

Note from the Attorney General's Office:

1968 Op. Att'y Gen. No. 68-087 was modified by
1977 Op. Att'y Gen. No. 77-025.

OPINION NO. 68-087

Syllabus:

Neither the state nor any of its political subdivisions may operate as a Community Action Agency inasmuch as the federally imposed employment guidelines are not consonant with the Ohio Constitution and the civil service statutes of this state.

To: Robert H. Huffer, Pickaway County Pros. Atty., Circleville, Ohio
By: William B. Saxbe, Attorney General, June 5, 1968

I have before me your request for my opinion on the following matter:

"Under the 1967 Amendments to Section 210 of the Economic Opportunity Act, can a political subdivision, as a county or city, operate under its (home rule) powers, a public Community Action Agency as a department, division or otherwise and meet the requirements of the above named act and the accompanying Office of Economic Opportunity guidelines."

Section 210 of the Economic Opportunity Act. Title 42, Section 2781, et seq., U.S.C.A., as amended provides in part:

"(a) A community action agency shall be a State or political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or a public or private nonprofit agency or organization which has been designated by a State or such a political subdivision or combination of such subdivisions, which -

"(1) has the power and authority and will perform the functions set forth in section 212, including the power to enter into contracts with public and private nonprofit agencies and organizations to assist in fulfilling the purposes of this title, and

"(2) is determined to be capable of planning, conducting, administering and evaluating a community action program and is currently designated as a community action agency by the Director."

The purpose of amending the Act was to require greater involvement of state and local officials in community action programs. Section 213 (b) of the Economic Opportunity Act authorizes the Director to prescribe rules and regulations to supplement the Act. In the handbook, Organizing Community For Action, the Office of Economic Opportunity sets forth the guidelines and policies which raise the question of whether a state or political subdivision itself could serve as a community action agency.

"In order for a CAA to be recognized by OEO it must among other things,

- have legal authority under State or local law to:
- conduct a community action program;
- contract with and delegate to public or private organizations (including religious organizations) the operation of programs;
- give preference to the employment of poor people and persons over 55 years of age; and
- receive, administer, and transfer funds.

"Where a political jurisdiction lacks one of the vital powers or where it is of insufficient size it may designate another public or private non-profit agency which would have such powers and be of sufficient size.* * *"

A more detailed description of the employment requirements is set forth in Community Action Memorandum No. 80, Part B, 9. It reads as follows:

"9. In connection with the community action program, the community action agency must be free from employment rules or restrictions which would prevent:

"(a) The hiring of any qualified poor person, in preference to other qualified persons who are not poor.

"(b) The hiring of any qualified person who lives in the neighborhood or area where the job is to be performed, in preference to other qualified persons who do not live there.

"(c) The employment of persons without any fixed upper age limit.

"(d) Restriction of non-professional jobs to particular types of persons because of their relationship to the program or its beneficiaries (for example, parents of pre-school children, manpower trainees, the elderly, tenants of a particular project or block).

"(e) The hiring of any person who can per-

form a non-professional job, even though he lacks a formal education.

"(f) The hiring of an otherwise qualified person solely because he has a criminal record, unless that record casts doubt on his ability to perform the particular job with integrity and without danger to the program participants.

"(g) The employment of persons without regard to their race, creed, color, or national origin.

"(h) The payment to program employees of the current Federal minimum wage for employment in interstate commerce (\$1.60 an hour as of February 1, 1968)."

Section 10, Article XV, Ohio Constitution, provides:

"Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable by competitive examinations. Laws shall be passed providing for the enforcement of this provision."

This section has been implemented by the enactment of Chapter 143, Revised Code, which establishes the civil service laws of this state. It is clear that the preferential hiring made mandatory by the Office of Economic Opportunity guidelines are in contravention of our Constitution and laws. Thus, neither the state nor a political subdivision of the state could meet the requirements set forth in the guidelines. Since this would prevent either from serving as a Community Action Agency itself, it is not necessary to examine the other requirements imposed by the guidelines and the Act.

It is therefore my opinion and you are hereby advised that neither the state nor any of its political subdivisions may operate as a Community Action Agency inasmuch as the federally imposed employment guidelines are not consonant with the Ohio Constitution and the civil service statutes of this state.