

OPINION NO. 87-047**Syllabus:**

1. Where a community reinvestment area is properly established pursuant to R.C. 3735.66, the area continues to exist despite changes in conditions in the area which occur subsequent to its establishment.
2. Once a community reinvestment area has been established pursuant to R.C. 3735.66, if the only residential structure within the area is destroyed by fire, real property within the area continues to be eligible for real property tax exemptions providing that the requirements for such exemptions, as set forth in R.C. 3735.67, are met.
3. Under R.C. 3735.67, a real estate tax exemption may be granted when construction or renovation is complete and the application for the exemption is certified by the housing officer. The exemption will apply in the year following the calendar year of certification.
4. Where the only house in a community reinvestment area has been destroyed by fire, residents of that house who were members of the housing council established pursuant to R.C. 3735.69 may continue to serve on the council only if they intend to resume residence within the area.
5. If, after the creation of a community reinvestment area pursuant to R.C. 3735.66, it becomes impossible to fill vacancies on the housing council established for such an area under R.C. 3735.69 due to a lack of area residents, then it is not necessary to fill the vacancies, and the council may operate with fewer than seven members.

To: William F. Schenk, Greene County Prosecuting Attorney, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 10, 1987

I have before me your request for my opinion regarding community reinvestment areas established pursuant to R.C. 3735.66. Upon creation of a reinvestment area property, owners may apply for property tax exemptions. R.C. 3735.69 requires that a housing council be formed for each reinvestment area. Two area residents are to be included on the council. You have indicated that the City of Fairborn established a community reinvestment area. At the time of its establishment this area

included only one house with two residents. Both residents were members of the housing council. A developer then began construction of a large office and warehouse facility in this designated area. When construction of the office and warehouse complex was approximately half complete, the residents' house was destroyed by fire.

On behalf of the county auditor, who must process the tax exemptions, you ask the following questions:

1. Does a rehabilitation area under Ohio Revised Code 3735.65 still exist?
2. Is the area still eligible for the abatement even though said abatement has not been granted in the area?
3. Can the tax abatement be granted at this time?
4. If the tax abatement is granted, how should the housing council be constituted and can the former residents and members of the housing council continue to serve or can the housing council operate without any residents from the area?

R.C. 3735.66 authorizes counties and municipalities to establish community reinvestment areas. It reads, in part, as follows:

The legislative authorities of municipal corporations and counties may survey the housing within their jurisdictions and, after the survey, may adopt resolutions describing the boundaries of community reinvestment areas which contain the conditions required for the finding under division (B) of section 3735.65 of the Revised Code.

R.C. 3735.65(B) reads as follows:

(B) "Community reinvestment area" means an area within a municipal corporation or unincorporated area of a county for which the legislative authority of the municipal corporation or, for the unincorporated area, of the county, has adopted a resolution under section 3735.66 of the Revised Code describing the boundaries of the area and containing a statement of finding that the area included in the description is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

Legislative authorities "may adopt resolutions describing the boundaries of community reinvestment areas which contain the conditions required for the finding under division (B) of Section 3735.65...." R.C. 3735.66 (emphasis added). The conditions required by R.C. 3735.65(B) are "that the area...is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures is discouraged." These conditions must exist at the time the resolution is adopted. A community reinvestment area is defined as "an area...for which the legislative authority...has adopted a resolution under Section 3735.66...describing the boundaries of the area and containing a statement of finding...." R.C.

3735.65(B). The conditions required by R.C. 3735.65(B) must exist in the area in order for the legislative authority to establish a reinvestment area. R.C. 3735.65(B) does not impose any conditions upon the continued existence of the area once properly established. I therefore conclude that under R.C. 3735.65(B) and R.C. 3735.66 once the legislative authority determines that the statutory conditions exist, adopts a resolution creating a community reinvestment area, and the resolution describes the boundaries of the area and contains a statement of the legislative authority's finding, then the area continues to exist despite changes in the area which may subsequently occur. I find support for this conclusion in the observation that one of the goals of a reinvestment area is to encourage construction and repair through tax exemptions. Thus, a condition precedent to creation of the district, the need for capital improvements, will presumably be eliminated over time. The language of the statute does not require that the reinvestment area remain static. Rather, the purpose of the statute is to encourage change in the form of capital improvements. Therefore, one must look at the conditions existing at the time of establishment to determine if an area qualifies as a reinvestment area.

In applying this analysis to your situation, the first issue to be addressed is whether the legislative authority properly determined that the statutory conditions for creation of such an area did exist when the area was created. The first requirement is that the area must be one in which housing facilities or structures of historical significance are located. The second requirement is that new housing construction and repair of existing facilities and structures are discouraged. Under R.C. 3735.66 these are findings to be made by the legislative authority. The authority of the Attorney General to issue opinions does not authorize me to resolve questions of fact. See 1983 Op. Att'y Gen. No. 83-057. It would be particularly inappropriate for me to do so in this case since such a finding has already been made by a legislative body. Therefore, I must defer to the legislative authority's finding.¹ I will assume that the findings were made and that the legislative authority properly designated the area as a community reinvestment area. The second part of the analysis is to determine if the legislative body established boundaries for the area and set forth its finding in a resolution. For purposes of this opinion, I will assume that the resolution establishing the area included a description of the boundaries and a statement of finding. Since the requirements of the statute were presumably met when the area was established, the area was properly designated as a community reinvestment area. It retains that status despite subsequent destruction of the house. The language of R.C. 3735.65 and R.C. 3735.66 requires that the necessary conditions be met only at the time of establishment of the area. Thus, in answer to your first question, I conclude that a community reinvestment area once properly established, continues to exist despite destruction of the only residential structure in the area.

¹ I note that the community reinvestment area includes only one house, while R.C. 3735.65(B) refers to "housing facilities", a plural form. R.C. 1.43(A) states that "[t]he singular includes the plural, and the plural includes the singular". Thus, one house is sufficient to allow the area to qualify as a community reinvestment area.

Your second question asks if the area is still eligible for an abatement. This question is answered by R.C. 3735.67, which reads as follows:

The owner of any real property in a community reinvestment area may file an application for an exemption from real property taxation for a new structure or remodeling, completed after the effective date of the resolution adopted pursuant to section 3735.66 of the Revised Code, with the housing officer designated pursuant to section 3735.66 of the Revised Code, for the community reinvestment area in which the property is located.

The housing officer shall verify the construction of the new structure or the cost of the remodeling and the facts asserted in the application. The housing officer shall determine whether the construction or the cost of the remodeling meets the requirements for an exemption under division (A), (B), or (C) of this section. In cases involving a structure of historical or architectural significance, the housing officer shall not determine whether the remodeling meets the requirements for a tax exemption unless the appropriateness of the remodeling has been certified, in writing, by the society, association, agency, or legislative authority that has designated the structure or by any organization or person authorized, in writing, by such society, association, agency, or legislative authority to certify the appropriateness of the remodeling.

If the construction or remodeling meets the requirements for exemption, the housing officer shall forward the application to the county auditor with a certification as to the division of this section under which the exemption is granted and the period of the exemption as determined by the legislative authority pursuant to that division.

The tax exemption shall first apply in the year following the calendar year in which the certification is made to the county auditor by the housing officer pursuant to this section. If the remodeling qualifies for an exemption under division (A) or (B) of this section, the dollar amount by which the remodeling increased the market value of the structure shall be exempt from the real property taxation. If the construction of the structure qualifies for an exemption under division (C) of this section, the structure shall not be considered an improvement on the land on which it is located for the purpose of real property taxation.

The construction of new structures and the remodeling of existing structures are hereby declared to be a public purpose for which exemptions from real property taxation may be granted for the following periods:

(A) For every dwelling containing not more than two family units, located within the same community reinvestment area, and upon which the cost of remodeling is at least two thousand five hundred dollars, a period to be determined by the legislative authority adopting the resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling is located, but not exceeding ten years;

(B) For every dwelling containing more than two units, and commercial or industrial properties, located within the same community reinvestment area, and upon which the cost of remodeling is at least five thousand dollars, a period to be determined by the legislative authority adopting the resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling or property is located, but not exceeding twelve years;

(C) For construction of every dwelling, or commercial or industrial structure located within the same community reinvestment area, a period to be determined by the legislative authority adopting the resolution, pursuant to section 3735.66 of the Revised Code, describing the community reinvestment area where the dwelling or structure is located, but not exceeding fifteen years.

The first sentence of this section authorizes property owners within the community reinvestment area to apply for tax exemptions. As long as the community reinvestment area continues to exist the property owners may apply for a tax exemption. The first sentence does, however, limit applications for such exemptions to construction or remodeling completed after the effective date of the resolution establishing the community reinvestment area. Upon application, the housing officer must determine if the property meets the requirements listed in R.C. 3735.67. If the requirements are met, then the housing officer must certify the application and forward it to the county auditor. The exemption is then applied in the calendar year following certification. Thus, in answer to your second question, so long as the area retains its status as a community reinvestment area, property owners may become eligible for a tax exemption.

In answer to your third question, the tax exemption can be granted when construction or renovation is complete and the application for the exemption is certified by the housing officer. The exemption will first apply in the calendar year following certification.

Your final question asks how the housing council should be constituted since the only residential structure within the area was destroyed. R.C. 3735.69, which requires establishment of the housing council, reads as follows:

A community reinvestment area housing council shall be appointed for each community reinvestment area. When the area is located within a municipal corporation, the council shall be composed of two members appointed by the mayor of the municipal corporation, two members appointed by the legislative authority of the municipal corporation, and one member appointed by the planning commission of the municipal corporation. The majority of the foregoing members shall then appoint two additional members who shall be residents within the area. When the area is located within an unincorporated area of a county, the council shall be composed of one member appointed by each member of the board of county commissioners of the county where the area is located and two members appointed by the county planning commission. The majority of the foregoing members shall then appoint two additional members who shall be residents within the area. Terms of the members of the council shall

be for three years. An unexpired term resulting from a vacancy in the council shall be filled in the same manner as the initial appointment was made.

The council shall make an annual inspection of the properties within the community reinvestment area for which an exemption has been granted under section 3735.67 of the Revised Code. The council shall also hear appeals under section 3735.70 of the Revised Code.

By the terms of R.C. 3735.69, the council must include two residents of the area. This presents a problem since the residents who had been serving on the council left the area after their house burned. Generally a public officer must not only be qualified at the outset of his term, but throughout it. State ex rel. Haff v. Pask, 126 Ohio St. 633, 186 N.E. 809 (1933). R.C. 3735.69 requires that two residents serve on council. While both individuals in the situation you describe are unable to live within the area until their home is rebuilt, it could be that they can continue to qualify as residents since residence ends when the intent to return ends. State ex rel. Weber v. Hathaway, 22 Ohio C.C. (N.S.) 314 (1908). Thus, the two members may continue to serve as council members so long as they intend to return to the area.

In the event that one or both of the residents no longer intend to return, the continued existence of the housing council is subject to doubt since there would be no residents to serve on it. This dilemma can be resolved by applying the well recognized maxim that the law does not require the doing of an impossible act. Hill v. Micham, 116 Ohio St. 549, 157 N.E. 13 (1927). In Hill, the Ohio Supreme Court concluded that "[a] statute is never to be understood as requiring an impossibility, if such can be avoided by any fair and reasonable construction. Fishing in the River Thames, 12 Coke's Reports, 89, 77 English Reports, Rep., 1365." Id., 116 Ohio St. at 553, 157 N.E. at 15. Thus, where it would be impossible to replace the two former council members with residents, replacement is not required. Instead, the council may operate with fewer members.

It is, therefore, my opinion, and you are hereby advised, that:

1. Where a community reinvestment area is properly established pursuant to R.C. 3735.66, the area continues to exist despite changes in conditions in the area which occur subsequent to its establishment.
2. Once a community reinvestment area has been established pursuant to R.C. 3735.66, if the only residential structure within the area is destroyed by fire, real property within the area continues to be eligible for real property tax exemptions providing that the requirements for such exemptions, as set forth in R.C. 3735.67, are met.
3. Under R.C. 3735.67, a real estate tax exemption may be granted when construction or renovation is

complete and the application for the exemption is certified by the housing officer. The exemption will apply in the year following the calendar year of certification.

4. Where the only house in a community reinvestment area has been destroyed by fire, residents of that house who were members of the housing council established pursuant to R.C. 3735.69 may continue to serve on the council only if they intend to resume residence within the area.
5. If, after the creation of a community reinvestment area pursuant to R.C. 3735.66, it becomes impossible to fill vacancies on the housing council established for such an area under R.C. 3735.69 due to a lack of area residents, then it is not necessary to fill the vacancies, and the council may operate with fewer than seven members.