

OPINION NO. 76-010**Syllabus:**

The Ohio Building Authority has authority under R.C. 152.21 to lease land on which an office building would be constructed.

To: Harvey G. Oppmann, Chairman, Ohio Building Authority, Cleveland, Ohio
By: William J. Brown, Attorney General, February 18, 1976

Your request for my opinion reads in pertinent part as follows:

"In reviewing the Ohio Revised Code under which the Ohio Building Authority is authorized to operate regarding the construction and rental of state office buildings, we respectfully request your opinion of our authority to lease land upon which an office facility would be constructed."

Your letter suggests that such authority may be found under R.C. 152.19 and R.C. 152.21(A). Those sections may be set out as follows:

R.C. 152.19

"(A) The Ohio building authority may purchase, construct, reconstruct, equip, furnish, improve, alter, enlarge, maintain, repair, and operate office buildings and related storage and parking facilities for the use of state agencies on one or more sites within the state.

"(B) With the exception of construction by the adjutant general which involves federal funds that otherwise lapse, the first project of the authority pursuant to division (A) of this section shall be the acquisition, provision, or construction of office facilities, pursuant to the instructions of the legislative office building committee as provided in section 152.25 of the Revised Code. After the location of said facilities has been determined, the authority may proceed to subsequent projects.

"(C) After the first project, all buildings and facilities acquired or constructed by the Ohio building authority shall be acquired or constructed with the advice of the capital planning and improvement advisory board and shall follow the procedure of section 125.82 of the Revised Code."

R.C. 152.21(A)

"With respect to buildings and facilities described in section 152.19 of the Revised Code, the Ohio building authority may:

"(A) Acquire, by appropriation subject to Chapter 163. of the Revised Code, or by gift, grant, or purchase, hold, lease, mortgage, and dispose of real estate and interests in real estate and personal property suitable for its purposes;

". . . ."

While R.C. 152.21(A) uses the term "lease" in defining the powers and duties of the Ohio Building Authority with respect to real estate and interests in real estate, it is not clear what the General Assembly intended by its use of that term. On this point it may be noted that the word "lease" when used as a verb can have several meanings depending on its context. Deakyne v. Lewes, 204 F. Supp. 415, 419 (1962); Stone v. City of Los Angeles, 200 F. 838, 841 (1931). In Stone, supra, the Court said at page 841 that:

"When used as a verb: 'to lease' is to transfer, for a term specified therein, from the lessor to the lessee, the property therein demised; also to let, to farm out; to rent. There is authority for the view that the word 'leased' may properly be used in two senses, first in describing the act of the lessor in giving the lease, and again in describing the act of the lessee in taking the lease. 35 Cor. Jur. 1139."

The issue raised by your question is whether "lease" as used in R.C. 152.21(A) should be construed to mean the act of the lessee or the act of the lessor, or both.

The general rule in construing statutes is that words and phrases are to be read in context and construed according to the rules of grammar and common usage. R.C. 1.42. However, when a statute is ambiguous, R.C. 1.49 refers courts to the following considerations in determining legislative intent:

- "(A) The object sought to be attained;
- "(B) The circumstances under which the statute was enacted;
- "(C) The legislative history;
- "(D) The common law or former statutory provisions, including laws upon the same or similar subjects;
- "(E) The consequences of a particular construction;
- "(F) The administrative construction of the statute."

R.C. 152.21 was enacted in 1968, along with R.C. 152.19 through R.C. 152.27. In doing so, the General Assembly established the framework of the Ohio Building Authority's role in constructing and operating state office facilities. Since the purpose of these sections is to authorize the construction of office facilities and the acquisition of real estate on which such buildings are to be erected, it may reasonably be argued that the General Assembly contemplated the use of long-term leases where necessary to acquire suitable real estate. This view is supported by a reference to R.C. 1.49(A) *supra*, which states that in construing ambiguous language it is correct to consider the object sought to be obtained. On this point see also *Crowl v. DeLuca*, 29 Ohio St. 2d 53 (1972), in which the Supreme Court reaffirmed the considerations enumerated in R.C. 1.49 as the codification of long established rules of statutory construction. In that case the Court specifically referred to and relied on, as a consideration, the object sought to be obtained.

In addition I would refer you to R.C. 1.47 which reads:

"In enacting a statute, it is presumed that:

"(A) Compliance with the constitutions of the state and of the United States is intended;

"(B) The entire statute is intended to be effective;

"(C) A just and reasonable result is intended;

"(D) A result feasible of execution is intended."

Subsections (B), (C), and (D) are pertinent to this discussion. Under R.C. 1.47(B), the entire statute is intended to be effective. R.C. Sections 152.19-152.27 contemplate not only leasing activities by the O.B.A. as lessor (e.g. R.C. 152.21(E), R.C. 152.24), but also activities as the lessee (e.g., R.C. 152.26). Therefore, since under R.C. 1.47(C) and (D) a just and reasonable result, feasible of execution, is intended, it follows that the term "lease", as used in R.C. 152.21(A), must be construed broadly to include both the leasing of real estate as lessee and the leasing of real estate as lessor.

In specific answer to your questions it is, therefore, my opinion and you are advised that the Ohio Building Authority has authority under R.C. 152.21 to lease land on which an office facility would be constructed.