accordance with State civil defense programs or projects approved by the Administrator: \* \* \*."

(Emphasis added)

In cooperation with the policy and intent of Congress the

General Assembly enacted Chapter 5915, Revised Code. Section 5915.02, Revised Code, provides as follows:

"There is hereby created within the adjutant general's department a civil defense section which shall be governed under regulations promulgated by the governor. The adjutant general shall be the state director of civil defense, \* \* \*. He shall coordinate all activities of all agencies for civil defense within the state,\* \* \*."

Section 5915.05, Revised Code, provides as follows:

"The governor shall promulgate and enforce, and when necessary he may amend or rescind the regulations with respect to the civil defense of the state \* \* \*. Such regulations shall become effective upon being filed in the office of the secretary of state and thereupon shall have the effect of law until amended or rescinded. \* \* \*"

The first appropriation act enacted by the General Assembly to provide funds for the State's share of Civil Defense projects, contains a paragraph which appears in all subsequent acts (The Appropriation Acts of the One Hundredth General Assembly, 1953, page 186):

"All moneys released from the appropriation provided herein to the state civil defense section or to local subdivisions which have civil defense organizations, and all moneys appropriated by local subdivisions for civil defense purposes shall be expended only for the purpose of civil defense as authorized by the laws of this state and the United States and the expenditure of such moneys shall be subject to audit by the bureau of inspection as created by section 274 of the General Code."

Section 274, General Code, is now Section 117.01, Revised Code, which provides for the supervision and inspection of the accounts of all public offices and institutions of the State by the Bureau of Inspection and Supervision of Public Offices.

The Federal regulations governing the use of, title to, and disposal of, Civil Defense equipment, appear in the Federal Civil Defense Guide, January 1970, Part F, Chapter 5, Appendix 1, which provides, in pertinent part, as follows:

Section 1.4 Authorized Use.

"a. Items acquired with Federal contributions may be used for the following civil defense purposes \* \* \*:

\* \* \*

\* \* \*

\* \* \*

"b. Items acquired with Federal contributions may not be used for any other purpose, unless so authorized by the Director of Civil Defense. \* \* \*

"\* \* \* \* \* \* \* \* \*"

Section 1.6 Title.

"a. OCD makes financial contributions only to the States, and through the States to their political subdivisions. Except in cases of Federal procurement, title to items so obtained passes directly from the vendor to the State or the political subdivision. In all cases the State shall be responsible for compliance with \* \* \* the OCD regulations. The political subdivision is also bound to observe \* \* \* the Regulations.

"b. Provided the transferee agrees to comply with all requirements, title, or possession may be transferred among States and political subdivisions when and as approved by the Regional Director.

"\* \* \* \* \* \* \* \* \*"

Section 1.10 Disposal. Disposal of items acquired with Federal contributions is subject to the following conditions:

"\* \* \* \* \* \* \* \* \*"

"c. All items [with certain exceptions], may be disposed of, without OCD approval, after a period of 8 years from the date of procurement.

"1. All OCD interest in the equipment ceases at the end of the designated period of time after the date of procurement. States and political subdivisions need not account to OCD for the use, maintenance, or disposal of such equipment.

"\* \* \* \* \* \* \* \* \*"  
(Emphasis in original)

The original Civil Defense Regulations of the State of Ohio, promulgated pursuant to Section 5915.05, supra, became effective on December 23, 1953. A revised edition, signed by the Governor on June 1, 1957, was filed with the Secretary of State on June 5, 1957. The revised edition provides, in pertinent part, as follows:

"Section 5. Local Organization.

"\* \* \* \* \* \* \* \* \*"

"4. All local Civil Defense organizations  
\* \* \* shall have the power and authority \* \* \*:

"1. To receive and disburse funds for the  
purpose of: carrying out the provisions of  
Chapter 5915 of the Revised Code and these  
Regulations. \* \* \*

"2. To control funds for the purpose  
of: purchasing, accepting, assigning, ac-  
quiring, holding, transferring, housing,  
repairing, or owning property, \* \* \*

"3. To dispose of unrestricted property  
by: donation, negotiation, exchange or sale,  
and/or in conformance with any agreement made  
by any countywide or regional Civil Defense  
organization or authority.

"4. To acquire and hold title to  
property as defined in Section 12a of these  
Regulations."

Section 12 of the Governor's Regulations, just referred to in  
Section 5e. 4, supra, is concerned with surplus personal property  
donated by the Federal Government to the State or its political  
subdivisions for Civil Defense purposes, and it has no direct  
bearing on the questions you have asked. The same is true of  
Section 13 of the Governor's Regulations.

To summarize, the Federal laws and regulations provide that  
the Federal Government shall make financial contributions to the  
States for the purchase of Civil Defense equipment; that the title  
to such purchased equipment shall vest in the State or in its  
political subdivisions, although subject to numerous specific  
conditions restricting its use to Civil Defense purposes; and  
that after 8 years, the restrictive conditions terminate, and  
the property may be disposed of by the titleholder without the  
approval of the Federal Government. The Ohio laws and regulations  
provide that local Civil Defense organization may receive and  
disburse funds received from the Federal Government and from the  
State for Civil Defense purposes; that they may purchase and  
own Civil Defense equipment; that such funds must be expended  
only for Civil Defense purposes and the expenditures are sub-  
ject to audit by the Bureau of Inspection and Supervision of  
Public Offices; and that the local organizations may dispose of  
the property after the termination of all restrictive conditions  
imposed upon its use.

Despite these restrictive conditions, there is nothing in  
the statutes or the regulations to indicate that either the  
Federal Government or the State of Ohio intended to retain an

equitable interest in the property to which the local subdivisions took title. There was, in effect, an agreement between the Federal Government, the State of Ohio, and the local subdivisions for the purposes of Civil Defense, whereby the Federal Government and the State would provide general supervision, planning and funds, and the local subdivisions would purchase the necessary equipment and set up the operating units. This was a contractual arrangement under which the Federal Government and the State surrendered legal and equitable title in the purchased equipment, subject to the condition subsequent that the local subdivisions use it only for the purposes specified by the Federal Government and the State. Under such circumstances, title passes subject to being divested if the condition subsequent is not fulfilled. 11 O. Jur. 2d 438, 439; 5 Williston on Contracts (3rd ed.) 144-148. If the transaction were to be treated as a conditional gift or as a trust for a specific purpose, the result would be the same. 38 Am. Jur. 883, 884; Stambaugh Assn. v. Youngstown, 73 Ohio App. 234 (1943); Gearhart v. Richardson, 109 Ohio St. 418 (1924).

The requirement that there be an audit of expenditures by the Bureau of Inspection and Supervision of Public Offices is no evidence of an intent by the General Assembly to retain an interest in the property. All public moneys constitute a public trust fund, State ex rel. Smith v. Maharry, 97 Ohio St. 272 (1918), and the expenditure of such funds is limited to a public purpose, Kohler v. Powell, 115 Ohio St. 418 (1926). Where the expenditure of funds is expressly limited by law, such funds cannot be spent for any other purpose. State ex rel. Walton v. Edmondson, 89 Ohio St. 351 (1914). Here, an audit would, of course, be necessary to insure the proper expenditure of the expended funds. The General Assembly, by so providing, was performing its legal duty and not preserving to the State an equity in the property to be purchased.

Opinion No. 1665, Opinions of the Attorney General for 1952, held that a township had complete ownership and control of Civil Defense equipment, although it did not specifically consider the possibility of a retained equitable interest in the State. That Opinion, and Opinion No. 4224, Opinions of the Attorney General for 1954, both hold that the Civil Defense laws and regulations should be given a liberal construction tending to accomplish the purpose of the legislation. I believe that the interpretation given here does accomplish that purpose.

In specific answer to your first question, therefore, it is my opinion, and you are so advised, that money appropriated by the State toward the purchase of Civil Defense equipment by a local subdivision constituted an outright grant to the subdivision, subject only to the condition that the equipment be used for the required period for Civil Defense purposes.