

OPINION NO. 94-037**Syllabus:**

1. As used in R.C. 164.06(B), "existing" infrastructure denotes installations or facilities of the nature and type described in R.C. 164.01(A) that exist at the time a district public works integrating committee selects the requests for assistance for capital improvement projects that will be submitted to the Director of the Ohio Public Works Commission, and determines the nature, amount, and terms of the assistance that will be so requested.
2. As used in R.C. 164.05(H), "new" infrastructure denotes installations or facilities of the nature and type described in R.C. 164.01(A) that do not exist prior to or at the time that the Director of the Ohio Public Works Commission makes the monetary allocations described in R.C. 164.08(B)(1)-(5), but thereafter come into existence for the first time as a result of those allocations.

3. As used in R.C. 164.05(H), "expanded" infrastructure denotes an enlargement or expansion of installations or facilities of the nature and type described in R.C. 164.01(A) that exist prior to or at the time that the Director of the Ohio Public Works Commission makes the monetary allocations described in R.C. 164.08(B)(1)-(5).

To: Kevin J. Baxter, Erie County Prosecuting Attorney, Sandusky, Ohio
By: Lee Fisher, Attorney General, June 9, 1994

You have requested an opinion regarding the definition of certain terms that appear in R.C. Chapter 164 (aid to local government improvements). R.C. Chapter 164 was enacted by the General Assembly in 1987-1988 Ohio Laws, Part III 4806 (Am. Sub. H.B. 704, eff. March 29, 1988) for the purpose of implementing the provisions of article VIII, §2k of the Ohio Constitution. Article VIII, §2k authorizes the issuance of bonds and other obligations of the state to finance or to assist in financing the cost of public infrastructure capital improvements for local government. That provision reads, in pertinent part, as follows:

(A) In addition to the authorization otherwise contained in Article VIII of the Ohio Constitution, the General Assembly may provide by law, in accordance with but subject to the limitations of this section, for the issuance of bonds and other obligations of the state for the purpose of financing or assisting in the financing of the cost of public infrastructure capital improvements of municipal corporations, counties, townships, and other governmental entities as designated by law. As used in this section, public infrastructure capital improvements shall be limited to roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental thereto. Capital improvements shall include without limitation the cost of acquisition, construction, reconstruction, expansion, improvement, planning, and equipping.

Division (A) of Ohio Const. art. VIII, §2k further declares that the foregoing public infrastructure capital improvements "are necessary to preserve and expand the public capital infrastructure of such municipal corporations, counties, townships, and other governmental entities, ensure the public health, safety, and welfare, create and preserve jobs, enhance employment opportunities, and improve the economic welfare of the people of this state," and division (E) also states that §2k "shall otherwise be implemented in the manner and to the extent provided by law by the General Assembly."

Pursuant to the directives thus set forth in article VIII, §2k(A) and (E), R.C. Chapter 164 establishes the statutory scheme whereby moneys of the state are raised through the issuance of general obligations, R.C. 164.09-.11, and thereafter allocated to local subdivisions to finance public infrastructure capital improvements, R.C. 164.02-.08. R.C. 164.01(A) provides that as used in R.C. Chapter 164, "[c]apital improvement," "capital improvement project," or "project" means the

acquisition, construction, reconstruction, improvement, planning, and equipping of roads and bridges, waste water treatment systems, water supply systems, solid waste disposal facilities, flood control systems, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental to those facilities.

R.C. Chapter 164 does not provide a separate definition of the term "infrastructure." The dictionary defines "infrastructure" as "a substructure of underlying foundation; esp., the basic installations and facilities on which the continuance and growth of a community, state, etc. depends, as roads, schools, power plants, transportation and communication systems, etc." *Webster's New World Dictionary* 723 (2nd college ed. 1978). For purposes of R.C. Chapter 164, therefore, "infrastructure" is to be understood as denoting installations or facilities of the nature and type enumerated in R.C. 164.01(A) as follows: (1) roads and bridges; (2) waste water treatment systems; (3) water supply systems; (4) solid waste disposal facilities; (5) flood control systems; and (6) storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental to those facilities.

Infrastructure: "Existing," "New," or "Expanded"

You note in your letter that R.C. 164.05(H) and R.C. 164.06(B) refer, respectively, to "new or expanded" infrastructure and "existing" infrastructure,¹ and that those particular qualifiers, as used in those two sections, are not defined in either the Revised Code or the Ohio Administrative Code. Consequently, you have asked that I render an opinion about the proper definitions of "new," "expanded," and "existing" when used in R.C. Chapter 164 as qualifiers of the term "infrastructure." You have explained that such definitions will help guide the county engineer in formulating public infrastructure capital improvement projects that satisfy the eligibility requirements for funding under R.C. Chapter 164. Correspondence from the county engineer that accompanies your request provides several examples of specific public infrastructure capital improvements, and he has asked whether those improvements constitute new infrastructure, or replacement of existing infrastructure. Specifically, the county engineer has asked about (1) the installation of a sanitary sewer system wherein septic tanks on individual lots are replaced with a new sewer line that connects to a central sewage system; (2) the installation of a storm sewer system that replaces an open drainage ditch along a public road; and, (3) the installation of a new county-owned water line that connects to the county water system and replaces wells on individual lots.

Terms left undefined by statute are to be accorded their common, everyday meanings. *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). *See also* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *State ex rel. Rear Door Bookstore v. Tenth District Court of Appeals*, 63 Ohio St. 3d 354, 358, 588 N.E.2d 116, 120 (1992) ("[t]he legislature need not define every word of a statute. Words of ordinary usage will be given the meaning commonly attributed to them"); *Eastman v. State*, 131 Ohio St. 1, 1 N.E.2d 140 (1936) (syllabus, paragraph five) ("[w]ords in common use will be construed in their ordinary acceptance and significance and

¹ R.C. 164.05(H) sets forth percentage limitations upon the "amount of the annual allocations made pursuant to [R.C. 164.08(B)(1)-(5)] which can be used for new or expanded infrastructure." R.C. 164.06(B) states that in selecting requests for assistance for capital improvement projects for submission to the Director of the Ohio Public Works Commission, *see* R.C. 164.05(A)(1); R.C. 164.06(A), and in determining the nature, amount, and terms of the assistance that will be requested, a district public works integrating committee, *see* R.C. 164.04, "shall give priority to capital improvement projects for the repair or replacement of existing infrastructure and which would be unlikely to be undertaken without assistance under this chapter, and shall specifically consider" all the factors thereafter listed.

with the meaning commonly attributed to them"). The *Oxford English Dictionary, Compact Edition* vol. I 926 (1971) provides the following definitions of the verb "exist":

1. To have place in the domain of reality, have objective being.
2. To have being in a specified place or under specified conditions. With advb. phrase or *as*; formerly with simple complement. Of relations, circumstances, etc.: To subsist, be found, occur.
3. To have life or animation; to live.
4. To continue in being, maintain an existence. (Examples omitted.)

As a participial adjective, therefore, "existing" denotes something "[t]hat exists or has existence," or "that exists at any implied or specified time." *Id.* The verb "expand" is defined, in part, as "to cause to fill a larger space; to widen the boundaries, increase the area or capacity of" a material object, or "[t]o increase in bulk, swell; to become dilated or enlarged." *Id.* at 927. "Expanded" thus means "[i]ncreased in area or bulk; enlarged." *Id.*

The following meanings are listed for "new" when used as an adjective:

1. Not existing before; now made, or brought into existence, for the first time.
2. Not previously known; now known for the first time.
3. Coming as a resumption or repetition of same previous act or thing; starting afresh.
4. Other than the former or old; different from that previously existing, known, or used.
5. Used with *the* to distinguish the thing spoken of from something old, or already existing, of the same kind. (Examples omitted.)

Oxford English Dictionary, Compact Edition vol. I at 1918.

Applying those definitions in this instance, "existing" infrastructure, as used in R.C. 164.06(B), denotes installations or facilities of the nature and type described in R.C. 164.01(A) that exist or have existence at the time that a district public works integrating committee selects the requests for assistance for capital improvement projects that will be submitted to the Director of the Ohio Public Works Commission and determines the nature, amount, and terms of the assistance that will be so requested.² "New" infrastructure, as used in R.C. 164.05(H), denotes installations or facilities of the nature and type described in R.C. 164.01(A) that do not exist prior to or at the time that the Director of the Ohio Public Works Commission makes the monetary allocations described in R.C. 164.08(B)(1)-(5), but thereafter come into existence for the first time as a result of those allocations. "Expanded" infrastructure, as used in R.C. 164.05(H), denotes an enlargement or expansion of installations or facilities of the nature and type described in R.C. 164.01(A) that exist prior to or at the time that the Director of the Ohio Public Works Commission makes the monetary allocations described in R.C. 164.08(B)(1)-(5).

Application of the foregoing definitions to the specific public infrastructure capital improvements described in the county engineer's correspondence indicates that each such improvement constitutes "new" infrastructure. The facts set forth in the engineer's letter make it clear that each improvement he has described is markedly different in nature and type from

² The language of R.C. 164.06(B) contemplates that the type of work that is performed upon "existing" infrastructure, without creating "new" or "expanded" infrastructure, will comprise activities that effect either a "repair" of existing infrastructure, or a "replacement" of existing infrastructure with infrastructure that is identical in all material respects to that existing infrastructure.

the existing installation or facility that it replaces, and has not existed previously. It follows, therefore, that each of those improvements qualifies as new infrastructure for purposes of R.C. Chapter 164, and is not simply a replacement of existing infrastructure.

Conclusion

Based upon the foregoing, it is my opinion, and you are advised that:

1. As used in R.C. 164.06(B), "existing" infrastructure denotes installations or facilities of the nature and type described in R.C. 164.01(A) that exist at the time a district public works integrating committee selects the requests for assistance for capital improvement projects that will be submitted to the Director of the Ohio Public Works Commission, and determines the nature, amount, and terms of the assistance that will be so requested.
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