

**OPINION NO. 82-049****Syllabus:**

1. The Director of Commerce may not transfer funds available to the minority contractors bonding special account under R.C. 169.05 until such time as the Ohio Development Financing Commission notifies him that such funds are to be disbursed for the purpose of paying obligations on bonds written by the Commission pursuant to R.C. 122.88.
2. Pursuant to Section 23(A) (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981), the Controlling Board may transfer at any time up to \$10,000,000 to the minority contractors bonding special account from the balances in the housing guarantee fund and the housing development fund. For the purposes of Section 23(A), the balance in the housing development fund does not include the unclaimed funds allocated

to it on the records of the Director of Commerce pursuant to R.C. 169.05(A). For the purposes of Section 23(A), the balance in the housing guarantee fund includes unclaimed funds allocated to it pursuant to R.C. 169.05(A) only to the extent that such funds are retained by the holder or placed with a financial organization or paid to the Director of Commerce for deposit as the agent of the housing guarantee fund.

**To: Jack R. Marchbanks, Executive Director, Ohio Development Financing Commission, Minority Development Financing Advisory Board, Columbus, Ohio; J. Gordon Peitler, Director, Department of Commerce, Columbus, Ohio**  
**By: William J. Brown, Attorney General, July 12, 1982**

I have before me your respective requests for my opinion concerning the duty of the Director of Commerce to transfer funds to the minority contractors bonding special account created by R.C. 122.88. In your requests you seek clarification of when such transfers must be made and the purpose to which any funds so transferred may be applied.

R.C. 122.88 provides, in part, as follows:

(A) There is hereby created the minority contractors bonding special account in the state special revenue fund, consisting of moneys deposited or credited to it pursuant to section 169.05 of the Revised Code; all grants, gifts, and contributions received pursuant to division (C) of section 122.75 of the Revised Code; all premiums charged and collected in accordance with section 122.89 of the Revised Code; all moneys recovered following defaults; and any other moneys obtained by the commission for the purposes of sections 122.87 to 122.89 of the Revised Code. The fund shall be administered by the Ohio development financing commission. Moneys in the fund shall be held by the commission in trust for the purposes of sections 122.87 to 122.89 of the Revised Code and shall at no time be part of public funds.

(B) Any claims against the state arising from defaults shall be payable from the minority contractors bonding special account. . . .

The purpose of this special account is to enable the Ohio Development Financing Commission to execute construction contract bonds as surety for minority contractors. R.C. 122.89(A). As indicated in R.C. 122.88(A), the General Assembly has provided that this special account will be funded in part by moneys deposited or credited to it pursuant to R.C. 169.05.

R.C. 169.05, which describes the duties of the Director of Commerce with respect to unclaimed funds, provides, in pertinent part, as follows:

(A) Every holder required to file a report under section 169.03 of the Revised Code, shall at the time of filing pay to the director of commerce ten per cent of the aggregate amount of unclaimed funds as shown on such report. Such funds shall be deposited by the director in the state treasury to be credited to a special account in the state special revenue fund to be known as the unclaimed funds special account. . . . The remainder of such aggregate amount of unclaimed funds as shown on such report. . . shall, at the option of the holder, be retained by the holder or placed with a financial organization, or paid to the director for deposit as agent for the mortgage funds with a financial organization as defined in section 169.01 of the Revised Code, such funds to be in income-bearing accounts to the credit of the mortgage funds, or the holder may enter into an agreement with the director specifying the obligations of the United States in which funds are to be invested, and agree to pay the interest on such obligations to the state. Holders retaining such funds not in obligations of the United States shall enter into an agreement

with the director specifying the classification of income-bearing account in which the funds will be held and pay the state interest thereon at a rate equal to the prevailing market rate for similar funds. Moneys which the holder has elected to pay to the director rather than to retain may be deposited with the treasurer of state.

. . . .

One-half of the funds evidenced by such agreements or in such income-bearing accounts or on deposit with the treasurer of state shall be allocated on the records of the director to the mortgage insurance fund created by section 122.561 of the Revised Code. Out of the remaining half, after allocation of sufficient moneys to the minority contractors bonding special account to meet the provisions of division (B) of this section, an equal amount shall be allocated to the housing guarantee fund created by division (D) of section 128.11 of the Revised Code and the housing development fund created by division (C) of section 128.11 of the Revised Code.

(B) The director shall serve as agent for the Ohio development financing commission and as agent for the Ohio housing development board in the making of deposits and withdrawals and maintenance of records pertaining to the minority contractors bonding special account created by section 122.88 of the Revised Code, the mortgage insurance fund, the housing guarantee fund, and the housing development fund created by division (C) of section 128.11 of the Revised Code. Funds from the mortgage insurance fund shall be available to the Ohio development financing commission when such funds are to be disbursed to prevent or cure, or upon the occurrence of, a default of a mortgage insured pursuant to section 122.451 of the Revised Code. Funds from the housing guarantee fund shall be available to the Ohio housing development board when such funds are to be disbursed under a guarantee authorized by division (B) of section 128.05 of the Revised Code to satisfy a guaranteed mortgage which is in default. Funds from the housing development fund shall be available to the Ohio housing development board for the purposes of division (A) of section 128.05 of the Revised Code when it so requests. Funds from the minority contractors bonding special account shall be available to the Ohio development financing commission upon request for the purpose of paying obligations on bonds written by the commission pursuant to section 122.88 of the Revised Code; except that, unless additional amounts are authorized by the general assembly, the total maximum amount of moneys that may be allocated to the minority contractors bonding special account under this division is ten million dollars.

When such funds are to be so disbursed, the appropriate agency shall call upon the director to transfer to it the necessary funds. The director shall first withdraw the funds paid to him by the holders and by him deposited with the treasurer of state or in a financial institution as agent for such funds. Whenever these funds are inadequate to meet the request he shall provide for a withdrawal of funds, within a reasonable time, in such amount as is necessary to meet the request, from financial institutions in which such funds were retained or placed by a holder and from other holders who have retained funds, substantially pro rata to the dollar amount of such funds held by each such holder. . . . The director shall then transfer to the agency the amount of funds requested. (Emphasis added.)

Pursuant to this statute the Director of Commerce must allocate on his records of unclaimed funds up to ten million dollars to the minority contractors bonding special account. Such funds are not to be actually transferred to the special account, however, until such time as the Ohio Development Financing Commission notifies the Director of Commerce that such funds are to be disbursed for the purpose of paying obligations on bonds written by the Commission pursuant to R.C. 122.88. This conclusion is necessitated by that portion of R.C. 169.05 emphasized in the above quotation.

You have specifically asked whether the Director of Commerce has the duty or authority to transfer, upon the request of the Ohio Development Financing Commission, the entire ten million dollars authorized in R.C. 169.05 in one lump sum as "start-up funding" for this new program. It is my opinion that such a single lump sum transfer is not authorized. Under R.C. 169.05 the Director has no duty or authority to transfer funds to the minority contractors bonding special account until such time as the funds are to be "disbursed." The Commission will be called upon to disburse funds from the special account only in the event that a minority contractor defaults on a construction contract and the obligee on the bond executed by the Commission files a claim against the state arising from such default. See R.C. 122.88(B); R.C. 122.89(A). The Director of Commerce has the authority to transfer unclaimed funds to the special account only after these conditions have occurred and then only to the extent that funds are necessary to pay the state's obligations to the obligee.

As you note in your requests, however, the provisions of R.C. 169.05 have been supplemented by the subsequent adoption of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981), the current biennial appropriation act. In Section 23(A) (uncodified) of Am. Sub. H.B. 694, the General Assembly has appropriated to the Ohio Development Financing Commission for the minority contractors bonding program \$10,000,000 for each of the fiscal years in the current biennium. Section 23(A) further provides that:

[n]otwithstanding Chapters 122., 128., and 169. of the Revised Code and other provisions of this act; up to \$10,000,000 may be transferred to the 602 Minority Contractors Bonding special account of the Ohio Development Financing Commission from the balances in the Housing Guarantee Fund and the Housing Development Fund created pursuant to section 121.11 [sic] of the Revised Code, and any moneys transferred are hereby appropriated to the Ohio Development Financing Commission. These moneys may come from funds held by the Treasurer of State.

Thus, by the enactment of this section, the General Assembly authorized an additional ten million dollars to be made available during the current biennium to the minority contractors bonding special account from the balances in the housing guarantee fund and the housing development fund.<sup>1</sup> Section 23(A) does not specifically state when or by whom any such transfers are to be made. Since Section 23(A) does not speak to these procedural matters, I must presume that the General Assembly intended these transfers be made in accordance with the general procedures governing the transfer of funds.

As a general rule where the legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, except as a different purpose is plainly shown.

United States v. Jefferson Electric Mfg. Co., 291 U.S. 386, 396 (1934).

I note that the General Assembly has plainly shown its intent that the transfers authorized in Section 23(A) not be subject to R.C. 169.05, since it has authorized these transfers to be made "[n]otwithstanding Chapters 122., 128., and 169. of the Revised Code." The General Assembly did not, however, exempt these

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<sup>1</sup>I note, however, that, pursuant to R.C. 131.33, any portion of the ten million dollars appropriated to the minority contractors bonding special account for fiscal year 1981-1982 that was unencumbered as of June 30, 1982 may be expended in fiscal year 1982-1983 only if transferred pursuant to R.C. 127.14(B).

transfers from R.C. 127.14, which generally governs the transfer of funds and items of appropriation. R.C. 127.14 provides, in pertinent part, that:

[t]he controlling board may, at the request of any state agency or the director of budget and management, authorize with respect to the provisions of any appropriation act:

. . .

(F) Transfer of all or part of an appropriation or other moneys into and between existing funds, or new funds, as may be established by law. . . .

I must presume, therefore, that the General Assembly intended the transfers authorized in Section 23(A) to be made in accordance with R.C. 127.14(F). Accordingly, it is my opinion that such transfers may be made by the Controlling Board upon the request of the Director of Budget and Management or any state agency.<sup>2</sup> There is no express limitation as to when such transfers may be made. Such transfers may be made, however, only with respect to the "balances" in the housing guarantee fund or the housing development fund. It is, therefore, necessary to determine whether the moneys allocated on the records of the Director of Commerce to the housing guarantee fund and the housing development fund constitute part of the balances in those funds.

The two funds in question are created pursuant to R.C. 128.11, which provides, in pertinent part, as follows:

(C) The housing development fund is hereby created, consisting of moneys appropriated to it, interest earned on investments or deposits, grants and gifts made to the fund from public or private sources, and moneys repaid to the fund for advances made pursuant to section 128.05 of the Revised Code. The fund shall be administered by the board. Moneys in the fund shall be used solely for the purposes authorized by Chapter 128. of the Revised Code.

(D) The housing guarantee fund of the board is hereby created. Said fund shall consist of all grants, gifts, and contributions of moneys or rights to moneys made to the board for such fund, all guarantee fees charged and collected as provided in this division, all moneys deposited or credited to the housing guarantee fund pursuant to section 169.05 of the Revised Code, and all other moneys and property designated by the board or by law for such purpose.

With respect to the housing development fund, I note that R.C. 128.11(C) states in relevant part that the fund consists of "moneys appropriated to it" rather than moneys allocated to the fund. The allocation of funds pursuant to R.C. 169.05(A) does not constitute an appropriation of such funds. Indeed, it would be a misnomer to call such funds appropriated funds, since the greater percentage of such funds are not even held in the state treasury. See R.C. 169.05(A). Funds are appropriated to the housing development fund only to the extent provided in Section 100 of Am. Sub. H.B. 694, which states:

The balances on June 30, 1981 in the housing guarantee fund and the housing development fund created pursuant to section 128.11 of the Revised Code and in the mortgage insurance fund created pursuant to section 122.561 of the Revised Code and all receipts accruing to these funds during the period from July 1, 1981 through June 30, 1983, to the extent said balances and receipts are held in the state treasury, are

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<sup>2</sup>The term "state agency" as used in R.C. Title I means "every organized body, office, and agency established by the laws of the state for the exercise of any function of state government." R.C. 131.31(O). Accordingly, the Minority Development Financing Advisory Board, as well as the Ohio Development Financing Commission or Director of Commerce may request a transfer pursuant to R.C. 127.14.

hereby appropriated for the purposes authorized by Chapters 122., 128., and 169. of the Revised Code.

Thus, the General Assembly has appropriated to the housing development fund only the balance in that fund on June 30, 1981 and any receipts accruing to the fund during the current biennium, and then only to the extent such balance or receipts are held in the state treasury. It is clear, therefore, that funds allocated to the housing development fund but not on deposit in the state treasury are not part of that fund for the purposes of R.C. 128.11(C) or Section 23(A) of Am. Sub. H.B. 694. Moreover, it appears that even to the extent that unclaimed funds allocated to the housing development fund are on deposit in the state treasury, such funds are not properly considered to be appropriated to the fund until such time as they are to be disbursed. Unclaimed funds deposited in the state treasury, although allocated in part to the housing development fund, are credited to the unclaimed funds special account. R.C. 169.05(A). Such funds do not actually accrue to the housing development fund until such time as they are to be disbursed for the purposes of R.C. 128.05(A). R.C. 169.05(B). Thus, I must conclude that the balance in the housing development fund as used in Section 23(A) does not include unclaimed funds allocated to the housing development fund pursuant to R.C. 169.05(A).<sup>3</sup>

With respect to the housing guarantee fund, I note that R.C. 128.11(D) states, in pertinent part, that the fund shall consist of "all moneys deposited or credited to the housing guarantee fund pursuant to section 169.05 of the Revised Code." The balance in such fund at any point in time would not, therefore, include unclaimed funds unless such funds are actually deposited or credited to the fund. Unclaimed funds allocated on the records of the Director of Commerce pursuant to R.C. 169.05(A) may consist of 1) unclaimed funds paid to the Director of Commerce and deposited by him in the state treasury, 2) funds retained by the holders or placed with a financial organization by the holders, 3) funds paid to the director for deposit as agent for the mortgage funds, and 4) funds invested in obligations of the United States pursuant to an agreement between the holder and the Director of Commerce. With respect to the first category of funds, I note that R.C. 169.05(A) provides that "[s]uch funds shall be deposited by the director in the state treasury to be credited to a special account in the state special revenue fund to be known as the unclaimed funds special account." Such funds cannot, therefore, be considered as deposited or credited to the housing guarantee fund until such time as they are actually transferred to that fund pursuant to R.C. 169.05(B). With respect to the remaining three categories of unclaimed funds, R.C. 169.05(A) provides, in pertinent part, that:

The remainder of such aggregate amount of unclaimed funds . . . shall at the option of the holder, be retained by the holder or placed with a financial organization, or paid to the director for deposit as agent for the mortgage funds with a financial organization as defined in section 169.01 of the Revised Code, such funds to be in income bearing accounts to the credit of the mortgage funds, or the holder may enter into an agreement with the director specifying the obligations of the United States in which funds are to be invested, and agree to pay interest on such obligations to the state. . . . (Emphasis added.)

The term "mortgage funds" is defined in R.C. 169.01(F) to include "the housing guarantee fund created by division (D) of section 128.11 of the Revised Code." Thus, that portion of the unclaimed funds allocated to the housing guarantee fund that is retained by the holder or placed in a financial organization or paid to the Director of Commerce at the option of the holder must be considered as credited to the

<sup>3</sup>I am assuming that to the extent that the balance in the housing development fund as of June 30, 1981 included unclaimed funds, such funds have been disbursed for the purposes of R.C. 128.05(A), since no such funds would have been properly transferred to the housing development fund unless necessary for immediate disbursement. R.C. 169.05(B).

housing guarantee fund for the purposes of R.C. 128.11(D). Unclaimed funds invested in obligations of the United States pursuant to an agreement between the Director of Commerce and the holder, however, are not credited to the housing guarantee fund under R.C. 169.05(A). Thus, for the purposes of R.C. 128.11(D) and Section 23(A) of Am. Sub. H.B. 694, the balance in the housing guarantee fund includes the unclaimed funds allocated to it on the records of the Director of Commerce only to the extent that such funds are retained by the holder or placed with a financial organization or paid to the Director of Commerce for deposit as the agent of the housing guarantee fund.

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

1. The Director of Commerce may not transfer funds available to the minority contractors bonding special account under R.C. 169.05 until such time as the Ohio Development Financing Commission notifies him that such funds are to be disbursed for the purpose of paying obligations on bonds written by the Commission pursuant to R.C. 122.88.
2. Pursuant to Section 23(A) (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981), the Controlling Board may transfer at any time up to \$10,000,000 to the minority contractors bonding special account from the balances in the housing guarantee fund and the housing development fund. For the purposes of Section 23(A), the balance in the housing development fund does not include the unclaimed funds allocated to it on the records of the Director of Commerce pursuant to R.C. 169.05(A). For the purposes of Section 23(A), the balance in the housing guarantee fund includes unclaimed funds allocated to it pursuant to R.C. 169.05(A) only to the extent that such funds are retained by the holder or placed with a financial organization or paid to the Director of Commerce for deposit as the agent of the housing guarantee fund.