OPINION NO. 73-006

Syllabus:

1. Under R.C. 901.31 and 901.32, funds which formerly belonged to the Ohio Rural Rehabilitation Corporation may be used for the purpose of guaranteeing loans made by commercial banks to Ohio farmers.

2. Article VIII, Section 4, of the Ohio Constitution, does not prohibit the use of funds returned to the state pursuant to the "Rural Rehabilitation Corporation Trust Liquidation Act", 40 U.S.C. 440 et seq (1950), for the purpose of guaranteeing loans made by commercial banks to Ohio farmers.

To: Gene R. Abercrombie, Director, Dept. of Agriculture, Columbus, Ohio
By: William J. Brown, Attorney General, January 31, 1973

I have before me your request for my opinion, which reads as follows:

> As director of agriculture, I am designated by Sections 901.30 to 901.34 of the Revised Code as the state official authorized to use or enter into agreements for the use of assets formerly belonging to the Rural Rehabilitation Corporation Trust. Pursuant to Section 901.31, the director has entered into an agreement concerning the use of these assets with the Secretary of Agriculture of the United States. (A copy of this agreement is attached to this letter).

Paragraph 5 of this agreement indicates these assets may be used for "purposes permissible under the former Ohio Rural Rehabilitation Corporation's Charter as may from time to time be agreed upon between the State and Government." Because of the recent hardships encountered by Ohio farmers, resulting from the weather and the federal government's freeze on emergency loans, I have submitted a request to the Secretary to use the assets of the trust for the purpose of guaranteeing loans made by commercial banks to Ohio farmers. I believe this purpose was authorized by Section G of the purpose clause of the Ohio Rural Rehabilitation Corporation's charter. (A copy of the charter is also attached.) I expect approval of this proposed use to be shortcoming from the Secretary.

In order to assure that I am properly discharging my duties under Sections 901.30 to 901.34 of the Revised Code, I request a formal opinion from your office on the following questions:

1. Assuming the Secretary agrees to the use of the assets to guarantee private loans, is this use authorized by the Revised Code?

2. Assuming such use is authorized by the Revised Code, would any provision of the Constitution of the State of Ohio bar me as director of agriculture from authorizing such guarantees?

The relevant Sections of the Revised Code are R.C. 901.30, 901.31 and 901.32, which read as follows:

R.C. 901.30:

The director of agriculture is hereby designated as the state official to make application to, and as the state agent to receive from, the secretary of agriculture of the United States, or any other proper federal official, pursuant to the "Rural Rehabilitation Corporation Trust Liquidation Act," 64 Stat. 98, 40 U.S.C. 440 et seq. (1950), the trust assets, either funds or property, held by the United States as trustee in behalf of the Ohio rural rehabilitation corporation.

R.C. 901.31:

The director of agriculture may enter into agreements with the secretary of agriculture of the United States pursuant to section 2 (f) of the ["]Rural Rehabilitation Corporation Trust Liquidation Act", 64 Stat. 98, 40 U.S.C. 440 et seq. (1950), referred to in section 901.30 of the Revised Code, upon such terms and for such periods of time as are mutually agreeable, authorizing the secretary of agriculture of the United States to accept, administer, expend, and use in the state any part of such trust assets for carrying out the purposes of Title I and II of the "Bankhead-Jones Farm Tenant Act," 50 Stat. 522, 7 U.S.C. 1001 et seq. in accordance with the applicable provisions of Title IV thereof, as amended, and to do all things necessary to carry out the purposes of said agreements.

R.C. 901.32:

> Funds and the proceeds of the trust assets which are not authorized to be administered by the secretary of agriculture of the United States under section 901.31 of the Revised Code shall be paid to and received by the director of agriculture, and paid by him into the state treasury to a special fund to be known as the "Ohio farm loan revolving fund." Upon appropriation by the general assembly, such fund may be expended or obligated by the director for such of the rural rehabilitation purposes permissible under the charter of the now dissolved Ohio rural rehabilitation corporation as are agreed upon by the director and the secretary of agriculture or for the purposes of section 901.31 of the Revised Code.

A word about the history of Rural Rehabilitation Corporations is necessary. In 1934, these corporations were formed in practically every state, to receive and administer federal funds for programs of assistance to farmers. However, the Comptroller General ruled that the grants were illegal, and to save the programs, the President created a federal agency to administer them. All assets, liabilities, and staffs of these original state corporations were transferred to the Resettlement Administration, which was later made part of the Department of Agriculture. These changes were accomplished by executive order. Legislative authority was provided in 1937 by the "Bankhead-Jones Farm Tenant Act", 7 U.S.C. 1001 et seq., referred to in R.C. 901.31.

In 1950, Congress passed the Corporation Trust Liquidation Act, directing the liquidation of the trusts. (40 U.S.C. 440 et seq., (1950), referred to in R.C. 901.31.) Pending final liquidation, the Act permitted agreements with the Secretary of Agriculture for his continued administration of the assets. Pursuant to this Act, the Ohio Director of Agticulture and the administrator of the Farmers Home Administration, Department of Agriculture, entered into the "Liquidation Agreement" mentioned in your request. The Agreement provides for the return of certain assets to the State of Ohio, to be administered under the terms of the Agreement. As your letter mentions, those assets may be used for "purposes permissible under the former Ohio Rural Rehabilitation Corporation's Charter as may from time to time be agreed upon between the State and [U.S.] Government." Section G of that Charter provides that the purposes of the Corporation are, inter alia:

> To lend or advance money to, extend financial assistance to, accept bills of exchange, endorse the notes and guarantee the obligations of individuals, firms, Corporations, and/or others with or without collateral security of any kind whatsoever * * *.

Clearly, this language covers the guaranteeing of loans to private individuals. Therefore, assets returned to the state pursuant to the "Liquidation Agreement" may be used for such a purpose, under the terms of that Agreement.

Your first question is whether such a use is authorized by the provisions of the Revised Code. Since the Liquidation Agreement is authorized by R.C. 901.31, the answer is yes. Note that the procedures specified by R.C. 901.31 and 901.32 must be followed, including the securing of approval of the Secretary of Agriculture.

Your second question is whether the making of such guarantees would violate any provision of the Ohio Constitution, obviously a reference to Article VIII, Section 4, which reads as follows:

> The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

"Individual" was clearly intended as a noun, not an adjective. A review of the Debates and Proceedings of the Ohio Constitutional Convention of 1850-1851, prepared by the Official Convention Reporter, J. V. Smith, indicates that although the present wording of Article VIII, Section 4, remains exactly as written and adopted by the Constitutional Convention of 1850-1851, an omission in punctuation has since occurred. At the time of its adoption in 1851, Article VIII, Section 4, had a comma positioned between the word "individual" and the word "association." See Volume II of the Debates and Proceedings of that Convention, at pages 810, 837, and 861. That comma had since been omitted, apparently through error. Accordingly, Article VIII, Section 4, should be read to prohibit the giving or lending of the credit of the state to "any individual, association, or corporation whatever." (Emphasis added.)

Since the guarantees in question would give certain individuals the ability to borrow, they involve credit. However, I do not feel that the credit which is being extended is "the credit of the state." It is true that the assets which are returned to the state pursuant to the Liquidation Agreement are administered by the state, and therefore are public funds. (See Opinion No. 72-023, Opinions of the Attorney General for 1972.) It is also true that Article VIII, Section 4, applies even to funds which are not produced by taxes, and even to loans which do not create debts of the state. State, ex rel. Saxbe, v. Brand, 176 Ohio St 44 (1964), so held, in ruling that loans made by the Ohio Development Financing Commission violated this constitutional provision. The loans were made to private corporations for profit, and financed by the issuance and sale of bonds, which, under statute, could impose no liability on the state or any of its subdivisions. (Incidentally, the Ohio Development Financing Commission was revived by the adoption of Article VIII, Section 13, Ohio Constitution, which provided specific authorization for the Commission's operations.)

The reasoning behind the Court's holding is given at 176 Ohio St. 52, as follows:

> Where the state raises money by the sale of revenue bonds which do not involve the debt of the state, could anyone contend with reason that the money so raised is not money of the state? If such money were stolen, the state would certaintly regard it as state money.
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> Also, the sale of revenue bonds of the state to raise money necessarily involves a borrowing of money even though no indebtedness of the state results. If the bonds are not paid, the borrowing power of the state will as a result be adversely affected, even though the bonds do not represent a debt of the state. The borrowing power of the state is related to the taxing power

> because, to the extent that the state's borrowing power is lessened, a greater burden will be placed upon its taxing power.

I do not feel that these reasons apply to the instant situation. The assets in question are not "the money of the state", but federal monies held in trust by the state for a specific purpose. The money was originally held by private nonprofit corporations in the several states, not by the state governments. As the Court says in State, ex rel. Saxbe, v. Brand, supra, at 176 Ohio St. 48, Article VIII, Section 4, does not apply to "the borrowing and loaning by an entity separate from the state."

The original state corporations transferred their assets, which were actually federal funds, to the federal government, to be held in trust and administered for their original purpose. Since then, their use has been controlled by federal executive order and statute. When they were "returned" to the states, it was only for liquidation of these assets by disposal for purposes authorized by federal law, and approved by the Secretary of Agriculture. Thus, the State of Ohio merely holds these funds in trust for certain purposes which were decided by the Congress, not the General Assembly. While the state government does have some discretion in specific expenditures, the fact that the Secretary of Agriculture's approval is required strongly indicates that the funds in question are not the state's money.

In State, ex rel. Saxbe v. Brand, supra, the Court mentions the fact that failure to pay revenue bonds of the state, even if it results in no liability on the state's part, will adversely affect the state's borrowing power, presumably because its reputation for paying its debts will be harmed. Thus, as a practical matter, the state will be obligated. But this reasoning obviously does not apply to the raising of money by accepting a grant of federal funds. Since there is no debt involved, the state's borrowing power, or credit, cannot be affected, even indirectly.

I conclude that, under the reasoning of State, ex rel. Saxbe v. Brand, supra, the guaranteeing of loans with the funds of the former Ohio Rural Rehabilitation Corporation would not be a giving or loaning of the credit of the state, for purposes of Article VIII, Section 4, Ohio Constitution.

In specific answer to your question it is my opinion, and you are so advised, that:

1. Under R.C. 901.31 and 901.32, funds which formerly belonged to the Ohio Rural Rehabilitation Corporation may be used for the purpose of guaranteeing loans made by commercial banks to Ohio farmers.

2. Article VIII, Section 4, Ohio Constitution, does not prohibit the use of funds returned to the state pursuant to the "Rural Rehabilitation Corporation Trust Liquidation Act", 40 U.S.C. 440 et seq. (1950), for the purpose of guaranteeing loans made by commercial banks to Ohio farmers.