OPINION NO. 76-056

Syllabus:

The Ohio Development Financing Commission may, pursuant to R.C. 122.39 and R.C. 122.451, insure a loan made by a proper community improvement corporation where the involved project includes both the refinancing of existing equipment obligations and the acquisition of real property and new equipment, and which will result in increased employment or will preserve employment in the State of Ohio.

To: William A. Dutton, Director, Ohio Development Financing Commission, Columbus, Ohio

By: William J. Brown, Attorney General, August 13, 1976

I have before me your request for my opinion on the following question:

> "Can the Ohio Development Financing Commission guarantee a loan which replaces existing financing?"

In implementation of Article VIII, Section 13, of the Ohio Constitution, the Ohio Development Financing Commission was created through the enactment of R.C. 122.40, to promote the economy and expansion of employment. R.C. 122.41. Accomplishment of these and other purposes may be undertaken by insuring loans of "community improvement corporations." R.C. 122.41. The funds made available in this fashion are to be used for various "projects" undertaken. The pertinent statutory provision is R.C. 122.451 which provides in part:

> "Upon application of a community improvement corporation . . . the Ohio Development Financing Commission may . . . insure . . . not more than ninety per cent of any mortgage on any project for which such community improvement corporation has loaned funds. . . ."
> (Emphasis added.)

As explained in your request letter and in subsequent telephone conversations between this office and yours I understand that the issue now raised is one dealing with the definition of "project". The facts underlying this issue include an application by a qualified community improvement corporation. The particular enterprise involved here is a small manufacturing company which currently leases the physical facilities that house its operation. It also owns, subject to existing debt obligations, the manufacturing equipment used in that operation.

The company desires to borrow money from the community improvement corporation and the question is whether the Ohio Development Financing Commission may guarantee that loan.

The company plans to purchase the physical facilities which it now leases and to purchase additional manufacturing equipment. It proposes to finance these purchases by procuring a new loan from the community improvement corporation to be insured by the Ohio Development Financing Commission. This proposal also includes a "refinancing" of its current equipment obligation. That is, the new loan is planned to be sufficiently large to finance the purchase of its building and of new equipment, and to discharge the currently existing obligation on the company's manufacturing equipment. In turn the new loan would be fully collaterialized by a first mortgage on the building, the new equipment and the existing equipment.

You have stated that the proposal, once effective, will result in the hiring of additional employees by the small manufacturing company.

The narrow issue presented is whether this proposal is a "project" within the meaning of R.C. 122.451. "Project" as used in R.C. 122.39 to R.C. 122.62 is defined in R.C. 122.39(B) as follows:

> "[A]ny real or personal property connected with or being a part of an industrial, distribution, commercial, or research facility to be acquired, constructed, reconstructed, enlarged, improved, furnished, or equipped, or any combination thereof, with the aid of the Ohio development financing commission as provided in Chapter 122. of the Revised Code, for industrial, commercial, distribution, and research development of the state."
>
> (Emphasis added.)

From the facts you have provided no question has been raised concerning the fact that only real and personal property is involved, that the company operates an industrial, distribution, commercial or research facility or that the company will comply with the purposes outlined in R.C. 122.39(B). Accordingly, the remaining question is whether the proposal is an acquisition, construction, reconstruction, enlargement, improvement, furnishing, equipping, or combination thereof, of the facility.

It seems that the proposal does qualify as a "project" inasmuch as it involves acquisitions and a furnishing or equipping of the facility. The concern, however, is whether the refinancing of the existing equipment obligation, as a part of the proposal, negates its otherwise apparent qualification as a "project".

In the absence of statutory language directly addressing this concern and in the absence of guidance from any case law, any vagarity in the statutory scheme must be analyzed in light of apparent legislative intent. R.C. 1.47 and R.C. 1.49. Here, in particular, it is appropriate to focus attention on the reasonableness of results reached and the legislative object sought to be obtained as outlined in R.C. 122.41.

According to your discussions with this office I understand that the refinancing aspect of the company's proposal is to be viewed as essential in order for the company to rearrange its financial structure and obtain the buildings and equipment which it does not now own. Thus, the refinancing aspect is an integral part of the plan that may lead to expanded employment and industrial-commercial development, which R.C. Chapter 122 was designed to generate.

Based upon the facts and explanations outlined above I must conclude that the refinancing aspect of this proposal does not serve to disqualify the proposal as a "project". To conclude otherwise would be to treat the refinancing as a negative factor when, in economic reality, it is probably the most positive and essential factor to the success of the proposal.

Despite the conclusion I have reached on these particular facts as to the authority of the Commission, it yet remains for the Commission itself to make the discretionary determinations required by R.C. Chapter 122, particularly R.C. 122.451(A) through (F), before granting the application. That is, what the Commission <u>may</u> do and what it <u>does</u> do with respect to determining if the proposal is economically sound are two different things. It is the economic tests set out in R.C. 122.451(A) through (F) which the Commission must now apply.

It is, then, my opinion and you are so advised that the Ohio Development Financing Commission may, pursuant to R.C. 122.39 and R.C. 122.451, insure a loan made by a community improvement corporation where the involved project includes both the refinancing of existing equipment obligations and the acquisition of real property and new equipment, and which will result in increased employment or will preserve employment in the State of Ohio.