

**OPINION NO. 83-094**

**Syllabus:**

Ohio Const. art. VIII, §13 permits the state to issue, under appropriate enabling statutes, bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement or equipment of property, structures, equipment or facilities used in farming.

**To: Dale L. Locker, Director, Department of Agriculture, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 21, 1983**

I have before me your request for my opinion as to whether Ohio Const. art. VIII, §13 permits the state to issue agricultural development bonds to be used to aid Ohio's farmers.

At the outset, I note that your request is phrased in general language, and that no specific agricultural development project has been proposed. Therefore, my opinion must, of necessity, be phrased in general terms.

The extension of the state's credit to, or in aid of, any individual, association, or corporation is generally forbidden by Ohio Const. art. VIII, §4. However, Ohio Const. art. VIII, §13 is an exception to this general prohibition. It states, in part:

To create or preserve jobs and employment opportunities [and] to improve the economic welfare of the people of the state, . . . it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities.

In State ex rel. Brown v. Beard, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976), the court considered the meaning of art. VIII, §13 in reviewing a proposed issuance of bonds for the construction and rehabilitation of low and moderate cost housing. The court stated that the opening language of the section, which states that the object of the section is "[t]o create or preserve jobs and employment opportunities [and] to improve the economic welfare of the people. . .", is prefatory and must, therefore, "be evaluated in light of the specific thrust of the provision that the excepted state credit be 'for industry, commerce, distribution, and research'" 40 Ohio St. 2d at 291, 358 N.E.2d at 570. The court held that the proposed issuance was:

not directly related to those specific purposes enumerated in Section 13 and must fail. To hold otherwise would render ineffective the provisions of Section 4 of Article VIII. Further, this court rejects respondents' argument that moderate and low cost housing is related to industry and commerce to such an extent as to fall within either of those constitutionally designated categories.

48 Ohio St. 2d at 291-93, 358 N.E.2d at 570. The court appeared to view the proposed issuance as being directly related to a welfare purpose of providing low cost housing, rather than to the art. VIII, §13 purpose of promoting industry, commerce, distribution and research. Thus, State ex rel. Brown v. Beard indicates that the determinative issue herein is whether farming is directly related to one or more of the constitutionally designated categories, "industry, commerce, distribution and research." Of the four enumerated categories, I find that "commerce" is the broadest and the most relevant to your inquiry. Since State ex rel. Brown v. Beard did not define this term, I must look to other sources.

The art. VIII, §13 meaning of "commerce" was considered in County of Stark v. Ferguson, 2 Ohio App. 3d 72, 440 N.E.2d 816 (Stark County Ct. of App. 1981). In that case, the court rejected a challenge to a proposed issuance of bonds to be used for the construction of an office building containing rental space for physicians, dentists, a pharmacy, and a laboratory. In holding that the exchange of medical services for money constitutes a form of "commerce," the court distinguished State ex rel. Brown v. Beard in the following manner:

In the instant case the facility will provide an on-going, continuing exchange of both services and goods; it will be a place where people go to do business with doctors, dentists, laboratory technicians, and pharmacists. The point is well taken that, in the instance of public housing, people will come there, moving away from the place where they formerly did business, and will not, necessarily, be receiving an on-going, continuous exchange of goods and services. The only exception, of course, is the receipt of occupancy upon the payment of rent. (Emphasis in original.)

2 Ohio App. 3d at 76, 440 N.E.3d at 820. Clearly, it was the continuous exchange of goods and services arising from the use of the office building that qualified the project for state aid. See also 1981 Op. Att'y Gen. No. 81-095 (issuance of bonds for construction of a nursing home qualifies under "commerce" standard). Thus, this case indicates that a project which directly promotes a continuous exchange of goods or services qualifies as an aid to "commerce," and is eligible for development bond financing. Therefore, I now look to whether the issuance of agricultural development bonds to aid farmers would directly promote a continuous exchange of goods or services.

In analyzing this issue, the relevant benchmark is the structure of farming as it currently exists. The Ohio Supreme Court has stated that constitutional provisions must be read in light of current conditions, circumstances and necessities. See State ex rel. City of Columbus v. Ketterer, 127 Ohio St. 483, 494, 189 N.E. 252, 256 (1934) (Constitutions "should be given a flexible interpretation such as will meet new conditions and circumstances as they arise, and which necessity may demand without doing violence to plain language employed or transgressing the clear bounds of reason"). This principle is especially relevant to this analysis because the farming sector of the economy has been undergoing tremendous changes in recent years.

There is little doubt that current farming in Ohio involves the continuous sale and transportation of farm products on a large scale. For example, in 1981 the sale of Ohio farm products totaled nearly \$3.5 billion.<sup>2</sup> It is apparent that the ability of farmers to continue and to expand their operations, and the ability of new farmers to begin such operations, has a direct effect on the amount of farm products sold. Thus, unlike the situation in State ex rel. Brown v. Beard, the issuance of bonds to aid farming operations could have a direct and substantial effect on the amount of products emanating from the principal recipients of the state aid.

Moreover, not only are farmers involved in the sale of farm products, but they also engage in the buying of inputs used in farming operations. In the last 50 years, the technological revolution in agriculture has greatly increased the farmers' dependence on purchased inputs, and has considerably lessened their reliance on inputs supplied on the farm.<sup>3</sup> In 1981, farmers spent about 85% of their aggregate gross income on the goods and services used in the production of farm products.<sup>4</sup> It has been said that: "The farmer now acquires such a large proportion of his inputs from other entrepreneurs that he is imitating an assembly-line producer in putting together purchased inputs during the onfarm production process. It would appear

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<sup>1</sup> See, e.g., R. Knutson, J. Penn, and W. Boehn, Agricultural and Food Policy 169-201 (1983).

<sup>2</sup> U.S. Dep't of Agriculture, Miscellaneous Publication No. 1063, 1983 Fact Book of U.S. Agriculture 25 (1982).

<sup>3</sup> Zellner and Lamn, "Agriculture's Vital Role for Us All," The 1982 Yearbook of Agriculture 2, 3 (U.S. Dep't of Agriculture).

<sup>4</sup> Office of Governmental and Public Affairs, U.S. Dep't of Agriculture, Miscellaneous Publication No. 1063, 1983 Fact Book of U.S. Agriculture 15 (1982).

that the trend of increasingly acquiring inputs will continue, possibly at an accelerated rate."<sup>5</sup> Thus, unlike the situation in State ex rel. Brown v. Beard, the issuance of bonds to aid farmers could have a direct and substantial effect upon the amount of goods and services purchased by the principal recipients of the state aid.

It is also significant to note that the aforementioned sales of farm products and farm inputs are extremely important to employment. The value of these sales directly affects not only the operators of Ohio's approximately 93,000 farms,<sup>6</sup> but also many persons employed in other occupations. The U.S. Department of Agriculture has estimated that, nationwide, approximately one in five jobs in private enterprise involves either the supplying of farm inputs or the storing, transporting, processing, or merchandising of farm products.

It is also relevant to note that, unlike the principal recipients of the state aid in State ex rel. Brown v. Beard, modern farmers are engaged in an enterprise that is, in nearly every sense, like other modern commercial concerns. This situation is a direct result of the technological revolution in agriculture. In addition to increasing the farmers' reliance on purchased inputs, the technological revolution has produced other changes in farming, such as: rapid increases in the size of farms, a growing complexity of the business of farming,<sup>8</sup> a greater need for entrepreneurial competence, and a greater need for financing.<sup>9</sup> It has been stated that: "The capital and managerial requirements for a farm, even of average size, are roughly comparable to those of a small manufacturing plant."<sup>10</sup>

This view of the modern farmer as an "agribusinessman" has been accepted by at least one court in Ohio. In Ohio Grain Co. v. Swisshelm, 40 Ohio App. 2d 203, 318 N.E.2d 428 (Greene County Ct. of Apps. 1973), the court faced the issue of whether the farmer in that case was a "merchant" as that term is used in R.C. 1302.10, and therefore bound by the additional terms set forth in a written confirmation sent by a grain buyer to the farmer.<sup>11</sup> In holding that the farmer was bound by the additional terms, the court stated:

[Defendant's counsel] would represent defendant as a simple tiller of the soil, unaccustomed to the affairs of business and the marketplace. Farming is no longer confined to simple labor. Only an

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<sup>5</sup> M. Harris, Entrepreneurship in Agriculture 119 (1974).

<sup>6</sup> U.S. Dep't of Agriculture, Miscellaneous Publication No. 1063, 1983 Fact Book of U.S. Agriculture 27 (1982).

<sup>7</sup> Id. at 1.

<sup>8</sup> Harris, supra note 5, at 84.

<sup>9</sup> Id. at 11.

<sup>10</sup> J. Shover, First Majority-Last Minority: The Transforming of Rural Life in America 161 (1976).

<sup>11</sup> R.C. 1302.10(B) states, inter alia, that additional terms contained in a written confirmation become part of a contract "between merchants" unless notification of objection to the additional terms is given within a reasonable time after notice of them has been received. R.C. 1302.01(7) states that: "'Between merchants' means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants." R.C. 1302.01(5) defines "merchant" as "a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill."

agribusinessman may hope to survive. This defendant was clearly familiar with farm markets and their operation and followed them with some care."

40 Ohio App. 2d at 206, 318 N.E.2d at 403.

In view of the modern farmer's role as a seller of products, purchaser of production inputs, and manager of a highly technological, capital-intensive business, I conclude that current farming operations may fall within the art. VIII, §13 meaning of "commerce," and that, therefore, the state may issue, under appropriate enabling statutes, bonds to aid farming businesses.

I repeat, however, that my analysis is in general terms only. I am certain that there are some residences which, although commonly referred to as "farms," would not qualify for state aid under art. VIII, §13 because the owners do not use these farms for commercial purposes. For example, Ohio State University researchers have noted that some persons use small farms for rural "recreational residences." The researchers described these farms as "places of rural residence that afford owners the opportunity to do some farming more for recreational or pastime purposes than for commercial incentives."<sup>12</sup> Since the non-commercial nature of farms such as these would disqualify them for state aid under art. VIII, §13, any proposed issuance of bonds must be carefully tailored such that the aid is used for the benefit of commercial farming.

Finally, I wish to note that the foregoing analysis is not intended to limit or preclude the issuance of bonds for farming projects that fall within one of the other constitutionally designated categories, industry, distribution or research. I recognize that a particular farming endeavor may meet the requirements of one of these other categories, even though such endeavor does not involve an ongoing, continuous exchange of goods and services. For example, a particular farming endeavor may be devoted to the development of new products or new varieties of products. Even if such an endeavor did not involve the ongoing exchange of goods or services, it could fall within the meaning of research for the purposes of art. VIII, §13. While I have not undertaken a discussion of each of these other categories in this opinion, because of the general nature of your inquiry, I would willingly entertain a request to do so, should the need for such an analysis arise.

Therefore, it is my opinion, and you are so advised, that Ohio Const. art. VIII, §13 permits the state to issue, under appropriate enabling statutes, bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement or equipment of property, structures, equipment or facilities used in farming.

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<sup>12</sup> The Ohio State University, Ohio Agricultural Research and Development Center, Ohio's Food and Farm System in Transition, Research Circular No. 273 at 18 (1982).