

Note from the Attorney General's Office:

1991 Op. Att'y Gen. No. 91-071 was clarified
by 2019 Op. Att'y Gen. No. 2019-024.

OPINION NO. 91-071**Syllabus:**

1. Pursuant to R.C. 505.701, a township has authority to make contributions of public money to a community improvement corporation organized pursuant to R.C. Chapter 1724, in order to defray the administrative expenses of the community improvement corporation. (1985 Op. Att'y Gen. No. 85-024, syllabus, paragraph 1, approved and followed, in part.)
2. Pursuant 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. (1967 Op. Att'y Gen. No. 67-056, overruled.)
3. Pursuant to Ohio Const. art. XVIII, §3, and in light of R.C. 307.78 and R.C. 505.701, a municipal corporation 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. (1967 Op. Att'y Gen. No. 67-056, overruled.)

To: Phillip J. Brumbaugh, Darke County Prosecuting Attorney, Greenville, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for an opinion concerning the authority of a municipal corporation to contribute funds to a county community development corporation. In conversations with a member of my staff, you have stated that your question relates specifically to a community improvement corporation ("CIC") created pursuant to R.C. Chapter 1724.

**I. Counties, Townships, and Municipal Corporations
May Designate a CIC as Their Agency to Perform
Functions Under R.C. Chapter 1724**

A CIC is a nonprofit corporation, organized as provided in R.C. Chapter 1724 "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. R.C. Chapter 1724 was enacted pursuant to Ohio Const. art. VIII, §13, which permits public aid to private enterprise "[t]o create or preserve jobs and employment opportunities [or] to improve the economic welfare of the people of the state." See, e.g., *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 446 (1966).

Counties, townships, and municipal corporations, or a combination of those entities, may designate a CIC as their agency and may enter into agreements for the CIC to prepare a plan for development, R.C. 1724.10(A); for the CIC to acquire,

construct, improve and equip buildings and other properties for lease or sale by the CIC, R.C. 1724.10(A); for the CIC to sell or lease lands owned by the political subdivision and not needed for purposes of the subdivision, R.C. 1724.10(B); or for the political subdivision to convey to the CIC lands owned by the political subdivision and not needed for purposes of the subdivision where the conveyance "will promote the welfare of the people of the political subdivision, 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 political subdivision and provide additional opportunities for their gainful employment," R.C. 1724.10(C). The CIC may incur debt and issue obligations to carry out its purposes; such debt is solely that of the corporation and is not secured by the pledge of moneys from a political subdivision. Ohio Const. art. VIII, §13; R.C. 1724.02; R.C. 1724.10(A); *see also* R.C. Chapter 165.

Your question relates to a CIC that was created several years ago but has not been active. Local residents are seeking funds from various political subdivisions to enable the CIC to carry out its purposes. Your letter states that you have determined that counties and townships are authorized by statute to contribute money to fund CIC activities, but you are uncertain whether municipal corporations have the same authority. I assume, for purposes of this opinion, that your question relates to contributions made for the purpose of defraying expenses of a CIC incurred in connection with its functions under R.C. Chapter 1724. *See generally*, e.g., 1988 Op. Att'y Gen. No. 88-037.

II. Counties and Townships Have Statutory Authority to Contribute Money to a CIC

Under Ohio law, counties and townships are both creatures of statute, having only such powers as they are granted by statute.¹ *See, e.g., State ex rel. Schramm v. Ayres*, 158 Ohio St. 30, 106 N.E.2d 630 (1952); *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947). R.C. 307.78 expressly authorizes the board of county commissioners of any county to "make contributions of moneys, supplies, equipment, office facilities, and other personal property or services to any community improvement corporation organized pursuant to Chapter 1724 of the Revised Code to defray the expenses of the corporation," and provides that the CIC may use the board's contributions for any of its functions under R.C. Chapter 1724.² R.C. 505.701 provides somewhat more limited authority to a township, stating that the board of trustees of a township "may give financial or other assistance, including any fees generated by [a community improvement] corporation, to such a corporation to defray its administrative expenses."³ *See* 1985 Op. Att'y Gen. No. 85-024.

III. Municipal Corporations Have Constitutional Authority to Contribute Money to a CIC

There is no corresponding statute granting a municipal corporation authority to make monetary contributions to a CIC. *Cf.* R.C. Chapter 761 (setting forth certain powers of a municipal corporation with respect to a CIC). Authority for a municipal corporation to make such contributions is, however, derived from the municipal corporation's constitutional powers. Ohio Const. art. XVIII, §3 grants a

¹ A county may adopt a charter and obtain certain powers pursuant to the Ohio Constitution. *See* Ohio Const. art. X, §3; *see also, e.g.*, 1986 Op. Att'y Gen. No. 86-053 at 2-283 n. 1. For purposes of this opinion, I am not considering charter counties.

² Prior to August 20, 1991, a county's authority to make contributions to a CIC was limited to contributions to defray the administrative expenses of the corporation. *See* H.B. 25, 119th Gen. A. (1991) (eff. Aug. 20, 1991).

³ Townships have statutory power to adopt a limited self-government form of township government pursuant to R.C. Chapter 504. *See* Sub. H.B. 77, 119th Gen. A. (1991) (eff. Sept. 17, 1991). I am not considering the effect that any such self-government may have upon the authority granted by R.C. 505.701.

municipal corporation the authority to exercise all powers of local self-government. *See also* Ohio Const. art. XVIII, §7 (providing for charter municipalities). This authority extends to all matters that are local and municipal in character, and includes the power to spend money for municipal public purposes. *See, e.g., Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968), *appeal dismissed sub nom. Fosdick v. Hamilton County*, 391 U.S. 601 (1968); 1974 Op. Att'y Gen. No. 74-048; 1973 Op. Att'y Gen. No. 73-102; 1971 Op. Att'y Gen. No. 71-044. A municipal corporation may, accordingly, contribute public funds to a CIC if the legislative authority of the municipal corporation, in the reasonable exercise of its discretion, determines that the making of a contribution constitutes a municipal public purpose.

By enacting R.C. 505.701, the General Assembly indicated that giving public money to a CIC for the purpose of defraying the administrative expenses of the CIC constitutes a valid public purpose. R.C. 307.78 reflects a determination by the General Assembly that a contribution of public money to a CIC constitutes a valid public purpose when the money is available for any of the functions of the CIC under R.C. Chapter 1724. The existence of these provisions makes it clear that, under Ohio law, it is reasonable for the legislative authority of a municipal corporation to determine that a contribution of public moneys to a CIC constitutes a public purpose. In order to make such a contribution, the municipal corporation must determine also that the contribution constitutes a purpose of the municipal corporation. If, on particular facts, the legislative authority of a municipal corporation finds that a contribution to a CIC constitutes a municipal public purpose, the municipal corporation may properly expend its funds for that purpose. *See, e.g., Bazell v. City of Cincinnati*; Op. No. 88-037; Op. No. 73-102 at 2-386 (a grant of public funds to a nonprofit association for a public purpose "must contain restrictions which insure that the funds will be expended for only that purpose"); Op. No. 71-044.

IV. It is Necessary to Overrule 1967 Op. Att'y Gen. No. 67-056

I am aware that, in 1967 Op. Att'y Gen. No. 67-056, one of my predecessors concluded that "[a] political subdivision may not appropriate moneys derived from taxation to provide for the maintenance or operating expenses of a community improvement corporation." Op. No. 67-056 (syllabus). That opinion did not distinguish between municipal corporations and other political subdivisions. Op. No. 67-056 was overruled as it applied to townships because of the enactment of R.C. 505.701. Op. No. 85-024. Op. No. 67-056 must, similarly, be overruled as it applies to counties on the basis of the language currently appearing in R.C. 307.78. Further, Op. No. 67-056 must also be overruled as it applies to municipal corporations on the basis of their constitutional powers.

V. Conclusion

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 505.701, a township has authority to make contributions of public money to a community improvement corporation organized pursuant to R.C. Chapter 1724, in order to defray the administrative expenses of the community improvement corporation. (1985 Op. Att'y Gen. No. 85-024, syllabus, paragraph 1, approved and followed, in part.)
2. Pursuant 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. (1967 Op. Att'y Gen. No. 67-056, overruled.)
3. Pursuant to Ohio Const. art. XVIII, §3, and in light of R.C. 307.78 and R.C. 505.701, a municipal corporation has authority to make contributions of public money to a community improvement corporation organized pursuant to R.C. Chapter 1724, in order to

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