

OPINION NO. 89-019

Syllabus:

1. Ohio Const. art. VIII, §15 authorizes the General Assembly to pass laws providing for the issuance of obligations for the purpose of making grants, loans, or loan guarantees "for research and development of coal technology that will encourage the use of Ohio coal."

2. R.C. 1555.01(A), in implementing Ohio Const. art. VIII, §15, defines "coal research and development" to include inquiry, experimentation, or demonstration to advance knowledge or to advance the application, adaptation, or use of knowledge that will permit the expanded use of Ohio coal.
3. Under R.C. 1555.01, "coal research and development projects" include research, experimentation, commercial-scale demonstrations, and pilot projects.
4. Ohio Const. art. VIII, §15 and R.C. Chapter 1555 do not permit the use of funds derived from obligations issued under art. VIII, §15 to make grants, loans, or loan guarantees to provide commercially available equipment for the purpose for which it is ordinarily supplied, to be used in a commonly-accepted manner.
5. Ohio Const. art. VIII, §15 and R.C. Chapter 1555 permit the use of funds derived from obligations issued under art. VIII, §15 for the financing of equipment that is commercially available only when that equipment is used for "research and development of coal technology," as that term is used in art. VIII, §15 and applied in R.C. 1555.01.
6. The Director of the Ohio Coal Development Office, with the advice of the Technical Advisory Committee and the approval of the Director of Development, has discretion to determine when a coal research and development project qualifies under R.C. Chapter 1555 for a loan, loan guarantee, or grant of money derived from obligations issued under Ohio Const. art. VIII, §15.

To: David J. Baker, Director, Department of Development, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1989

I have before me your request for an opinion concerning the provisions of Ohio Const. art. VIII, §15 and R.C. Chapter 1555 that govern the issuance of bonds and other obligations for the purpose of making grants, loans, and loan guarantees for coal research and development. You have asked whether the definition of "coal research and development" appearing in R.C. 1555.01(A) includes commercially available equipment. You have not defined the term "commercially available equipment." I use that term in its ordinary sense to mean equipment that is currently being manufactured and can readily be procured in the marketplace. See *Random House Dictionary of the English Language* 102, 295 (unabridged ed. 1973) (defining "available" to mean: "readily obtainable"; defining "commerce" to mean: "an interchange of goods or commodities").

Ohio Const. art. VIII, §15 was adopted by the voters of Ohio in November of 1985. It authorizes the General Assembly to pass laws providing for the issuance of bonds or other obligations to secure moneys to finance coal research and development projects. Ohio Const. art. VIII, §15 states:

Laws may be passed authorizing the state to borrow money and to issue bonds and other obligations for the purpose of making grants and making or guaranteeing loans for research and development of coal technology that will encourage the use of Ohio coal, to any individual, association, or corporation doing business in this state, or to any educational or scientific institution located in this state, notwithstanding the requirements, limitations, or prohibitions of any other section of article VIII or of sections 6 and 11 of article XII of the constitution. The aggregate principal amount of the money borrowed and bonds and other obligations issued by the state pursuant to laws passed under this section shall not exceed one hundred million dollars outstanding at any time. The full faith and credit of the state may be pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws passed under this section.

Laws passed pursuant to this section also may provide for the state to share in any royalties, profits, or other financial gain resulting from the research and development. (Emphasis added.)

Ohio Const. art. VIII, §15 thus authorizes the issuance of "bonds and other obligations for the purpose of making grants and making or guaranteeing loans for research and development of coal technology that will encourage the use of Ohio coal."

R.C. Chapter 1555 was enacted in 1986 to implement the provisions of Ohio Const. art. VIII, §15. The bill enacting R.C. Chapter 1555 expressly states as its purpose: "to authorize the state to borrow money and issue bonds to provide financial assistance for research and development of coal technology, thereby implementing Section 15 of Article VIII, Ohio Constitution...." See 1985-1986 Ohio Laws, Part III, 5633 (Am. Sub. H.B. 750, eff. April 5, 1986). R.C. 1555.01 includes the following definitions, which expand upon the concept of "research and development of coal technology" set forth in art. VIII, §15:

As used in this chapter:

(A) "*Coal research and development*" means inquiry, experimentation, or demonstration to advance basic scientific or technical knowledge, or the application, adaptation, or use of existing or newly discovered scientific or technical knowledge, regarding the beneficiation of Ohio coal before combustion, conversion of Ohio coal to other fuels, the control of emissions of sulfur compounds resulting from the use of Ohio coal through the removal of sulfur compounds before, during, or after combustion but before the products of combustion are discharged, or other inquiry, experimentation, or commercial-scale demonstration, directed toward the utilization of Ohio coal in an environmentally acceptable manner as a fuel or chemical feedstock.

(B) "*Coal research and development facilities*" means buildings, structures, and other improvements, and equipment and other property, real and personal, or the modification or replacement of property, for coal research and development, including, without limitation, research, pilot, and commercial-scale demonstration facilities, and further including any property or system to be used wholly or partially for that purpose, whether or not another purpose is also served, and any property or system incidental to or which pertains to the purpose of coal research and development. *Coal research and development facilities as defined in this division are hereby determined to be those which qualify for grants, loans, and loan guarantees under Section 15 of Article VIII, Ohio Constitution.*

(C) "*Coal research and development project*" or "*project*" means any coal research and development, or any coal research and development facility, including undivided or other interests therein, acquired or to be acquired, constructed or to be constructed, or operating or to be operated by a person doing business in this state or by an educational or scientific institution located in this state with all or a part of the cost thereof being paid from a loan or grant from the Ohio coal development office or a loan guaranteed by the office under this chapter, including all buildings and facilities that the office determines necessary for the operation of the project, together with all property, rights, easements and interests that may be required for the operation of the project. (Emphasis added.)

R.C. Chapter 1555 establishes a procedure for the issuance of obligations and the making of loans, loan guarantees, and grants through the Ohio Coal Development Office. See, e.g., R.C. 1555.02; R.C. 1555.03; R.C. 1555.08. The Ohio Coal Development Office exists within the Department of Development. See R.C. 1551.32. It is headed by the Director of the Ohio Coal Development Office, who is appointed by the Director of Development and serves at his pleasure. See R.C. 1551.33. R.C. 1551.35 establishes the Technical Advisory Committee, which is responsible for reviewing various topics, including proposals for grants, loans, and loan guarantees under R.C. 1555.01-.06, and making recommendations to the Director of the Ohio Coal Development Office.

R.C. 1555.02 sets forth purposes and powers of the Ohio Coal Development Office, as follows:

It is hereby declared to be the public policy of the state through the operations of the Ohio coal development office under this chapter to contribute toward one or more of the following: to provide for the comfort, health, safety, and general welfare of all employees and other inhabitants of the state through research and development directed toward the discovery of new technologies or the demonstration or application of existing technologies to enable the conversion or use of Ohio coal as a fuel or chemical feedstock in an environmentally acceptable manner thereby enhancing the marketability and fostering the use of this state's vast reserves of coal, to assist in the financing of coal research and development and coal research and development projects or facilities for persons doing business in this state and educational and scientific institutions located in this state, to create or preserve jobs and employment opportunities or improve the economic welfare of the people of the state, or to assist and cooperate with such persons and educational and scientific institutions in conducting coal research and development. In furtherance of such public policy, *the Ohio coal development office may, with the advice of the technical advisory committee created in section 1551.35 of the Revised Code and the approval of the director of development, make loans, guarantee loans, and make grants to persons doing business in this state or to educational or scientific institutions located in this state for coal research and development projects by such persons or educational or scientific institutions; may, with the advice of the technical advisory committee and the approval of the director of development, request the issuance of coal research and development general obligations under section 1555.08 of the Revised Code to provide funds for making such loans, loan guarantees, and grants; and may, with the advice of the technical advisory committee and the approval of the director of development, expend moneys credited to the coal research and development fund created in section 1555.15 of the Revised Code for the purpose of making such loans, loan guarantees, and grants. Determinations by the director of the Ohio coal development office that coal research and development or a coal research and development facility is a coal research and development project under this chapter and is consistent with the purposes of Section 15 of Article VIII, Ohio Constitution, and this chapter shall be conclusive as to the validity and enforceability of the coal research and development general obligations issued to finance such project and of the authorizations, trust agreements or indentures, loan agreements, loan guarantee agreements, or grant agreements, and other agreements made in connection therewith, all in accordance with their terms.* (Emphasis added.)

See also R.C. 1551.33-.34.

Pursuant to R.C. Chapter 1555, obligations of the State implementing Ohio Const. art. VIII, §15, in amounts authorized by the General Assembly, are issued by the Commissioners of the Sinking Fund, upon certification by the Director of the Ohio Coal Development Office of the amount needed. R.C. 1555.02; R.C. 1555.08. The Director of the Ohio Coal Development Office may request the issuance of such obligations "with the advice of the technical advisory committee and the approval of the director of development." R.C. 1555.02; R.C. 1555.03(C). With similar advice and approval, the Director of the Ohio Coal Development Office may make loans, guarantee loans, and make grants for coal research and development projects. R.C. 1555.02; R.C. 1555.03(A). R.C. 1555.15 creates in the State Treasury the Coal Research and Development Fund, which holds the proceeds of obligations issued under R.C. 1555.08 (except for such portion to be deposited in the Coal Research and Development Bond Service Fund as provided in the bond proceedings), see R.C. 1555.08, and other moneys that are available for "the purpose of making grants and making or guaranteeing loans for coal research and development projects that will encourage the use of Ohio coal...." R.C. 1555.15. R.C. 1555.02 states expressly that determinations by the Director of the Ohio Coal Development Office "that coal

research and development or a coal research and development facility is a coal research and development project under this chapter and is consistent with the purposes of [Ohio Const. art. VIII, §15 and R.C. Chapter 1555] shall be conclusive as to the validity and enforceability" of the obligations issued to finance the project and of all other agreements made in connection with the project.

It is evident that the responsibility of determining when there exists a coal research and development project that is consistent with Ohio Const. art. VIII, §15 and R.C. Chapter 1555 has been placed by the General Assembly upon the Director of the Ohio Coal Development Office, to be exercised with the advice of the Technical Advisory Committee and the approval of the Director of Development. See R.C. 1555.02; R.C. 1555.03. See generally *State ex rel. S. Monroe & Son Co. v. Baker*, 112 Ohio St. 356, 366, 147 N.E. 501, 504 (1925) ("every executive officer is invested with certain powers and discretion, and within the scope of the powers granted and discretion conferred his dictum is supreme and his judgment is not subject to the dictation of any other officer"); 1983 Op. Att'y Gen. No. 83-034; 1958 Op. Att'y Gen. No. 1868, p. 157. I do not have authority to determine whether a particular proposal qualifies as a coal research and development project or to use this opinion in any manner to exercise discretion that has been granted by statute to other public officials. See, e.g., 1986 Op. Att'y Gen. No. 86-076; 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098; 1984 Op. Att'y Gen. No. 84-067. I am, accordingly, simply considering the language of art. VIII, §15 and relevant provisions of R.C. Chapter 1555 and providing guidance as to the manner in which that language may reasonably be interpreted and applied.

Ohio Const. art. VIII, §15 clearly states its intent to make funds available "for research and development of coal technology that will encourage the use of Ohio coal." Ohio coal is high sulfur coal. Because of increased stringency of environmental standards, the use of such coal has been limited. The adoption of art. VIII, §15 had as its purpose the provision of funds to develop methods of sulfur removal or other techniques that would permit the use of Ohio coal in a manner consistent with environmental concerns. *Gongwer News Service, Inc., Ohio Report* 1-2 (Nov. 6, 1985); see R.C. 1555.02. See generally R.C. 1551.31-.35.

The definition of "coal research and development" appearing in R.C. 1555.01(A) is consistent with the concept that new technology is being sought. While the syntax of R.C. 1555.01(A) is a bit confusing, the language of that provision appears to define "coal research and development" to mean: (1) inquiry, experimentation, or demonstration to advance basic scientific or technical knowledge regarding the beneficiation of Ohio coal before combustion, the conversion of Ohio coal to other fuels, or the control of emissions of sulfur compounds resulting from the use of Ohio coal through the removal of sulfur compounds before, during, or after combustion but before the products of combustion are discharged; (2) inquiry, experimentation, or demonstration to advance the application, adaptation, or use of existing or newly discovered scientific or technical knowledge regarding the beneficiation of Ohio coal before combustion, the conversion of Ohio coal to other fuels, or the control of emissions of sulfur compounds resulting from the use of Ohio coal through the removal of sulfur compounds before, during, or after combustion but before the products of combustion are discharged; or (3) other inquiry, experimentation, or commercial-scale demonstration, directed toward the utilization of Ohio coal in an environmentally acceptable manner as a fuel or chemical feedstock. In each case, the activity that is included within coal research and development is inquiry, experimentation, or demonstration. The definition thus includes research, experimentation, and demonstrations of techniques by which the use of knowledge may be advanced.

R.C. 1555.01(B) defines "coal research and development facilities" to mean buildings, structures, equipment, and other property "for coal research and development," including research, pilot, and commercial-scale demonstration facilities. "Coal research and development facilities" are, thus, facilities used for "coal research and development," as that term is defined in R.C. 1555.01(A). R.C. 1555.01(B) includes as coal research and development facilities any property or system "used wholly or partially" for coal research and development, and any property or system "incidental to or which pertains to the purpose of coal research and development." R.C. 1555.01(B) states expressly that facilities coming within its

definition are "those which qualify for grants, loans, and loan guarantees" under Ohio Const. art. VIII, §15.

R.C. 1555.01(C) defines "coal research and development project" to consist of "coal research and development," as defined in R.C. 1555.01(A), and "coal research and development facilities," as defined in R.C. 1555.01(B). The definitional system contained in R.C. Chapter 1555 thus provides that the projects eligible for grants, loans, or loan guarantees of moneys derived from obligations issued under Ohio Const. art. VIII, §15 must constitute either "coal research and development" or "coal research and development facilities." See R.C. 1555.02; R.C. 1555.03(A); R.C. 1555.15. Accordingly, coal research and development projects that are eligible for financial assistance under R.C. Chapter 1555 include research, experimentation, pilot projects, and commercial-scale demonstrations. See R.C. 1555.01(A), (B). The term "coal research and development project," as used in R.C. Chapter 1555, is focused on projects that expand technical knowledge or demonstrate new ways in which technical knowledge may be applied.

Neither Ohio Const. art. VIII, §15 nor R.C. 1555.01 expressly mentions the type of equipment about which you have inquired—that is, "commercially available equipment." It is clear from the language of both art. VIII, §15 and R.C. 1555.01 that those provisions were not intended to provide money simply to secure for private entities whatever equipment is readily available in the marketplace. The concept of "research and development of coal technology" set forth in Ohio Const. art. VIII, §15 calls for expanded knowledge and new techniques for applying technology. R.C. 1555.01(A), (B), and (C) include demonstrations and pilot projects as well as inquiry and experimentation, but indicate in all cases that the activity must advance knowledge or advance the application, adaptation, or use of knowledge. See generally *Random House Dictionary of the English Language* 394, 1219 (unabridged ed. 1973) (defining "develop" to mean: "to bring out the capabilities or possibilities of; bring to a more advanced or effective state"; defining "research" to mean: "diligent and systematic inquiry or investigation into a subject in order to discover or revise facts, theories, applications, etc."). It does not appear that such advancement occurs when equipment that is commercially available is provided for the purpose for which it is ordinarily supplied, to be used in a commonly-accepted manner. R.C. 1555.01 and related provisions may not be read in such manner as to expand the purposes for which moneys derived under art. VIII, §15 may be expended beyond the purposes expressly set forth in art. VIII, §15. See R.C. 1555.15 (moneys in the Coal Research and Development Fund, including moneys derived from obligations issued under R.C. 1555.08, "shall be expended for the purpose of making grants and making or guaranteeing loans for coal research and development projects that will encourage the use of Ohio coal...as provided for in [Ohio Const. art. VIII, §15 and R.C. 1555.08]..."). See generally *State ex rel. Brown v. Beard*, 48 Ohio St. 2d 290, 358 N.E.2d 569 (1976) (construing Ohio Const. art. VIII, §13); 1985 Op. Att'y Gen. No. 85-011; 1983 Op. Att'y Gen. No. 83-094. Cf. R.C. 1555.18 (providing that R.C. 1555.01-.18, "being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof"). It must, therefore, be concluded that moneys derived from obligations issued under Ohio Const. art. VIII, §15 may not be used to make grants, loans, or loan guarantees to provide commercially available equipment for the purpose for which it is ordinarily supplied, to be used in a commonly-accepted manner.

That is not to say, however, that art. VIII, §15 and R.C. Chapter 1555 would never permit the use of funds derived from obligations issued under art. VIII, §15 to make grants, loans, or loan guarantees for equipment that is commercially available. Such equipment may be provided whenever it is found to constitute a necessary part of a coal research and development project. Commercially available equipment may, for example, be used as part of an experiment or demonstration to advance the application, adaptation, or use of existing technical knowledge, or as part of another experiment or commercial-scale demonstration that comes within R.C. 1555.01(A). It may be used as part of a pilot project or a commercial-scale demonstration facility that comes within R.C. 1555.01(B). Since such uses come within the definition of "coal research and development project" set forth in R.C. 1555.01(C), they would be eligible for funds derived under Ohio Const. art. VIII, §15 pursuant to R.C. Chapter 1555. A determination as to whether a particular use of commercially available equipment constitutes a coal research and development project for purposes of R.C. Chapter 1555 must be made, as discussed above, by the

Director of the Ohio Coal Development Office, with the advice of the Technical Advisory Committee and the approval of the Director of Development. See R.C. 1555.02; R.C. 1555.03. See generally *State ex rel. Board of County Commissioners v. Mong*, 12 Ohio St. 3d 66, 465 N.E.2d 428 (1984) (construing Ohio Const. art. VIII, §13); *County of Stark v. Ferguson*, 2 Ohio App. 3d 72, 440 N.E.2d 816 (Stark County 1981) (construing Ohio Const. art. VIII, §13); 1983 Op. Att'y Gen. No. 83-087; 1981 Op. Att'y Gen. No. 81-095.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. Ohio Const. art. VIII, §15 authorizes the General Assembly to pass laws providing for the issuance of obligations for the purpose of making grants, loans, or loan guarantees "for research and development of coal technology that will encourage the use of Ohio coal."
2. R.C. 1555.01(A), in implementing Ohio Const. art. VIII, §15, defines "coal research and development" to include inquiry, experimentation, or demonstration to advance knowledge or to advance the application, adaptation, or use of knowledge that will permit the expanded use of Ohio coal.
3. Under R.C. 1555.01, "coal research and development projects" include research, experimentation, commercial-scale demonstrations, and pilot projects.
4. Ohio Const. art. VIII, §15 and R.C. Chapter 1555 do not permit the use of funds derived from obligations issued under art. VIII, §15 to make grants, loans, or loan guarantees to provide commercially available equipment for the purpose for which it is ordinarily supplied, to be used in a commonly-accepted manner.
5. Ohio Const. art. VIII, §15 and R.C. Chapter 1555 permit the use of funds derived from obligations issued under art. VIII, §15 for the financing of equipment that is commercially available only when that equipment is used for "research and development of coal technology," as that term is used in art. VIII, §15 and applied in R.C. 1555.01.
6. The Director of the Ohio Coal Development Office, with the advice of the Technical Advisory Committee and the approval of the Director of Development, has discretion to determine when a coal research and development project qualifies under R.C. Chapter 1555 for a loan, loan guarantee, or grant of money derived from obligations issued under Ohio Const. art. VIII, §15.