

OPINION NO. 89-045**Syllabus:**

When the Ohio Air Quality Development Authority holds funds that it has acquired as a result of fees charged for the issuance and administration of air quality revenue bonds and those funds are not needed to pay the costs of issuing or administering air quality revenue bonds, the Authority may loan those funds directly to persons, as defined in R.C. 3706.01(B), for the construction of air quality projects, provided that the use of the funds is not restricted by resolution or contract.

**To: Gayle S. Channing, Chairman, Ohio Air Quality Development Authority,
Columbus, Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, July 20, 1989

I have before me your request for an opinion concerning the authority of the Ohio Air Quality Development Authority ("OAQDA") to make loans for air quality projects. You have asked specifically whether the OAQDA may use funds that it has acquired as a result of fees charged for the issuance and administration of air quality revenue bonds to loan directly to persons (as defined in R.C. 3706.01(B)) for the construction of air quality projects.

The Ohio Air Quality Development Authority was created by R.C. 3706.02. Its purposes are set forth in R.C. 3706.03, which states, in part:

It is hereby declared to be the public policy of the state through the operations of the Ohio air quality development authority under this

chapter to contribute toward one or more of the following: to provide for the conservation of air as a natural resource of the state, and to prevent or abate the pollution thereof, to provide for the comfort, health, safety, and general welfare of all employees, as well as all other inhabitants of the state, to assist in the financing of air quality facilities for industry, commerce, distribution, and research, including public utility companies, to create or preserve jobs and employment opportunities or improve the economic welfare of the people, or assist and cooperate with governmental agencies in achieving such purposes. In furtherance of such public policy *the Ohio air quality development authority* may initiate, acquire, construct, maintain, repair, and operate air quality projects or cause the same to be operated pursuant to a lease, sublease, or agreement with any person or governmental agency; may make loans and grants to governmental agencies for the acquisition or construction of air quality facilities by such governmental agencies; *may make loans to persons for the acquisition or construction of air quality facilities by such persons*; and may issue air quality revenue bonds of this state payable solely from revenues, to pay the cost of such projects. (Emphasis added.)

The OAQDA is thus expressly authorized to "make loans to persons for the acquisition or construction of air quality facilities by such persons." R.C. 3706.03. This authority implements the provisions of Ohio Const. art. VIII, §13 that permit the enactment of laws authorizing the issuance of bonds and the making of loans and lending of aid and credit for the purposes set forth therein, provided that moneys raised by taxation are not obligated or pledged for the payment of bonds or other obligations issued under such laws. See R.C. 3706.03. See generally 1984 Op. Att'y Gen. No. 84-032.

The language of R.C. 3706.03 clearly authorizes the OAQDA to make loans to persons for the acquisition or construction of air quality facilities. See R.C. 3706.01(G) (defining "[a]ir quality facility"). R.C. 3706.01(H) defines "air quality project" to mean:

any air quality facility, including undivided or other interests therein, acquired or to be acquired or constructed or to be constructed by the Ohio air quality development authority under Chapter 3706. of the Revised Code, or acquired or to be acquired or constructed or to be constructed by a governmental agency or person with all or a part of the cost thereof being paid from a loan or grant from the authority under Chapter 3706. of the Revised Code, including all buildings and facilities that the authority determines necessary for the operation of the project, together with all property, rights, easements and interests that may be required for the operation of the project.

R.C. 3706.01(B) defines "[p]erson" to mean "any individual, firm, partnership, association, or corporation, or any combination thereof." It follows that the OAQDA may make loans to persons, as defined in R.C. 3706.01(B), for the construction of air quality projects.

The issue raised by your request is whether the OAQDA may make such loans with funds that it has acquired as a result of fees charged for the issuance and administration of air quality revenue bonds. R.C. 3706.04 provides that the OAQDA may:

(H) Issue air quality revenue bonds and notes and air quality revenue refunding bonds of the state, payable solely from revenues as provided in [R.C. 3706.05], unless the bonds be refunded by refunding bonds, for the purpose of paying any part of the cost of one or more air quality projects or parts thereof....

R.C. 3706.01(I) includes administrative expense as part of the cost of an air quality project. R.C. 3706.05 sets forth more detailed provisions regarding the issuance of revenue bonds and notes by the OAQDA. Provisions authorizing the creation of a trust agreement to secure air quality revenue bonds permit expenses incurred in carrying out the provisions of the trust agreement to be treated as part of the cost

of the operation of the air quality project or projects and permit general administrative overhead expenses of the OAQDA to be allocated among projects as a factor of the operation expense of each project. R.C. 3706.07. R.C. 3706.09 specifies that air quality revenue bonds "do not constitute a debt, or a pledge of the faith and credit, of the state or any political subdivision thereof," and that they "are payable solely from the revenues and funds pledged for their payment," as authorized by R.C. Chapter 3706. "All expenses incurred in carrying out Chapter 3706. of the Revised Code are payable solely from funds provided under such chapter." R.C. 3706.09. *See also* R.C. 3706.02 ("[a]ll expenses incurred in carrying out [R.C. Chapter 3706] shall be payable solely from funds provided under [R.C. Chapter 3706], appropriated for such purpose by the general assembly, or provided by the controlling board").

The OAQDA is authorized to "[a]cquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by, a person or governmental agency, air quality projects." R.C. 3706.04(F). The OAQDA is also authorized to "[c]harge, alter, and collect rentals and other charges for the use or services of any air quality project." R.C. 3706.04(P); *see* R.C. 3706.13. Under R.C. 3706.12, the OAQDA "may charge, alter, and collect rentals or other charges for the use or services of any air quality project and contract...and fix the terms, conditions, rentals, or other charges for such use or services." The OAQDA has general authority to enter into contracts and to do all acts necessary or proper to carry out its powers. R.C. 3706.04(K), (R).

The facts that you have presented are that the OAQDA has issued air quality revenue bonds for the financing of various air quality projects, has loaned the proceeds of those bonds to various governmental entities or other persons, has charged fees for the issuance and administration of the bonds, and has accumulated amounts of fees in excess of the amounts needed to cover actual costs of issuing and administering the bonds. It is clear from the fact that administrative expenses are included as a part of the cost of an air quality project, *see* R.C. 3706.01(I), that proceeds of air quality revenue bonds may be used to pay such expenses. *See* R.C. 3706.04(H). The OAQDA is authorized to enter into arrangements under which the person to whom a loan is to be made for a particular project "is to make payments sufficient to pay all of the principal of, premium, if any, and interest on the air quality revenue bonds issued for the project." R.C. 3706.041(A). Such payments will include amounts necessary to pay the portion of the bond proceeds allocated to administrative expenses. Provisions governing the issuance of air quality revenue bonds authorize resolutions providing for such bonds to contain, among other items, "limitations on the amount of moneys to be expended by the authority for operating, administrative, or other expenses of the authority." R.C. 3706.05. R.C. 3706.07 provides that a resolution authorizing the issuance of air quality revenue bonds "may provide the method whereby the general administrative overhead expenses of the authority shall be allocated among the several projects acquired or constructed by it as a factor of the operation expense of each such project." It is, thus, clear that the OAQDA has authority to use bond proceeds and accept fees to pay administrative expenses. It is, further, clear that the amounts that may be charged for expenses of issuing and administering air quality revenue bonds may be the subject of negotiation and agreement. *See also* R.C. 3706.08; R.C. 3706.12; R.C. 3706.13.

I assume that your request pertains to proceeds from fees that have been properly charged by the OAQDA; that are not restricted, by resolution or contract, to any particular purpose, *see* R.C. 3706.10-.11; and that are not needed to pay for the costs of issuing or administering air quality revenue bonds. The statutory scheme does not specifically address the accumulation of such proceeds. Fees for the issuance and administration of air quality revenue bonds are evidently intended to cover administrative costs, rather than to constitute a source of income for the OAQDA. It is, nonetheless, clear that it is impossible to predict, at the time of issuance of bonds, the precise amount that will be required to pay for costs of administration throughout the lifetime of the bonds. It is, accordingly, understandable that excess proceeds may accrue from such source. These excess

proceeds appear to come within the general provisions governing the use by the OAQDA of moneys that it acquires. R.C. 3706.10¹ states, in part:

All moneys, funds, properties, and assets acquired by the Ohio air quality development authority under Chapter 3706. of the Revised Code, whether as proceeds from the sale of air quality revenue bonds or as revenues,² or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, shall be used and reused as provided in such chapter, and shall at no time be part of other public funds. (Emphasis and footnote added.)

The OAQDA is thus authorized to use and reuse acquired moneys, as provided in R.C. Chapter 3706, for the purposes of carrying out the powers and duties of the OAQDA. Since one of the powers of the OAQDA is to make loans to persons for the construction of air quality facilities, *see* R.C. 3706.03, it follows that the OAQDA may apply moneys that it holds to such purpose. I conclude, therefore, that when the OAQDA holds moneys acquired as a result of fees charged for the issuance and administration of air quality revenue bonds and those moneys are not needed to pay for the costs of issuing or administering air quality revenue bonds, the OAQDA may use those moneys to make loans to persons for the construction of air quality facilities, provided that the use of the moneys is not restricted by resolution or contract. *See generally* R.C. 3706.21 (providing that R.C. 3706.01-.20, "being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof").

It is, therefore, my opinion, and you are hereby advised, that, when the Ohio Air Quality Development Authority holds funds that it has acquired as a result of fees charged for the issuance and administration of air quality revenue bonds and those funds are not needed to pay the costs of issuing or administering air quality revenue bonds, the Authority may loan those funds directly to persons, as defined in R.C. 3706.01(B), for the construction of air quality projects, provided that the use of the funds is not restricted by resolution or contract.

¹ R.C. 3706.10 and R.C. 3706.11 provide for the investment or deposit of moneys of the OAQDA that are not restricted by resolution or contract and are not currently needed for the purposes of the OAQDA.

² R.C. 3706.01(K) defines "[r]evenues" as follows:

"Revenues" means all rentals and other charges received by the [Ohio air quality development] authority for the use or services of any air quality project, any gift or grant received with respect to any air quality project, any moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of an air quality project, moneys received in repayment of and for interest on any loans made by the authority to a person or governmental agency, whether from the United States or any department, administration, or agency thereof, or otherwise, proceeds of such bonds to the extent of use thereof for payment of principal of, premium, if any, or interest on the bonds is authorized by the authority, proceeds from any insurance, condemnation, or guaranty pertaining to a project or property mortgaged to secure bonds or pertaining to the financing of the project, and income and profit from the investment of the proceeds of air quality revenue bonds or of any revenues.