

**OPINION NO. 82-083****Syllabus:**

Title to all real estate acquired by the Ohio Public Facilities Commission must be taken in the name of the State of Ohio. However, title to real estate purchased by or for a governmental agency with moneys appropriated from the improvement funds created in R.C. Chapter 154 may be taken in the name of the governmental agency, if such governmental agency is otherwise empowered to acquire property in its own name.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: William J. Brown, Attorney General, October 26, 1982**

I have before me your request for my opinion which asks the following questions:

"Is the Ohio Public Facilities Commission the owner of the land purchased with monies appropriated from the designated funds created in Sections 154.20(F), 154.21(F) and 154.22(F) of the Revised Code? Should the deed for this land be in the name of the Ohio Public Facilities Commission or should it be in the name of the State of Ohio for the use of the institution or state department using the land?"

The Ohio Public Facilities Commission has been created, and constituted "an agency and instrumentality of the state of Ohio," pursuant to R.C. 154.03, for the

purpose of financing the acquisition or construction of capital facilities for mental hygiene and retardation, state supported and state assisted institutions of higher education, parks and recreation, and housing branches and agencies of state government. In order to carry out its statutory purpose, the Commission has been empowered to "[a]cquire by appropriation. . .or by gift, grant, lease, or purchase. . .and hold, lease, and dispose of real estate and interests therein and personal property for the purposes of Chapter 154 of the Revised Code." R.C. 154.06(A). The Commission, however, is not required to purchase the land upon which capital facilities financed pursuant to R.C. Chapter 154 will be constructed. Pursuant to R.C. 154.15 any governmental agency may enter into an agreement with the Commission permitting the Commission to use any property in the use of such governmental agency or under its control. Moreover, the Commission has been given very broad powers to enter into agreements with the governmental agencies for whose use the capital facilities are being acquired or constructed with respect to the purchase of such capital facilities. R.C. 154.20(B); R.C. 154.21(B); R.C. 154.22(B); R.C. 154.23(B). The term "capital facilities" as used in R.C. Chapter 154 includes real estate and interests therein. R.C. 154.01(J). Thus, land purchased with moneys appropriated from the improvement funds created in R.C. 154.20(F), R.C. 154.21(F), R.C. 154.22(F) or R.C. 154.23(F)<sup>1</sup> may be purchased, consistent with R.C. Chapter 154, by the Commission or, pursuant to an agreement with the Commission, by the governmental agency for whose use the capital facility is being acquired or constructed or for such governmental agency through an agency other than the Commission.<sup>2</sup>

The question of title to real estate acquired by the Commission is specifically addressed by R.C. 154.16, which provides, in part, as follows:

Any government agency may lease, grant, or convey to the Ohio public facilities commission, at its request, any real property or interests therein. . .which is necessary or convenient to the effectuation of the authorized purposes of the commission. . .upon such terms as the governing body of the governmental agency, and the governor in the case of real estate title of which is in the name of the state, and the commission agree. . . . Title to all real estate acquired by the commission shall be taken in the name of the state. (Emphasis added.)

Although this statute initially speaks only to property conveyed to the Commission by a governmental agency, the last sentence speaks to "all real estate acquired by the commission," and requires that title to such property be taken in the name of the state. While one might question the placement of this provision and suggest that the legislature may have intended it to apply only to property conveyed by governmental agencies, the use of the word "all" renders the intent plain and unambiguous. Since the legislature has expressed its intent so plainly, it would be inappropriate to seek or impose another meaning. See, e.g., Jasinsky v. Potts, 153 Ohio St. 529, 92 N.E.2d 809 (1950).

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<sup>1</sup>R.C. 154.23, which authorizes the Commission to issue obligations to pay the costs of capital facilities for housing branches and agencies of state government, was enacted subsequent to your request for this opinion. I shall assume, therefore, that your concerns are pertinent to the fund created in R.C. 154.23(F) as well as those funds mentioned in your request.

<sup>2</sup>I have noted that the Commission and the governmental agencies mentioned in R.C. Chapter 154 have been given very broad powers to make agreements with respect to the use or purchase of capital facilities acquired or constructed thereunder and to do so "notwithstanding other provisions of law affecting the leasing, acquisition or disposition of capital facilities by the parties." See R.C. 154.20(B); R.C. 154.21(B); R.C. 154.22(B); R.C. 154.23(B). For the purposes of this opinion, I shall assume, however, that no such agreements have been executed, and shall limit my analysis to the general provisions of law affecting the acquisition of capital facilities by or for these governmental agencies.

It is my understanding, however, that to date the Commission has not exercised its power to acquire property, but rather has limited its role to that of a financing agent. To date, lands purchased with moneys appropriated from the improvement funds created in R.C. Chapter 154 have been purchased by or for the governmental agency for whose use the facility is to be acquired or constructed. See Ohio Public Facilities Commission General Regulations, art. III, §3.01 (June 11, 1970). The question of how title to such lands should be taken is governed, therefore, not by R.C. 154.16, but by the enabling statutes for the various governmental agencies for whose use facilities may be acquired or constructed pursuant to R.C. Chapter 154. Since R.C. Chapter 154 does not speak to how property acquired by or for a governmental agency is to be titled, if the governmental agency is otherwise empowered to take title to real property in its own name, it may do so notwithstanding the fact that the property is purchased with moneys appropriated from the improvement funds created in R.C. Chapter 154. See, e.g., R.C. 3354.13 (title to real property pertaining to a community college shall be vested in the board of trustees of the community college district); R.C. 3357.01(B) and R.C. 3357.09(B) (technical college districts are political subdivisions of the state and may own real property for the purposes of the institution). But see, e.g., R.C. 1501.01 (director of natural resources must acquire real property necessary for the purposes of the department in the name of the state); R.C. 3345.16 (boards of trustees of state colleges and universities are generally empowered to take title to real property only if the property is purchased by the board as an investment and is held in its endowment portfolio).

Accordingly, it is my opinion, and you are advised, that title to all real estate acquired by the Ohio Public Facilities Commission must be taken in the name of the State of Ohio. However, title to real estate purchased by or for a governmental agency with moneys appropriated from the improvement funds created in R.C. Chapter 154 may be taken in the name of the governmental agency, if such governmental agency is otherwise empowered to acquire property in its own name.