

**OPINION NO. 2006-037****Syllabus:**

Except as provided in R.C. 149.43(A)(1)(a)-(y) and R.C. 1724.11, information kept in the records of a community improvement corporation designated as an agency of a county under R.C. 1724.10 is a public record for purposes of R.C. 149.43.

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**To: Gary L. Lammers, Putnam County Prosecuting Attorney, Ottawa, Ohio**

**By: Jim Petro, Attorney General, August 24, 2006**

You have requested an opinion whether information kept in the records of a community improvement corporation (CIC) that has been designated as an agency of a county under R.C. 1724.10<sup>1</sup> is a public record for purposes of R.C. 149.43. Except as provided in R.C. 149.43(A)(1)(a)-(y) and R.C. 1724.11, this information is a public record for purposes of R.C. 149.43.

R.C. 149.43(B)(1) requires a public office to promptly prepare its public records and make them available for inspection to any person “at all reasonable times during regular business hours.” The statute further requires a public office to “make copies [of its public records] available at cost, within a reasonable period of time.” *Id.* As used in R.C. 149.43, the term “public record” means, with numerous excep-

<sup>1</sup> R.C. 1724.10 authorizes a county to designate a community improvement corporation (CIC) “as the agency of [the county] for the industrial, commercial, distribution, and research development in such [county] when the legislative authority of [the county] has determined that the policy of the [county] is to promote the health, safety, morals, and general welfare of its inhabitants through the designation of a [CIC] as such agency.”

tions set forth therein, “records<sup>2</sup> kept by any *public office*.”<sup>3</sup> R.C. 149.43(A)(1) (footnote and emphasis added).

In order to determine whether R.C. 149.43 applies to information kept in the records<sup>4</sup> of a CIC that has been designated as an agency of the county under R.C. 1724.10, we must determine whether such a CIC is a “public office,” as that term is used in R.C. 149.43. For purposes of R.C. 149.43, a “public office” includes “any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” R.C. 149.011(A). For the reasons that follow, we believe that a CIC designated as an agency of the county under R.C. 1724.10 is a “public office” for purposes of R.C. 149.43 and, as such, is subject to the provisions of the public records law set forth in R.C. 149.43.

Pursuant to R.C. 1724.01 and R.C. 1724.08, a CIC is a nonprofit corporation organized under the provisions of R.C. Chapter 1724, and is subject to the general nonprofit corporation provisions of R.C. Chapter 1702 to the extent that those

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<sup>2</sup> The term “records,” as used in R.C. Chapter 149, is defined as follows:

“Records” includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in [R.C. 1306.01], created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

R.C. 149.011(G).

<sup>3</sup> R.C. 149.43(A)(1) creates exceptions from the definition of “public record” for various types of information, including, among others, medical records, trial preparation records, confidential law enforcement investigatory records, intellectual property records, donor profile records, peace officer, firefighter, or EMT residential and familial information, and records the release of which is prohibited by state or federal law.

<sup>4</sup> This opinion will assume, for purposes of discussion, that the records of the CIC in which the information is kept constitute “records” for purposes of R.C. 149.43. *See* note two, *supra*. *See generally State ex rel. McCleary v. Roberts*, 88 Ohio St. 3d 365, 725 N.E.2d 1144 (2000) (personal information collected by a city’s parks and recreation department concerning children participating in city programs is not a record of the city since it does not document the organization, policies, activities, operations, or other aspects of city government, and so this information is not a public record for purposes of R.C. 149.43); 2004 Op. Att’y Gen. No. 2004-045 (syllabus, paragraph one) (“[i]nformation of a personal nature contained in a court’s criminal case files is a public record for purposes of R.C. 149.43, unless the information is not a ‘record’ of that office”).

provisions are not inconsistent with R.C. Chapter 1724.<sup>5</sup> A CIC is organized “for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area.” R.C. 1724.01. In order to accomplish this purpose, a CIC has, by statute, basic corporate powers, including the power to borrow money, issue bonds and notes, make loans, acquire or dispose of real and personal property, acquire assets or interests of businesses and undertake their obligations and liabilities, and acquire real estate for the purpose of constructing businesses or disposing of the real estate to others for such construction. R.C. 1724.02. In addition, a CIC may acquire, construct, operate, sell, or lease industrial plants or business establishments and may acquire, hold, or dispose of stocks, bonds, notes, and other securities in private businesses. *Id.*

The features of a CIC thus indicate that a CIC is a private corporation that serves and advances a public purpose, rather than a governmental entity. *See State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 446 (1966); 2003 Op. Att’y Gen. No. 2003-037; 2000 Op. Att’y Gen. No. 2000-037; 1987 Op. Att’y Gen. No. 87-024; 1979 Op. Att’y Gen. No. 79-061. As summarized in 1979 Op. Att’y Gen. No. 79-061 at 2-204:

Many of [a CIC’s] features, however, suggest a private status. A community improvement corporation is, in essence, a private non-profit corporation which is bound by the general terms of R.C. Chapter 1702 (non-profit corporations). A privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable.

Although a CIC is a private corporation, a CIC may nonetheless be subject to certain statutory provisions that govern the conduct or actions of governmental entities. *See* 2000 Op. Att’y Gen. No. 2000-037 at 2-231 (“[w]hen a CIC is

<sup>5</sup> The statutes of R.C. Chapter 1724 authorizing the creation and operation of CICs were enacted to implement Ohio Const. art. VIII, § 13, which permits public aid to private enterprise for purposes of creating or preserving employment opportunities or improving the economic welfare of the people of Ohio. *See State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 40, 218 N.E.2d 446 (1966) (R.C. 1724.10 “was enacted pursuant to and as a result of [Ohio Const. art. VIII, § 13]. It provides the machinery to make [Ohio Const. art. VIII, § 13] operative”). *See generally* 2003 Op. Att’y Gen. No. 2003-037 at 2-307 and 2-308 (“Ohio Const. art. VIII, § 13 was adopted as an exception to the provisions of Ohio Const. art. VIII, §§ 4 and 6, that prohibit the state and its counties, cities, and townships from owning stock in private companies or lending their credit to, or in aid of, private companies. Section 13 expressly permits the state and its political subdivisions (including counties), or their agencies or instrumentalities, or nonprofit corporations designated by them as agencies or instrumentalities, to make or guarantee loans, to borrow money and issue bonds or other obligations, and to lend aid and credit for certain purposes, ‘providing that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section’” (citation omitted)).

designated by a political subdivision as its agency, the CIC may be subject to certain statutory provisions that apply to that political subdivision”); 1987 Op. Att’y Gen. No. 87-024 (because the definition of “employee” appearing in R.C. 2744.01(B) (governing political subdivision tort liability) includes an “agent,” when a CIC is designated as the agency of a political subdivision both the CIC and members of its governing board are employees of the political subdivision for purposes of R.C. Chapter 2744, including provisions governing defense and indemnification in civil actions for damages); 1979 Op. Att’y Gen. No. 79-061 (because the definition of “public body” appearing in R.C. 121.22(B) (governing open meetings) includes an “agency” of a political subdivision, a CIC that is designated as the agency of a political subdivision constitutes a public body for purposes of the open meetings law).

Hence, a CIC’s status as a private corporation is not determinative of its status as a “public office” for purposes of R.C. 149.43. *See, e.g., State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, 106 Ohio St. 3d 113, 2005-Ohio-3549, 832 N.E.2d 711 (2005) (limited-liability companies engaged principally in buying and selling rare coins on behalf of the Ohio Bureau of Workers’ Compensation are public offices under the public records law); *State ex rel. Dist. 1199, Health Care and Soc. Serv. Union v. Lawrence Cty. Gen. Hosp.*, 83 Ohio St. 3d 351, 699 N.E.2d 1281 (1998) (public hospital that renders service to county residents and is supported by taxation is a “public office” under the public records law); *State ex rel. Freedom Communications, Inc. v. Elida Cmty. Fire Co.*, 82 Ohio St. 3d 578, 697 N.E.2d 210 (1998) (private, nonprofit corporation that contracts with a county to provide firefighting and emergency services and that is supported by tax revenues is a “public office” under the public records law); *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 684 N.E.2d 1239 (1997) (private, nonprofit corporation that receives public funds and performs the public service of resolving complaints against agencies of county government is a “public office” under the public records law); *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass’n of Greater Toledo*, 61 Ohio Misc. 2d 631, 582 N.E.2d 59 (C.P. Lucas County 1990) (nonprofit agency designated as a community action agency under R.C. 122.69, that receives public funds and performs services subject to statutory regulation, is a “public office” for purposes of the public records law); 1999 Op. Att’y Gen. No. 99-028 at 2-188 (publicly-funded nonprofit organizations have been held to be public offices subject to the public records law); *see also State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St. 3d 258, 602 N.E.2d 1159 (1992); *State ex rel. Fostoria Daily Review Co. v. Fostoria Hosp. Ass’n*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988); *State ex rel. Fox v. Cuyahoga Cty. Hosp. System*, 39 Ohio St. 3d 108, 529 N.E.2d 443 (1988); *Sabo v. Hollister Water Ass’n, Inc.*, Case No. 93 CA 1582, 1994 Ohio App. LEXIS 33 (Athens County Jan. 12, 1994); 1995 Op. Att’y Gen. No. 95-001.

The definition of “public office,” as that term is used in R.C. 149.43, includes an “agency ... established by the laws of this state for the exercise of any function of government.” R.C. 149.011(A); *see State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, 106 Ohio St. 3d 113, 2005-Ohio-3549, 832 N.E.2d 711, at ¶19 (limited-liability companies engaged principally in buying and selling

rare coins on behalf of the Ohio Bureau of Workers' Compensation "are public offices for purposes of the Public Records Act because they are entities 'established by the laws of this state for the exercise of any function of government'"). We must determine, therefore, whether a CIC is (1) an agency established by the laws of this state, (2) for the exercise of any function of government. *See generally* 1979 Op. Att'y Gen. No. 79-061 at 2-206 ("under certain circumstances the status of a community improvement corporation may transcend that of a simple non-profit corporation").

Under R.C. 1724.10, a CIC may be designated as an agency of a county. This statute provides, in part:

A community improvement corporation may be designated by a county . . . as the agency of [the county] for the industrial, commercial, distribution, and research development in such [county] when the legislative authority of such [county] has determined that the policy of the [county] is to promote the health, safety, morals, and general welfare of its inhabitants through the designation of a community improvement corporation as such agency. *Such designation shall be made by the legislative authority of the [county] by resolution or ordinance....*

(A) ... Not less than two-fifths of the governing board of any community improvement corporation designated as the agency of the [county] shall be composed of . . . members of [the board] of county commissioners, or any other appointed or elected officers of such [county]....<sup>6</sup>

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A community improvement corporation designated as the agency of a [county] under this section shall promote and encourage the establishment and growth in such [county] of industrial, commercial, distribution, and research facilities. (Emphasis and footnote added.)

R.C. 1724.10 establishes the method by which a CIC may become "quite literally an agency of a county[.]" 1979 Op. Att'y Gen. No. 79-061 at 2-206. To become such an agency, a board of county commissioners must designate the CIC as an agency of the county by resolution. R.C. 1724.10. In addition, R.C. 1724.10(A) requires that at least two-fifths of the governing board of a CIC designated as an agency of the county be composed of members of the board of county commissioners or other appointed or elected officers of the county. *See* note six, *supra*.

As an agency of the county, the authority of a CIC is limited to that which is set forth in an agreement entered into between the county and the CIC pursuant to R.C. 1724.10. Under the agreement, a county may provide a CIC with one or more

<sup>6</sup> It is assumed, for the purpose of this opinion, that no other political subdivision has designated the CIC as an agency under R.C. 1724.10.

of the following types of authority: (A) authority to prepare “a plan for the [county] of industrial, commercial, distribution, and research development” and participate as the agency of the county in carrying out the plan; (B) authority to sell or lease lands or interests in lands owned by the county for uses that “promote the welfare of the people of the [county], stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities” to benefit the people of the county and provide additional opportunities for their gainful employment; and (C) authority to acquire lands or interests in lands from the county or others and use them for purposes that “promote the welfare of the people of the [county], stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities” to benefit the people of the county and provide additional opportunities for their gainful employment. R.C. 1724.10.

R.C. 1724.10 thus governs the establishment of a CIC as an agency of the county, requires county officers to serve on the CIC’s governing board, and authorizes the county to confer certain powers upon the CIC. In light of the various provisions of R.C. 1724.10, it follows that a CIC designated as an agency of the county is an agency established by the laws of this state.

In similar situations, courts have construed the term “public office,” as defined in R.C. 149.011(A), broadly so as to include private entities that have been established “in accordance with” or “pursuant to” a provision of the Revised Code.<sup>7</sup> See, e.g., *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*; *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass’n of Greater Toledo*. In *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, the Ohio

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<sup>7</sup> In other statutory contexts we have advised that the phrase “established by the laws of this state” requires an entity be brought into existence by direct legislative action of the General Assembly, and not simply “in accordance with” or “pursuant to” a statute. See, e.g., 1992 Op. Att’y Gen. No. 92-034 at 2-130 n.2 (with regard to the legislative branch of government, the use of the phrase “established by the laws of this state” in R.C. 1.60, which sets forth the definition of “state agency,” as used in R.C. Title I (state government), “requires the body, office, or agency in question be brought into existence by direct legislative action of the General Assembly, and not simply ‘in accordance with’ or ‘pursuant to’ other provisions of the Revised Code”). However, insofar as “doubts as to the ‘public’ status of any entity should be resolved in favor of finding it subject to the disclosure statute[.]” *State ex rel. Toledo Blade Co. v. Univ. of Toledo Found.*, 65 Ohio St. 3d 258, 261, 602 N.E.2d 1159 (1992), the phrase “established by the laws of this state” should be interpreted liberally when determining whether an entity is a “public office” for purposes of R.C. 149.43. This means that a private entity established by a county “in accordance with” or “pursuant to” a statute is one that is “established by the laws of this state” for purposes of the public records law.



Supreme Court held that limited-liability companies<sup>8</sup> engaged principally in buying and selling rare coins on behalf of the Ohio Bureau of Workers' Compensation (Bureau) are public offices under the public records law. In accordance with R.C. 4123.44, the limited liability companies were established by the Bureau to facilitate investment of the state insurance fund.<sup>9</sup> Because the limited liability companies were established "in accordance with" or "pursuant to" R.C. 4123.44, the court determined that these companies were "established by the laws of this state for the exercise of any function of government":

Records in the possession of Capital I and Capital II are also subject to disclosure under R.C. 149.43. These companies are public offices for purposes of the Public Records Act because they are entities "established by the laws of this state for the exercise of any function of government." Under R.C. 4123.44, the administrator of the bureau was authorized to invest certain bureau funds: the surplus or reserve belonging to the state insurance fund. These funds are invested, and all cash, securities, and other property are held "in the name of the bureau." R.C. 4121.121(B)(7). Moreover, the coin companies were capitalized almost entirely by, and indeed owe their very existence to, money furnished by the bureau through the State Insurance Fund.

*State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers' Comp.*, 106 Ohio St. 3d 113, 2005-Ohio-3549, 832 N.E.2d 711, at ¶19.

In another situation, a court determined that a nonprofit agency designated as a community action agency by the state under R.C. 122.69<sup>10</sup> is a "public office" for purposes of the public records law. *State ex rel. Toledo Blade Co. v. Econ. Op-*

<sup>8</sup> R.C. 1705.04(A) provides that, "[o]ne or more persons, without regard to residence, domicile, or state of organization, may form a limited liability company." The legal existence of a limited liability company "begins upon the filing of the articles of organization or on a later date specified in the articles of organization that is not more than ninety days after the filing." *Id.*

<sup>9</sup> R.C. 4123.44 provides, in pertinent part, that, "[t]o facilitate investment of the [state insurance fund], the administrator [of Workers' Compensation] may establish a partnership, trust, limited liability company, corporation, including a corporation exempt from taxation under the Internal Revenue Code, 100 Stat. 2085, 26 U.S.C. 1, as amended, or any other legal entity authorized to transact business in this state."

<sup>10</sup> R.C. 122.69 states, in part:

(A) Any nonprofit agency or organization seeking designation as a community action agency by the office of community services shall obtain the endorsement of the chief elected officials of at least two-thirds of the municipal corporations and the counties within the community to be served by the agency or organization.

(B) Any nonprofit agency or organization that receives the endorsement provided for in division (A) of this section shall be

*portunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d 631, 582 N.E.2d 59. Although the court did not expressly declare that a nonprofit agency designated as a community action agency by the state under R.C. 122.69 is “established by the laws of this state,” such proposition is implicit in the court’s finding that the nonprofit agency is a “public office” for purposes of R.C. 149.43.<sup>11</sup>

As summarized above, a CIC is designated as an agency of the county “in accordance with” or “pursuant to” R.C. 1724.10. Absent R.C. 1724.10, a board of county commissioners would have no authority to enact a resolution designating a CIC as an agency of the county. A CIC thus exists as an agency of a county by virtue of the laws of this state, *i.e.*, R.C. 1724.10. Accordingly, a CIC designated as an agency of a county under R.C. 1724.10 is an agency established by the laws of this state.

Let us now consider whether a CIC designated as an agency of a county under R.C. 1724.10 is established “for the exercise of any function of government.” A key purpose of a CIC that is designated as an agency of a county under R.C.

designated by the office as the community action agency for the community it serves....

<sup>11</sup> The court in *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d 631, 582 N.E.2d 59 (C.P. Lucas County 1990) did not separately analyze whether the nonprofit agency in question was “established by the laws of this state.” See generally *State ex rel. Strothers v. Wertheim*, 80 Ohio St. 3d 155, 162-63, 684 N.E.2d 1239 (1997) (Cook, J., dissenting) (“[t]he definition of ‘public office’ found at R.C. 149.011(A) limits itself to entities ‘established by the laws of this state for the exercise of any function of government.’ (Emphasis added.) Today’s majority reads that part of the requirement out of the statute by classifying as a ‘public office’ any entity that (1) performs a public service and (2) is supported by public funds. That conclusion follows a short progression of cases in which this court has not specifically analyzed whether the entity involved was ‘established under the laws of this state for the exercise of any function of government,’ instead, analyzing only whether the entity actually exercises a function of government. I believe that we ought to give effect to the entire definitional phrase and apply it to this case”). Instead, the court merely stated that, “by designating [the Economic Opportunity Planning Association of Greater Toledo (EOPA)] a community action agency, the state Department of Development has conferred on EOPA a significant share of the sovereignty of the state.” *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d at 645, 582 N.E.2d 59.

It is possible that the court intended to rely upon other factors to satisfy R.C. 149.011(A)’s requirement that an entity be established by the laws of this state in order for it to be a public office. That the court expressly referenced the agency designation by the state pursuant to R.C. 122.69 as the source of the private agency’s authority suggests that such statutory designation fulfills R.C. 149.011(A)’s requirement that an entity be established by the laws of this state in order for it to be a “public office” that is subject to the public records law.



1724.10 is to advance, encourage, and promote the industrial, economic, commercial, and civic development of the county. R.C. 1724.01; R.C. 1724.10. Pursuant to Ohio Const. art. VIII, § 13 and various statutes, the advancement, encouragement, and promotion of the industrial, economic, commercial, and civic development of a county through a CIC designated by a county as an agency under R.C. 1724.10 is a function of county government. In this respect, Ohio Const. art. VIII, § 13 provides, in part:

*To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, 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. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, 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, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section. (Emphasis added.)*

*See generally* 2003 Op. Att’y Gen. No. 2003-037 at 2-310 and 2-311 (“[t]he fact that Ohio Const. art. VIII, § 13, in authorizing the creation of organizations such as community improvement corporations, speaks of ‘corporations not for profit designated ... as ... agencies or instrumentalities,’ indicates that the intent was to provide an entity that could serve a particular function” for the county).

Also, R.C. 1724.10 indicates that the designation of a CIC as an agency of a county provides the county with a private entity that can be used by the county to advance, encourage, and promote the industrial, economic, commercial, and civic development of the county:

Any [county] which has designated a community improvement

corporation as such agency may enter into an agreement with it to provide any one or more of the following:

(A) That the community improvement corporation shall prepare a plan for the [county] of industrial, commercial, distribution, and research development, and such plan shall provide therein the extent to which the community improvement corporation shall participate as the agency of the [county] in carrying out such plan. Such plan shall be confirmed by the legislative authority of the [county]....

....

(B) Authorization for the community improvement corporation to sell or to lease any lands or interests in lands owned by the [county] determined from time to time by the legislative authority thereof not to be required by such [county] for its purposes, for uses determined by the legislative authority as those that will promote the welfare of the people of the [county], 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 [county] and will provide additional opportunities for their gainful employment. The legislative authority shall specify the consideration for such sale or lease and any other terms thereof. Any determination made by the legislative authority under this division shall be conclusive....

(C) That the [county] executing the agreement will convey to the community improvement corporation lands and interests in lands owned by the [county] and determined by the legislative authority thereof not to be required by the [county] for its purposes and that such conveyance of such land or interests in land will promote the welfare of the people of the [county], 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 [county] and provide additional opportunities for their gainful employment, for the consideration and upon the terms established in the agreement, and further that as the agency for development the community improvement corporation may acquire from others additional lands or interests in lands, and any lands or interests in land so conveyed by it for uses that will promote the welfare of the people of the [county], stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities required for the people of the [county] and for their gainful employment.... If any lands or interests in land conveyed by a [county] under this division are sold by the community improvement corporation at a price in excess of the consideration received by the [county] from the community improvement corporation, such excess shall be paid to such [county] after deducting, to the extent and in the manner provided in the agreement, the costs of such acquisition and sale, taxes, assessments, costs of maintenance, costs of improve-

ments to the land by the community improvement corporation, service fees, and any debt service charges of the corporation attributable to such land or interests.

*See generally* 2003 Op. Att’y Gen. No. 2003-037 at 2-309 (“[t]he intent of R.C. 1724.10, and of the provisions of Ohio Const. art. VIII, § 13 authorizing its enactment, thus is to permit a county to implement industrial development through the agency of a CIC, allowing the county to provide assistance to the CIC but restricting the CIC from incurring debt on behalf of the county”).

Finally, a county that has designated a CIC as an agency of the county pursuant to R.C. Chapter 1724.10 may issue industrial revenue bonds to implement a CIC’s development plan, provide county property or funds to the CIC, or lend other assistance to the CIC. R.C. 165.03 provides that a county that has designated a CIC as an agency pursuant to R.C. Chapter 1724.10 may issue industrial development bonds to implement a CIC’s plan for the industrial, commercial, distribution, and research development of the county. R.C. 307.78 further authorizes a county that has designated a CIC as its agency pursuant to R.C. 1724.10 to contribute money or other assistance to the CIC so as to enable the CIC to perform its functions under R.C. Chapter 1724. *See* R.C. 1724.10; *see also* 1991 Op. Att’y Gen. No. 91-071 (syllabus, paragraph two) (“[p]ursuant to R.C. 307.78, a county has authority to make contributions of public money to a community improvement corporation organized pursuant to R.C. Chapter 1724, in order to defray expenses of the community improvement corporation incurred in connection with its functions under R.C. Chapter 1724”).

A review of Ohio Const. art. VIII, § 13, R.C. 1724.10, R.C. 307.78, and R.C. 165.03 thus clearly demonstrates that the advancement, encouragement, and promotion of the industrial, economic, commercial, and civic development of a county through a CIC designated by the county as an agency of the county is a function of county government. Accordingly, a CIC designated as an agency of a county under R.C. 1724.10 is an agency established by the laws of this state for a function of government and, as such, is a “public office,” as defined in R.C. 149.011(A).<sup>12</sup>

As a public office, a CIC designated as an agency of a county under R.C. 1724.10 is subject to the provisions of the public records law set out in R.C. 149.43.

<sup>12</sup> We are aware that R.C. 1724.10(A) states that, “[m]embership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment within the meaning of [R.C. 731.02] and [R.C. 731.12] or any other section of the Revised Code.” It thus could be argued that this provision evinces a legislative intent to not include within the definition of public office a CIC designated as an agency of a county under R.C. 1724.10 since the members of the governing board of the CIC do not hold a public office for purposes of any statute. *See* 1979 Op. Att’y Gen. No. 79-061 at 2-206 (if “the holding of a public office defines the outer limits of the open-meeting statute’s application, one might argue, on the basis of [language in R.C. 1724.10], that the governing board of a community improvement corporation is not a public body”).

R.C. 149.43(B). Accordingly, information kept in the records of a CIC designated

In a similar situation, 1979 Op. Att’y Gen. No. 79-061, which determined that the governing board of a CIC that has been designated an agency of a political subdivision pursuant to R.C. 1724.10 constitutes a public body for the purposes of R.C. 121.22, did not find such an analysis persuasive:

However, because the provision is rather obviously intended to eliminate problems regarding conflicts of interest and incompatibility of office, the argument is in this context not persuasive. In this particular instance reliance upon the provision regarding public offices would be inappropriate. It must be remembered that R.C. 121.22(A) provides that the statute is to be liberally construed “... to require public officials to take official action ... in open meetings.” Were there an apparent ambiguity concerning the applicability of R.C. 121.22 to the body in question, the provision could, as it has in the past, be invoked to clarify the issue. As with all other rules of statutory construction, however, the rule of liberal construction should be applied only in the face of some ambiguity. In this instance, the scope of R.C. 121.22 is quite clear. Application of the rule of liberal construction would only create an ambiguity, rather than eliminating one. (Citations omitted.)

*Id.* at 2-206 and 2-207; *see also* 1987 Op. Att’y Gen. No. 87-024 at 2-167 (“[n]otwithstanding the statement in R.C. 1724.10(A) that membership on the governing board of a community improvement corporation does not constitute the holding of a public office or employment, I conclude that when such a corporation has been designated as the agency of a political subdivision pursuant to R.C. 1724.10, a member of the governing board of the corporation is an ‘employee’ of the political subdivision for purposes of R.C. Chapter 2744”).

The analysis set forth in 1979 Op. Att’y Gen. No. 79-061 also applies when determining whether a CIC that has been designated as an agency of a county under R.C. 1724.10 is a “public office” for purposes of the public records law. Such analysis is warranted insofar as the public records law is to be construed “in favor of broad access, and any doubt is resolved in favor of disclosure of public records.” *State ex rel. Toledo Blade Co. v. Ohio Bur. of Workers’ Comp.*, 106 Ohio St. 3d 113, 2005-Ohio-3549, 832 N.E.2d 711, at ¶15 (2005) (quoting *Gilbert v. Summit Cty.*, 104 Ohio St. 3d 660, 2004-Ohio-7108, 821 N.E.2d 564, at ¶7 (2004), which quoted *State ex rel. Cincinnati Enquirer v. Hamilton Cty.*, 75 Ohio St. 3d 374, 376, 662 N.E.2d 334 (1996)). Accordingly, the language in R.C. 1724.10(A) that membership on the governing board of a CIC does not constitute the holding of a public office or employment is insufficient support for us to conclude that a CIC designated as an agency of a county under R.C. 1724.10 is not a public office for purposes of the public records law. *See generally State ex rel. WHIO-TV-7 v. Lowe*, 77 Ohio St. 3d 350, 355, 673 N.E.2d 1360 (1997) (“the purpose of Ohio’s Public Records Act, R.C. 149.43, is to expose government activity to public scrutiny, which is absolutely essential to the proper working of a democracy”).

as an agency of a county under R.C. 1724.10 is a public record for purposes of R.C. 149.43 unless the information falls within one of the exceptions to the definition of the term “public record” set forth in R.C. 149.43(A)(1)(a)-(y). *See* R.C. 1724.11(A) (certain information submitted to, or kept by, a CIC designated as an agency of a county under R.C. 1724.10 is not a public record subject to R.C. 149.43); *see also* 2004 Op. Att’y Gen. No. 2004-045 (syllabus, paragraph one) (“[i]nformation of a personal nature contained in a court’s criminal case files is a public record for purposes of R.C. 149.43, unless . . . the information falls within one of the exceptions to the definition of the term ‘public record’ set forth in R.C. 149.43(A)(1)(a)-(y)”).

There is, however, at least one exception that applies to information kept in the records of a CIC designated as an agency of a county under R.C. 1724.10. R.C. 149.43(A)(1)(v) states that the term “public record” does not include “[r]ecords the release of which is prohibited by state or federal law.” R.C. 1724.11(A), in turn, makes the following information of a CIC designated as an agency of a county under R.C. 1724.10 confidential and not subject to the public records law:

(1) Any financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity held or kept by the community improvement corporation, or by any [county] for which the community improvement corporation is acting as agent, is confidential information and is not a public record subject to [R.C. 149.43].

(2) Any other information submitted by or on behalf of an entity to the community improvement corporation in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity held or kept by the community improvement corporation, or by any [county] for which the community improvement corporation is acting as agent, is confidential information and is not a public record subject to [R.C. 149.43], until the entity commits in writing to proceed with the relocation, location, expansion, improvement, or preservation of its business.

Therefore, information classified as confidential information pursuant to R.C. 1724.11(A) that is kept in the records of a CIC designated as an agency of a county under R.C. 1724.10 is not a public record for purposes of R.C. 149.43.

In conclusion, it is my opinion, and you are hereby advised that, except as provided in R.C. 149.43(A)(1)(a)-(y) and R.C. 1724.11, information kept in the records of a community improvement corporation designated as an agency of a county under R.C. 1724.10 is a public record for purposes of R.C. 149.43.