

OPINION NO. 88-037**Syllabus:**

1. Pursuant to R.C. 1724.10(B) and (C), the legislative authority of a city may determine that the construction of multi-family housing to provide and maintain a work force for industries will, among other purposes, assist in the development of industrial, commercial, distribution and research activities. The determination must not be manifestly arbitrary or unreasonable, and, in light of *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976), must not rest on the fact that the building of the housing in itself will assist the construction industry.
2. Independent of any authority which may be conferred upon a community improvement corporation under an agreement with a political subdivision executed in accordance with R.C. 1724.10, and notwithstanding R.C. 1724.02(C) and (H), a community improvement corporation's authority to acquire real property is limited by R.C. 1724.02(D) to the acquisition of real property for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real property to others in whole or in part for the construction of industrial plants or other business establishments.
3. Because of the limitation imposed upon a community improvement corporation's authority to acquire real property contained in R.C. 1724.02(D), a city may not give money to a community improvement corporation for the purpose of having the community improvement corporation use those funds to acquire real property not owned by the city upon which multi-family housing units will be constructed.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 15, 1988

I have before me your request for my opinion concerning a proposed arrangement between the City of Moraine and the Moraine Community Improvement Corporation (Moraine CIC). You have indicated that pursuant to R.C. 1724.10, the city and the CIC entered into an agreement which designates the CIC as the agent of the city for the industrial, commercial, distribution, and research development in the city. Pursuant to this agreement, the city may sell or lease land to the CIC, which would in turn sell or sublease the land to private developers who would construct multi-family housing units on the land. I have rephrased your questions as follows:

1. Is the proposed arrangement between the city and the CIC permissible in light of the decision in *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976)?
2. May the city give money to the CIC in order for the CIC to buy land on which multi-family housing units will be developed?

Community improvement corporations are organized pursuant to R.C. 1724.01, which provides that corporations not for profit may be formed "for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area." R.C. 1724.10 provides that political subdivisions may designate such corporations as agents "for the industrial, commercial, distribution, and research development" in the political subdivision. R.C. 1724.10 further provides that an agreement between the political subdivision and CIC may provide any of the following:

(B) Authorization for the community improvement corporation to sell or to lease any lands or interests in lands owned by the political subdivision determined from time to time by the legislative authority thereof not to be required by such political subdivision for its purposes, *for uses determined by the legislative authority as those that will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities* to the benefit of the people of the political subdivision and will provide additional opportunities for their gainful employment....Any determinations made by the legislative authority under this division shall be conclusive....

(C) That the political subdivision executing the agreement will convey to the community improvement corporation land and interests in lands owned by the political subdivision *and determined by the legislative authority* thereof not to be required by the political subdivision for its purposes and *that such conveyance of such land or interests in land will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities* to the benefit of the people of the political subdivision and provide additional opportunities for their gainful employment....(Emphasis added.)

The proposal you have described falls within the provisions of R.C. 1724.10(B) or (C). Where a city and a CIC have entered an agency agreement, R.C. 1724.10(B) authorizes the CIC to sell or lease surplus land owned by a city, provided that the city legislature determines that the land will be used to "assist in the development of industrial, commercial, distribution, and research activities." Similarly, R.C. 1724.10(C) states that where a city and a CIC have so agreed, a city may convey land to a CIC if the city's legislative authority determines that such conveyance will "assist in the development of industrial, commercial, distribution, and research activities."

You have indicated that the City Council of Moraine has determined that building multi-family housing units will promote the welfare of the people of the city, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities based on the following facts. The city has a significant industrial and commercial base, but the city's housing stock is inadequate to accommodate many workers in close proximity to their jobs. Persons employed in or seeking to become employed in the city often

must live significant distances from their place of employment. As a result, prospective employees may be disinclined to accept employment in the city, and current employees may leave their employment. The city council has determined that building multi-family housing units will alleviate the problem and fulfill the purposes enumerated in R.C. 1724.10(B) and (C).

However, you have questioned whether the Ohio Supreme Court's decision in *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976) prohibits the proposed arrangement between the city and the CIC. Before discussing the case, I note that R.C. 1724.10(B) and (C) require the legislature of the political subdivision to make a factual determination as to whether a proposed transaction "will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision." R.C. 1724.10(B) adds that "[a]ny determinations made by the legislative authority under this division shall be conclusive." Thus, the legislative authority is authorized and required by statute to make a factual determination, and in this case has already done so. Both I and my predecessors have recognized that it is inappropriate to use the opinion-rendering function to make factual determinations. See 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three). See generally *State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 2d, 140 N.E. 660 (1923) (if a factual determination is necessary on a matter which has been assigned by statute to the state medical board, the board must make the determination); *State ex rel. Commissioners of Franklin County v. Guilbert*, 77 Ohio St. 333, 83 N.E. 80 (1907) (under a statute providing that the state auditor may not draw a warrant for any claim unless he finds the claim legal, the auditor is not bound in making that determination by the finding of a county prosecutor who certified the claim). In light of the foregoing, I construe your question regarding *State ex rel. Brown v. Beard* as asking whether that decision prohibits, as a matter of law, the proposed arrangement between the city and the Moraine CIC.

State ex rel. Brown v. Beard was a *quo warranto* action brought against the Ohio Housing Development Board. The board had authorized the issuance of revenue bonds, and planned to use the proceeds to provide mortgage loans to developers for the construction and rehabilitation of low and moderate income rental housing. The court found that the actions of the board constituted an impermissible lending of the state's credit in violation of Ohio Const. art. VIII, §4, which provides that "[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever...." The court then considered whether the actions of the board fell within the provisions of Ohio Const. art. VIII, §13 which provides certain exceptions to that limitation upon lending of credit. Art. VIII, §13 provides, in pertinent part:

To create or preserve jobs and employment opportunities, 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...or corporations not for profit designated by any of them as...agencies or instrumentalities...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. Laws may be passed to carry into effect such purposes.... (Emphasis added.)

In *Beard*, the court determined the following:

Respondents contend that "when it gives financial assistance to the private building industry for the preservation of the jobs and creation of new equipment," its actions fall within the stated purpose of Section 13 because they are designed to improve the "economic welfare of the people." This language, however, is prefatory and must be evaluated in light of the specific thrust of the provision that the excepted state credit be "for industry, commerce, distribution, and

research." The actions of the board herein, relating to issuance of revenue bonds for moderate and low cost housing, are 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.

For reason of the foregoing, the actions of respondents herein are in violation of Section 4, Article VIII of the Ohio Constitution, and are therefore invalid.

48 Ohio St. 2d at 291-92, 358 N.E.2d at 570.

There is no doubt that *Beard* imposes limits upon the city's authority to use the Moraine CIC as a vehicle to assist in financing the proposed housing units. However, for the following reasons, I am unable to state, as a matter of law, that *Beard* precludes a legislative authority from determining, pursuant to R.C. 1724.10(B) and (C), that the building of multi-family housing will "assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision and will provide additional opportunities for their gainful employment." First, the two situations are factually distinguishable. In *Beard*, the Housing Development Board was loaning money for the development of low to moderate income multi-family housing. The record makes it clear that the aim of the board was to provide housing for low to moderate income persons because of the shortage of reasonable housing for persons in those economic brackets. See Ohio Housing Development Board Commitment Resolution, *State ex rel. Brown v. Beard* (reprinted in *Ohio Supreme Court Briefs & Records*, 3d Series, Vol. 858, Case 76-040). The Board found that the housing was "for industry, commerce, distribution, and research" because the construction industry and "related manufacturing and service industries" would be furthered by the building of the housing developments. *Id.* In the situation at hand, the City Council of Moraine apparently believes that building multi-family housing will assist industry and commerce¹ by maintaining a work force for already established industries within the city. Second, the language used in Ohio Const. art. VIII, §13 while similar to the language used in R.C. 1724.10, is not identical to it. *Beard* was based on the language of Ohio Const. art. VIII, §13 which provides that it is proper to loan aid and credit "for industry, commerce, distribution and research."² The City Council of Moraine, however, is acting pursuant to either R.C. 1724.10(B) or (C) which permits a conveyance of land for uses which the city's legislative authority determines will "assist in the development of industrial, commercial, distribution, and research activities." (Emphasis added.) The language of Ohio Const. art. VIII, §13 is more restrictive than that of R.C. 1724.10, thus leaving room to apply R.C. 1724.10 to the situation in question. It may have been this distinction which the Moraine City Council viewed as supporting its decision in this case.

I note that one year after the *Beard* decision, in *State ex rel. Taft v. Campanella*, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977), the Ohio Supreme Court again addressed a question concerning appropriate use of bond proceeds. This question arose when the Board of County Commissioners of Cuyahoga County resolved to issue revenue bonds for the public purposes enumerated in R.C.

¹ In one case, a court distinguished *Beard* on the ground that *Beard* did not involve "commerce." See *County of Stark v. Ferguson*, 2 Ohio App. 3d 72, 76, 440 N.E.2d 816, 820 (Stark County 1981) (upholding the use by a CIC of bond proceeds to acquire, construct, and maintain an office building for physicians, dentists and a pharmacy; the court found that commerce was served because "the facility will provide an on-going, continuous exchange of both services and goods").

² I understand that the city proposes to sell or lease the land to the CIC at fair market value and that lending aid and credit is not an issue here.

140.02.³ The court upheld the board's decision and stated that "[t]he determination of whether a use of bonds constitutes a public purpose is primarily the function of the bond issuing authority, and will be overruled by the courts only if manifestly arbitrary or unreasonable." *Campanella*, 50 Ohio St. 2d at 246, 364 N.E.2d at 24 (citation omitted). The court also noted the following:

"In the absence of evidence to the contrary, public officials, administrative officers, and public authorities, within the limits of the jurisdiction conferred upon them by law, will be presumed to have properly performed their duties in a regular and lawful manner and not to have acted illegally or unlawfully, and, it will be presumed that public authorities, in determining the advisability of constructing a public project, have considered the necessary facts and have sufficiently satisfied themselves as to the propriety and feasibility of the construction, as a predicate for the issuance of bonds or notes to pay the cost thereof."

Id. at 246-47, 364 N.E.2d at 24 (quoting *State ex rel. Speeth v. Carney*, 163 Ohio St. 159, 126 N.E.2d 449 (1955) (syllabus, paragraph ten)). A similar presumption must be applied to the determination apparently made by the Moraine City Council in this case.

I conclude, therefore, that pursuant to R.C. 1724.10(B) and (C), unless its determination is manifestly arbitrary or unreasonable, the legislative authority of a city may determine that the construction of multi-family housing to provide and maintain a work force for industries will, among other purposes, assist in the development of industrial, commercial, distribution and research activities. However, in light of *State ex rel. Brown v. Beard*, the legislative authority may not base its determination solely on the fact that the building of housing will assist the construction industry.

I turn now to your second question. You ask whether a city may give money to a CIC in order for a CIC to buy land on which housing units will be developed. As I understand the proposal, the Moraine CIC will not be buying the land from the City of Moraine, nor will the city be issuing revenue bonds.⁴

I note first that a CIC is a statutorily created entity whose powers are created and defined by statute. See R.C. Chapter 1724. R.C. 1724.01 provides that a CIC may be organized "for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area." R.C. 1724.02 provides, in pertinent part:

In furtherance of the purposes set forth in section 1724.01 of the Revised Code, the corporation shall have the following powers:

(A) To borrow money for any of the purposes of the corporation...

(B) To make loans...

(C) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, sublease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(D) To acquire the good will, business, rights, real and personal property...of any persons, firms, partnerships, corporations...and to...pay the obligations, debts, and liabilities of any such person, firm,

³ The public purposes enumerated in R.C. 140.02 include "providing for the health and welfare of the people of the state by enhancing the availability, efficiency, and economy of hospital facilities" and "providing for cooperation of hospital agencies."

⁴ For provisions dealing with municipal revenue bond financing and CIC's, see R.C. Chapter 761 and R.C. Chapter 165.

partnership, corporation...to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others in whole or in part for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, sublease, or otherwise dispose of industrial plants or business establishments;

....

(H) To do all acts and things necessary or convenient to carry out the powers especially created in Chapter 1724. of the Revised Code. (Emphasis added.)

Thus, while R.C. 1724.02(D) provides that a CIC may "acquire improved or unimproved real estate" it may do so only "for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others in whole or in part for the construction of industrial plants or other business establishments." Because the statute specifically authorizes a CIC to acquire real estate for the construction of industrial plants and business establishments, I conclude that a CIC may not acquire real estate for the construction of multi-family housing units since those units are not industrial plants or business establishments. See generally *State ex rel. Alden E. Stilson & Associates v. Ferguson*, 154 Ohio St. 139, 93 N.E.2d 638 (1950) (recognizing the rule of statutory construction that the specification of one thing implies the exclusion of another). In 1968 Op. Att'y Gen. No. 68-071, one of my predecessors addressed a similar issue. Asked whether a CIC could acquire real estate in order to construct thereon a building for a county board of library trustees, my predecessor concluded that the planned acquisition was impermissible because R.C. 1724.02 only authorizes a CIC "to acquire and improve real estate for the purpose of *constructing industrial plants or other business establishments.*" Op. No. 68-071 at 2-86 (emphasis added). I note that in the appropriate circumstances R.C. 1724.10(C) expands the power of a CIC to acquire real estate. As the designated agency of a political subdivision, acting pursuant to an agreement entered under R.C. 1724.10(C), a CIC may acquire lands owned by the political subdivision in order to "promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision and provide additional opportunities for their gainful employment." However, the express language of R.C. 1724.10(C) indicates that the expanded authority of a CIC to acquire property for such purposes applies only where the political subdivision is conveying city lands to the CIC pursuant to an agreement entered into by the subdivision and the CIC under the authority of that section. That is not the case presented by your second question, and I therefore find R.C. 1724.10(C) inapplicable.

I am also aware of the broad authority arguably conferred upon a CIC by R.C. 1724.02(C) and (H). If those divisions were construed literally and expansively, however, the limiting language of R.C. 1724.02(D) would be rendered meaningless. Such a construction would be contrary to the well recognized maxim of statutory construction that, whenever possible, statutes are to be read harmoniously in order to give full effect to all language used. See *Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984). It is also axiomatic that each word in a statute must be accorded meaning, *State ex rel. Bohan v. Industrial Commission*, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946), and that each statute must be read and construed as a whole. *First Federal Savings & Loan Association v. Evatt*, 143 Ohio St. 243, 249, 54 N.E.2d 795, 797 (1944). Thus, while the purposes for which a CIC may acquire real estate are limited by R.C. 1724.02(D), the means of acquisition and disposal of real estate are set forth in R.C. 1724.02(C) and (H). Accordingly, I conclude that independent of authority conferred upon a CIC under an agreement with a political subdivision executed in accordance with R.C. 1724.10, and notwithstanding R.C. 1724.02(C) and (H), a CIC's authority to acquire real property is limited by R.C. 1724.02(D) to the acquisition of real property for the purpose of constructing industrial plants or other business establishments thereon, or for the purpose of disposing of such real estate to others in whole or in part for the construction of industrial plants or other business establishments. Because of this limitation, the City of Moraine may not give money to the Moraine CIC for the purpose of having the Moraine CIC purchase real property upon which multi-family housing units will be constructed if the real property is not owned by the city.

Therefore, it is my opinion and you are so advised that:

1. Pursuant to R.C. 1724.10(B) and (C), the legislative authority of a city may determine that the construction of multi-family housing to provide and maintain a work force for industries will, among other purposes, assist in the development of industrial, commercial, distribution and research activities. The determination must not be manifestly arbitrary or unreasonable, and, in light of *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976), must not rest on the fact that the building of the housing in itself will assist the construction industry.
2. Independent of any authority which may be conferred upon a community improvement corporation under an agreement with a political subdivision executed in accordance with R.C. 1724.10, and notwithstanding R.C. 1724.02(C) and (H), a community improvement corporation's authority to acquire real property is limited by R.C. 1724.02(D) to the acquisition of real property for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real property to others in whole or in part for the construction of industrial plants or other business establishments.
3. Because of the limitation imposed upon a community improvement corporation's authority to acquire real property contained in R.C. 1724.02(D), a city may not give money to a community improvement corporation for the purpose of having the community improvement corporation use those funds to acquire real property not owned by the city upon which multi-family housing units will be constructed.