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April 19, 2024

Attorney General Dave Yost
Ohio Attorney General, Opinions Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Re: Request for Attorney General Opinion

Dear Attorney General Yost:

I am writing to supplement my office's previous request, dated February 15, 2024, for your opinion related to a county's and a joint office of economic development's authority under R.C. 307.07 and/or R.C. 307.85(A) to be a federal trade zone grantee under 15 C.F.R. 400.12. My questions are:

1. Does R.C. 307.07 and/or R.C. 307.85(A) provide an Ohio county the authority, as enabling legislation, to apply for, and accept, a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 15 C.F.R. 400.12?
2. If your opinion is that neither R.C. 307.07 nor R.C. 307.85(A) provide such authority, is there any other enabling legislation that does give an Ohio county the authority to act as a foreign trade zone grantee under 15 C.F.R. 400.12?
3. Where several counties form a joint office of economic development (a "JOED") under R.C. 307.07(C) through a cooperative agreement, is the JOED authorized under R.C. 307.85, as enabling legislation, to apply for, and accept, a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 15 C.F.R. 400.12?
4. R.C. 1743.11 provides authority for an Ohio corporate entity to apply for, and accept, a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 19 U.S.C.A. 81A and 15 C.F.R. 400.12. Is a JOED a corporate entity under Ohio law? If not, is R.C. 307.85(A)

is a functional equivalent to R.C. 1743.11 with respect to an individual county or a JOED being authorized to apply for, and accept, a grant of authority from the Foreign Trade Zones Board, U.S. Department of Commerce to be a foreign trade zone grantee under 19 U.S.C.A. 81A and 15 C.F.R. 400.12, understanding that R.C. 307.85(A) is a much broader grant of authority with respect to any federal program?

15 C.F.R. 400.12 provides in part:

(a) In general. Subject to the other provisions of this section, public or private corporations may apply for grants of authority to establish zones. The Board shall give preference to public corporations.

(b) Public corporations and private non-profit corporations. The eligibility of public corporations and private non-profit corporations to apply for a grant of authority shall be supported by enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply. Any application must not be inconsistent with the charter or organizational papers of the applying entity. [Emphasis added.]

Public corporation, as used in this chapter of the Code of Federal Regulations, means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states. 15 C.F.R. 400.02(p). The nature of a grant of authority for a foreign trade zone is an agreement between a grantee entity and the federal government (the FTZ Board) for the grantee entity to administer foreign zone areas typically operated by private businesses.

In discussions with the FTZ Board's Executive Secretary, she has questioned whether R.C. 307.07 and/or 307.85(A) are enabling legislation as contemplated in 15 C.F.R. 400.12. She has expressed this concern because these two statutes are in contrast to R.C. 1743.11 and 4582.31(A)(9) that provide specific authority to corporations and port authorities to act as FTZ grantees. Note that Summit County is a charter county, and it has established a department of development and employs a director of economic development as provided in R.C. 307.07. Additionally, Summit County is asking about JOEDs because it has such a cooperative agreement with Stark and Richland Counties that involves accepting a foreign trade zone grant. The JOED considers itself to be a public agency within the definition of a "public corporation" under 15 C.F.R. 400.02(p) and that R.C. 307.85(A) is enabling legislation authorizing it to be an FTZ grantee.

R.C. 307.07 provides in relevant part:

(B) The director of economic development may:

(3) With the approval of the board, enter into agreements with federal, state, and local governments and agencies thereof, and with public, private, or nonprofit organizations to carry out the functions and duties of the office;

(8) With the approval of the board, design, implement, monitor, oversee, and evaluate economic development plans, programs, strategies, and policies;

(10) Perform all acts necessary to fulfill the functions and duties of the office.

(C) The boards of county commissioners of two or more counties, by resolution, may create a joint office of economic development for the purposes set forth in division (A) of this section. The counties participating in a joint office of economic development shall enter into an agreement that sets forth the contribution of funds, services, and property to the joint office from each participating county; establishes the person, public agency, or nonprofit organization that shall carry out the functions and duties of the office; and discloses any other terms by which the joint office shall operate.

R.C. 307.85 provides in relevant part:

(A) The board of county commissioners of any county may participate in, give financial assistance to, and cooperate with other agencies or organizations, either private or governmental, in establishing and operating any federal program enacted by the congress of the United States, or with any such agency or organization that is receiving federal funds pursuant to a federal program, and for such purpose may adopt any procedures and take any action not prohibited by the constitution of Ohio nor in conflict with the laws of this state.

In several opinions, your office has previously assigned broad powers to a county under R.C. 307.85 to participate in federal programs. See 1979 Ohio Op. Atty. Gen. No. 79-053; 1984 Ohio Op. Atty. Gen. No. 84-038; and 2004 Ohio Op. Atty. Gen. No. 2004-016. Most notably, Op. 79-053 stated:

The clear purpose of R.C. 307.85 was to enable the county commissioners to exercise whatever power was necessary to participate in the operation of a federal program. It is not uncommon for a state or local agency to lack such power and this situation can result in the loss of federal funds and/or hasty efforts by the Legislature to grant the agency the necessary power. It is this very situation which the Legislature clearly intended to remedy by granting the board of county commissioners the authority to ‘take any action,’ not prohibited by the constitution or in conflict with law, which is necessary to enable the board to participate in the operation of a federal program.

Attorney General Dave Yost
April 12, 2024
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This line of thought was carried through to the other, later opinions noted above and highlights the broad legislative intent to authorize counties to participate in any federal program not otherwise prohibited under Ohio law. Summit County is of the opinion that the above provisions authorize it and the JOED to act as an FTZ grantee. Please provide your opinion on this matter.

Thank you in advance for your consideration of this question, and I look forward to your opinion on this matter. Should you have any questions or need any additional information, please contact Chief Assistant Prosecutor of the Civil Division, John Galonski, at (330) 643-8379.

Very truly yours,



ELLIOT KOLKOVICH
Prosecuting Attorney