

**OPINION NO. 2000-037****Syllabus:**

For purposes of a lease of real property by a county to a community improvement corporation pursuant to R.C. 1724.10, a community improvement corporation is not a governmental subdivision under R.C. 307.09(B).

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**To: Richard L. Ross, Morgan County Prosecuting Attorney, McConnellsville, Ohio**

**By: Betty D. Montgomery, Attorney General, September 20, 2000**

We have received your request for an opinion on the question whether a community improvement corporation may be considered a governmental subdivision for purposes of R.C. 307.09, which governs the authority of a county to sell or lease county real estate. Your question concerns a situation in which the county no longer needs the former county highway garage for county purposes. The board of county commissioners has designated a community improvement corporation (CIC) as an agency of the county and is contemplating leasing the garage to the CIC for use as a small manufacturing business. The question has arisen because the county would like to lease the garage to the CIC for a period in excess of the five-year term generally permitted under R.C. 307.09.

To answer your question, let us first consider the nature and the powers of a community improvement corporation. By statute, a CIC is a nonprofit corporation 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; *see also* R.C. 1702.04; R.C. 1724.08. The statutes governing a CIC were enacted pursuant to 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* R.C. Chapter 1724; *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 446 (1966).

Pursuant to statute, a CIC has basic corporate powers, including the power to purchase, lease, otherwise acquire, or dispose of real or personal property. R.C. 1724.02(C). A CIC may borrow money, make loans, and acquire, construct, operate, lease, or dispose of industrial plants or business establishments. R.C. 1724.02(A), (B), (D). A county, township, or municipal corporation may designate a CIC as its agency and enter into an agreement for the CIC to perform various functions relating to economic development, including preparing a plan for development, issuing revenue bonds, selling or leasing lands or interests in lands owned by the political subdivision, and accepting conveyances of lands from the political subdivision. R.C. 1724.10.

Thus, a CIC may be empowered to lease real property from a county for the development of that property as a small manufacturing business. To determine whether a particular leasing arrangement is permissible, however, we must also examine the authority of the county to enter into a lease.

A county is a creature of statute and, as such, it has only those powers it is granted by statute. *See State ex rel. Shriver v. Board of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (syllabus, paragraphs 1 and 2); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 571-72 (1916) ("county commissioners, in their financial transactions, are invested only with limited powers .... The authority to act in financial transactions must be clear and distinctly granted"); 1999 Op. Att'y Gen. No. 99-016.

General authority for a county to lease real property that it owns is granted by R.C. 307.09. Pursuant to this section, the board of county commissioners is authorized to sell any real property belonging to the county and not needed for public use, or to lease such property for a term no longer than five years, with certain exceptions. R.C. 307.09(A). Those leases which can be made for longer terms are for certain uses, including lease-purchase agreements, facilities located in county office buildings, and airport facilities. *Id.*

Additionally, under division (B) of R.C. 307.09, a board of county commissioners may grant leases to governmental entities, including governmental subdivisions of the state, for public purposes; to privately-owned companies for public utilities services; or to nonprofit corporations for hospital, charitable, water, sewer, or recreational purposes. Such leases "may be for such length of time, upon such terms, for such purposes, and may provide for such renewals thereof as the board deems for the best interests of the county." R.C. 307.09(B).

The statute governing agreements between a county and a CIC provides for certain conveyances or leases to be made without advertising and receipt of bids and to contain terms specified by the legislative authority. R.C. 1724.10(B) and (C). That statute, however, does not authorize a county to enter into a lease that exceeds the term permitted under R.C. 307.09.

In the situation you have described, the CIC is a nonprofit corporation that is proposing to use the property in question for manufacturing purposes. The proposed lease of the garage by the county to the CIC does not come within the exceptions to the five-year limit provided for lease-purchase agreements, facilities located in county office buildings, or airport facilities. Further, the proposed lease would not be to a privately-owned company for public utilities services or to a nonprofit corporation for hospital, charitable, water, sewer, or recreational purposes. Therefore, the lease of property to the CIC may exceed five years in length only if it is a lease to a governmental entity for public purposes. The lease cannot come within this provision unless the CIC is considered to be a governmental subdivision of the state for purposes of R.C. 307.09(B).

It does not appear that a CIC is a governmental subdivision for purposes of entering into a lease pursuant to R.C. 309.07(B). It has been recognized that a CIC "possesses certain characteristics that are suggestive of public status." 1979 Op. Att'y Gen. No. 79-061, at 2-204. Among those are the purpose of promoting industrial, economic, commercial, and civic development, R.C. 1724.01, the capacity to accept contributions of county money, personal property, or services, R.C. 307.78, and the requirement of reporting to the Director of Development, R.C. 1724.05. *Id.*; see also 1991 Op. Att'y Gen. No. 91-071; 1987 Op. Att'y Gen. No. 87-024.

However, a CIC is created as a nonprofit corporation and not as a governmental entity. R.C. 1724.01. Thus, it has been concluded for various purposes that a CIC is not a political subdivision. See 1987 Op. Att'y Gen. No. 87-024, at 2-163 ("the fact that a community improvement corporation is organized as a private nonprofit corporation compels the conclusion that it is not, in itself, a public body and that it is not a 'political subdivision' for purposes of R.C. Chapter 2744"); 1979 Op. Att'y Gen. No. 79-061, at 2-204 ("[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").

When a CIC is designated by a political subdivision as its agency, the CIC may be subject to certain statutory provisions that apply to that political subdivision. See 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 meeting law). In the instant case, however, no statute classifies a CIC as a governmental subdivision for purposes of leasing real property from a county or authorizes a county to enter into extended-term leases with a CIC that is designated as its agent.

Therefore, for purposes of a lease of real property by a county to a community improvement corporation pursuant to R.C. 1724.10, a community improvement corporation is not a governmental subdivision under R.C. 307.09(B). Thus, the lease of real property by a county to a CIC cannot be for a term greater than five years. We note, however, that R.C. 1724.10 authorizes a variety of arrangements between a county and a CIC. In particular, a county is authorized to transfer real property to a CIC, and such a transfer might be used to make county property available for development in appropriate circumstances.

In conclusion, it is my opinion and you are advised that, for purposes of a lease of real property by a county to a community improvement corporation pursuant to R.C. 1724.10, a community improvement corporation is not a governmental subdivision under R.C. 307.09(B).