

## OPINION NO. 84-032

**Syllabus:**

A municipality, a county, or the state, acting through the Director of Development, may issue revenue bonds, pursuant to R.C. Chapter 165, to provide funds for pollution control or solid waste disposal facilities so long as the purpose for which such bonds are issued is to create or preserve jobs and employment opportunities or to improve the economic welfare of the people of the state and such facilities are otherwise appropriate subjects for such financing.

**To: Robert H. Maynard, Director, Ohio Environmental Protection Agency,  
Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, May 31, 1984**

I have before me your request for my opinion concerning the authority to issue revenue bonds to assist in the financing of facilities for the control of air and water pollution, and for solid waste disposal. You have asked whether the laws which implement Ohio Const. art. VIII, §13 preclude the state, acting through the Director of Development, counties, and municipalities from issuing revenue bonds for such facilities.

Ohio Const. art. VIII, §13 authorizes issuance of industrial development revenue bonds by providing, in pertinent part:

To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.  
(Emphasis added.)

Numerous laws exist to implement the provisions of Ohio Const. art. VIII, §13. You are particularly concerned with the statutes that empower the Ohio Air Quality Development Authority and the Ohio Water Development Authority to issue revenue bonds to assist in financing facilities for air and water pollution control and solid waste disposal. See R.C. 3706.01(G), (H) and R.C. 3706.04 (The Ohio Air Quality Development Authority may issue revenue bonds to finance air quality

facilities for industry, commerce, distribution or research.); R.C. 6121.01(K) and R.C. 6121.04 (The Ohio Water Development Authority may issue bonds for waste water facilities for industry, commerce, distribution, or research.); R.C. 6123.03 (It is the public policy of the state, operating through the Ohio Water Development Authority, to assist in the financing of solid waste facilities for industry, commerce, distribution or research.). Your query is whether the provisions of R.C. Chapters 3706, 6121, and 6123 preclude financing of such facilities by municipalities, counties, or the state, acting through an agency other than the air quality and water development authorities.

The state, counties and municipalities are given power to finance certain projects through issuance of revenue bonds pursuant to R.C. 165.02 which provides, in part:

Section 13 of Article VIII, Ohio Constitution, is in part implemented by this chapter in furtherance of the public purposes of the state to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state. All [sic] issuer acting through its issuing authority may in accordance with Section 13 of Article VIII, Ohio Constitution:

. . . .

(C) Issue its bonds to provide funds, by loans or otherwise, for acquiring, constructing, reconstructing, enlarging, improving, furnishing, or equipping one or more projects or parts thereof. . . . (Emphasis added.)

The pertinent terms are defined under R.C. 165.01(D), (E), and (H), as follows:

As used in this Chapter:

. . . .

(D) "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.

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

. . . .

(H) "Project" means real or personal property, or both, including undivided and other interests therein, acquired by gift or purchase, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, by an issuer, or by others in whole or in part from the proceeds of a loan made by an issuer, for industry, commerce, distribution, or research and located within the boundaries of the issuer. A project as defined in this division is hereby determined to qualify as facilities described in Section 13 of Article VIII, Ohio Constitution. (Emphasis added.)

Thus, a county acting through its board of county commissioners, a municipality acting through its legislative authority, and the state acting through the Director of Development are granted broad authority to issue revenue bonds to provide funds for, inter alia, acquisition, construction, or improvement of real or personal property located within the boundaries of the issuer for industry, commerce, distribution or research. Such authority may be exercised "to create or preserve

jobs and employment opportunities and to improve the economic welfare of the people of the state." R.C. 165.02.

R.C. Chapter 165 does not expressly exclude facilities for pollution control and solid waste disposal from the types of projects for which revenue bonds may be issued. While R.C. Chapter 165 does not authorize the issuance of revenue bonds for the purpose of controlling pollution or disposing of solid waste, if the purpose of a project is to create or preserve jobs and employment opportunities or to improve the economic welfare, such project may fall within the scope of R.C. Chapter 165, notwithstanding the fact that the project will also incidentally effect pollution control or solid waste disposal. Thus, in order to conclude that the Ohio Air Quality Development Authority and the Ohio Water Development Authority have exclusive power to issue bonds to finance such facilities, one must find that the powers granted under R.C. Chapter 165 are restricted by another statutory provision or by interpretation pursuant to the rules of statutory construction.

No provision of R.C. Chapters 3706, 6121, or 6123 expressly grants exclusive power to the Ohio Air Quality Development Authority or the Ohio Water Development Authority to finance facilities for air and water pollution control and solid waste disposal. Neither does any provision of these chapters expressly restrict the authority of a municipality, county, or the state, acting through the Director of Development, to issue revenue bonds for financing such facilities. The mere existence of laws specifically empowering certain state authorities to finance such projects cannot be construed as a repeal or restriction of part of the broad powers granted pursuant to R.C. Chapter 165, absent an express statutory declaration that such an effect is intended. Eggleston v. Harrison, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1899) ("The presumption is that laws are passed with deliberation and with knowledge of all existing ones on the subject. . . . The presumption being against indirect repeal, the courts will endeavor to harmonize the several parts, and where the statute has made no exception the courts will make none. . . . An enlarged meaning, beyond the import of the words, will not be given to one act in order to repeal another by implication."). Only if the provisions of R.C. Chapter 165 and R.C. Chapters 3706, 6121, and 6123 "are irreconcilable by any means of interpretation. . . or are so repugnant to or contradictory with each other as to evidence an intent on the part of the General Assembly to change the statutory law" could one statute be construed to supersede another. State v. Ruppert, 54 Ohio St. 2d 263, 268, 375 N.E.2d 1250, 1254 (1978).

A review of the various statutory provisions demonstrates that no such irreconcilable contradiction exists. R.C. Chapter 165 permits a municipality, county, or the state, acting through the Director of Development, to issue revenue bonds to provide funds for projects within their boundaries for industry, commerce, distribution or research for the public purposes of the creation or preservation of jobs or the improvement of the economic welfare of the people of the state. R.C. 165.01, 165.02. R.C. Chapters 3706, 6121, and 6123 authorize the state, acting through the Ohio Water Development Authority and the Ohio Air Quality Development Authority, to issue revenue bonds to finance certain pollution control and solid waste disposal facilities for industry, commerce, distribution or research; the public purposes to be achieved are control of air and water pollution and solid waste disposal. R.C. 3706.03 R.C. 6121.03; R.C. 6123.03. Thus, the statutes concerning each bond issuing authority provide for the implementation of the various public purposes enunciated under Ohio Const. art. VIII, §13, *i.e.*, "[t]o create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste." However, the specific thrust of Ohio Const. art. VIII, §13 is that the funds provided through issuance of revenue bonds be used for industry, commerce, distribution or research. State ex rel. Brown v. Beard, 48 Ohio St. 2d 290, 291, 358 N.E.2d 569, 570 (1976). This is reflected in the statutes applicable to each bond issuing authority. The distinguishing factor among the laws applicable to the various authorities is the public purposes for which each may issue bonds. However, so long as the project or facility which is to benefit from the bond proceeds fulfills the pertinent public purposes, and any other requirement imposed by the appropriate enabling statutes, the provisions of R.C. Chapters 3706, 6121, and 6123 do not effect limitations upon the authority of a municipality, county, or

the state, acting through the Director of Development as set forth in R.C. Chapter 165.<sup>1</sup>

Furthermore, the summary of the proceedings of the Ohio Constitutional Revision Commission reveals that those responsible for revising Ohio Const. art. VIII, §13 were aware that the state issued bonds to provide for pollution abatement facilities through the Department of Development, as well as through the Ohio Water Development Authority. 3 Ohio Const. Rev. Comm'n 1471-72 (1972). The Ohio Water Development Authority was considered to base its bond issuing authority upon the provisions of Ohio Const. art. VIII, §2i. Ohio Const. art. VIII, §13 was considered authority for the Department of Development to issue bonds for pollution abatement facilities. At that time, the only public purposes enunciated under art. VIII, §13 were the creation of jobs and employment opportunities, and the improvement of the economic welfare of the people of the state. Ohio Const. art. VIII, §13 (adopted May 4, 1965). I note that these are the purposes for which bonds may be issued pursuant to R.C. 165.02. In addition, it was anticipated that under authority of the proposed amendment to art. VIII, §13 concerning preservation of jobs, revenue bonds could be issued to finance environmental protection equipment for private companies. 3 Ohio Const. Rev. Comm'n 1473-1478 (1972). The language of art. VIII, §13 was thereafter amended to include preservation of jobs as a proper public purpose for industrial development bond revenues. Subsequently, R.C. 165.02 was also amended to include job protection among the purposes for which a municipality, a county, or the state, acting through the Director of Development, could issue revenue bonds.

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<sup>1</sup> The materials that accompanied your letter of request indicate that recourse to the legislative history of Am. Sub. S.B. 104, 111th Gen. A. (1975) (eff. Aug. 1, 1975) could lead to a different construction of R.C. 165.01 and R.C. 165.02. Am. Sub. S.B. 104 was enacted to amend numerous statutory provisions following the amendment of Ohio Const. art. VIII, §13 in 1974. During debate, it was proposed that Am. Sub. S.B. 104 amend the second sentence of R.C. 165.01(H) by adding the final phrase "including facilities defined in sections 3706.01, 6121.01 and 6123.01 of the Revised Code." This phrase was deleted in conference and omitted from the enactment. It would be inappropriate to presume any legislative intent to alter the plain meaning of R.C. 165.01(H) based upon this history. Neither the analyses provided by the Legislative Service Commission during consideration of the bill, nor the legislative journals indicate the reason for this action. One cannot interpret a statute in a manner inconsistent with the plain language of the provision upon a theory that the legislature intended such construction. State ex rel. Munding v. Industrial Commission, 92 Ohio St. 434, 443-44, 111 N.E. 299, 301 (1915), overruled on other grounds, State ex rel. Crawford v. Industrial Commission, 110 Ohio St. 271, 143 N.E. 574 (1924). "[W]here the language of an enactment is clear, and construction according to the terms does not lead to absurd or unpracticable consequences, the words employed are to be taken as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed." United States v. Missouri Pacific Railroad Co., 278 U.S. 269, 278 (1929). Accord Cleveland Trust Co. v. Eaton, 21 Ohio St. 2d 129, 138, 256 N.E.2d 198, 204 (1970). But see Gulf Oil Corp. v. Copp Paving Co., Inc., 419 U.S. 186, 199-201 (1974); Sinclair Refining Co. v. Atkinson, 370 U.S. 195, 202-210 (1962), overruled on other grounds, Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970); Missouri Pacific, 278 U.S. 269 (syllabus, paragraph 5) ("The reasons for and significant circumstances leading up to the enactment may, however, be noticed in confirmation of the meaning conveyed by the words used."). As discussed in the text, interpretation of the plain language used in R.C. 165.01(H) and R.C. 165.02 does not lead to any irreconcilable conflict with R.C. Chapters 3706, 6121, and 6123, nor to any untenable consequences. Accordingly, one may not resort to the legislative history of the provisions to achieve an implied repeal of any portion of the authority granted pursuant to R.C. 165.02.

For the foregoing reasons, it is my opinion, and you are advised, that a municipality, a county, or the state, acting through the Director of Development may issue revenue bonds, pursuant to R.C. Chapter 165, to provide funds for pollution control or solid waste disposal facilities so long as the purpose for which such bonds are issued is to create or preserve jobs and employment opportunities or to improve the economic welfare of the people of the state and such facilities are otherwise appropriate subjects for such financing.