

**OPINION NO. 73-109****Syllabus:**

1. Industrial revenue bonds issued pursuant to R.C. Chapter 165. are eligible as security for the deposit of public moneys under R.C. 165.08, in spite of the provisions of R.C.135.18 (B) (4).

2. The investment of a bank's funds in bonds issued pursuant to R.C. Chapter 165. is authorized by R.C. 165.08, and is not subject to regulations promulgated by the Superintendent of Banks pursuant to R.C. 1107.16 (A) (22).

---

**To: Lee C. Falke, Montgomery County Pros. Atty., Dayton, Ohio**  
**By: William J. Brown, Attorney General, November 7, 1973**

I have before me your request for an opinion which poses the following questions:

Are industrial revenue bonds duly issued under Chapter 165. of the Ohio Revised Code by a county, municipal corporation, or the State of Ohio (Ohio Development Financing Commission) eligible as security for public deposits under authority of Section 165.08 without regard to the provisions of Section 135.18 (B) (4); and are, under the same authority, such bonds lawful investments for state banks without regard to the limitations which may be imposed by the Superintendent of banks under Section 1107.16 (A) (22)?

Section 135.18(B) (4) provides in pertinent part as follows:

(B) The following securities shall be eligible for the purposes of this section:

\* \* \* \* \*

(4) Bonds and other obligations of any county, township, school district, municipal corporation, or other legally constituted taxing subdivision of this state, which is not at the time of such deposit, in default in the payment of principal or interest on any of its bonds or other obligations, for which the full faith and credit of the issuing subdivisions is pledged; \* \* \*.

R.C. 165.12 provides that:

Bonds issued under authority of Chapter 165. of the Revised Code do not, and shall state that they do

not, represent or constitute a debt or pledge of the faith and credit of the issuer, and such bonds are payable solely from the rentals, revenues, and other income, charges, and moneys as are pledged for their payment in accordance with the bond proceedings. No moneys of any issuer, other than those realized from the sale of bonds or from donations, shall be used for any of the purposes authorized by sections 165.01 to 165.14, inclusive, of the Revised Code.

(Emphasis added.)

Thus, bonds issued under the authority of R.C. Chapter 165. are revenue bonds and would not qualify as security for the deposit of public moneys under the requirements of R.C. 135.18 (B) (4).

However, R.C. 165.08 provides as follows:

Bonds issued under Chapter 165. of the Revised Code are lawful investments of banks, societies for savings, building and loan and savings and loan associations, deposit guarantee associations, trust companies, trustees, fiduciaries, insurance companies, including domestic for life and domestic not for life, trustees or other officers having charge of sinking and bond retirement or other special funds of political subdivisions and taxing districts of this state, the industrial commission, the state teachers retirement system, the public employees retirement system, the public school employees retirement system, and the police and firemen's disability and pension fund [and] are also acceptable as security for the deposit of public moneys. (Emphasis added.)

(The addition of the word "and" is necessary for the statute to make sense. See R.C. 1.47 (C). A parallel form is used in R.C. 122.51, 131.24, 140.07, and many other statutes.)

The provisions of R.C. 135.18 (B) (4) and R.C. 165.08 regarding the eligibility of industrial development revenue bonds as security for public moneys, are in apparent conflict, in which case R.C. 1.51 provides as follows:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. (Emphasis added.)

R.C. 1.51 is a codification of a principle of statutory construction recognized by the Ohio courts. Fisher Bros. Co. v. Bowers, Tax Comm'r. 166 Ohio St. 191 (1957), State, ex rel. Kearns, Prosecuting Att'y v. Rindefoos et al., 161 Ohio St. 60 (1954).

Although R.C. 135.18 (B) (4) was reenacted after R.C. 165.08 was enacted (132 Ohio Laws 111, 2287), R.C. 1.54 provides as follows:

A statute which is reenacted or amended is intended to be a continuation of the prior statute and not a new enactment, so far as it is the same as the prior statute.

The Supreme Court of Ohio has stated in dictum that in construing readopted Sections of an amended law, so far as the statute is not changed, it would be dangerous to hold that the mere nominal reenactment should have the effect of disturbing the whole body of statutes in pari materia which had been passed between the enactment of the original and amendatory acts. State ex rel. Greenland v. Fulton, 99 Ohio St. 168, 177. R.C. 135.18 (A)(4) is substantially identical to the former analogous provision, R.C. 135.16(F). See 130 Ohio Laws 81. It follows then that the specific provision in R.C. 165.08 is the later enactment, and therefore may be read as supplementary to R.C. 135.18 in naming eligible security for the deposit of public money.

Also indicative of the non-exclusivity of R.C. 135.18(B) is R.C. 131.13, which concerns the deposit of revenues controlled by certain county officials. That Section provides in part:

In place of the undertaking provided for in section 131.11 of the Revised Code, the depositor may accept as security for money deposited, to the extent such money is not covered by federal deposit insurance, the securities listed in section 135.18 of the Revised Code and any securities expressly made eligible as security for public deposits under any other law of this state.

(Emphasis added.)

In addition see Opinion No. 1202, Opinions of the Attorney General for 1960, and Opinion No. 826, Opinions of the Attorney General for 1964, in which my predecessors recognized authority in R.C. 321.44 for investments by county commissioners independent of provisions of the Uniform Depository Act (R.C. Chapter 135.).

With respect to R.C. 135.18, it should also be noted that the Legislature included no statement that "only" the enumerated securities shall be eligible. This fact, coupled with the enactment of other Sections providing for the acceptance of certain bonds as security, suggests strongly that the principle of expressio unius est exclusio alterius is not applicable in the case of R.C. 135.18, and that additional provisions, such as R.C. 165.08, are supplementary to that Section. See State, ex rel. Jackman v. Court of Common Pleas, 9 Ohio St. 2d 159, 164 (1967); Wachendorf v. Shaver, 149 Ohio St. 231, 240-241 (1948); State ex rel. Curtis v. DeCorp., 134 Ohio St. 295, 298 (1928). I must, therefore, conclude that under R.C. 165.08 bonds issued pursuant to R.C. Chapter 165. are acceptable as security for the deposit of public money.

The second part of your question concerns R.C. 1107.16 (A) (22) which authorizes the Superintendent of Banks to promulgate regulations imposing conditions and restrictions on a state bank's investment in revenue bonds, and R.C. 165.08 which states that industrial revenue bonds are "lawful investments of banks" and other enumerated investment institutions.

R.C. 1107.16 provides in part as follows:

(A) A bank may invest only in the following securities:

\* \* \* \* \*

(22) Bonds or other obligations of any state, or political subdivision of a state, a public corporation, or governmental agency which are payable solely out of anticipated revenues, commonly known as "revenue bonds" under such conditions and restrictions as the superintendent prescribes, by regulation.

(Emphasis added.)

Thus, R.C. 165.08 purports to authorize banks to invest in industrial revenue bonds, while R.C. 1107.16 by its language attempts to make that Section the exclusive listing of eligible investments. Under R.C. 1107.16 (A)(22) investment in revenue bonds is made subject to conditions and restrictions prescribed by the Superintendent of Banks. To the extent that such regulations attempt to restrict investment in bonds issued pursuant to R.C. Chapter 165., they necessarily conflict with the clear expression of legislative intent in R.C. 165.08 that industrial revenue bonds are lawful investments of banks.

As discussed above in my answer to your first question, where two Sections conflict, they must be reconciled if possible; but, where it is not possible to reconcile the sections, a specific provision controls over a general provision, unless the general provision is the later enactment, and it is the obvious intent of the Legislature that it control. R.C. 1.51. R.C. 165.08, which deals specifically with industrial revenue bonds, was enacted and became effective on June 26, 1967. 132 Ohio Laws 206, 2258. The pertinent language of R.C. 1107.16 (A)(22) was in effect prior to this date, though it was reenacted as part of a reorganization of the banking laws. 132 Ohio Laws 545, 2168, effective January 1, 1968. R.C. 1101.06, which was enacted at the same time, provides:

It is hereby declared to be the purpose of the general assembly in enacting Chapters 1101., 1103., 1105., 1107., 1109., 1111., 1113., 1115., 1117., 1119., 1121., 1123., 1125., 1127., and 1129. of the Revised Code:

(A) To delegate to the division of banks rule-making power and administrative discretion, subject to such chapters, which will assure that the supervision and regulation of banks, chartered under the laws of this state may be flexible and readily responsive to changes in economic conditions and in banking practices;

(B) To provide for the protection of the interests of depositors, creditors, shareholders, and the general public in banks doing business in this state;

(C) To permit banks to effectively serve the convenience and needs of their depositors, borrowers, and others, and to permit the continued improvement of such services.

(D) To provide the opportunity for the management of banks to exercise their business judgment, subject to the provisions of such chapters;

(E) To clarify and modernize the laws governing banking.

Nothing in this section expands the rule-making power of the superintendent of banks so as to supersede, annul, cancel, or revoke any existing statute.  
(Emphasis added.)

It appears clear from the above that R.C. 1107.16 (A)(22) may not be construed to qualify the eligibility of industrial revenue bonds as investments under R.C. 165.08.

This would be consistent with the conclusion of my predecessor who held in Opinion No. 821, Opinions of the Attorney General for 1939, that provisions in four Sections of the General Code, which were similar to R.C. 165.08, operated to permit a state bank to invest its funds in types of bonds or other obligations referred to without the approval of the Superintendent of Banks. At that time G.C. 710-111 authorized banks to invest their funds in bonds, provided that no investment could be made in bonds for which the full faith and credit of the issuing authority had not been pledged, unless such investment was approved by the Superintendent of Banks. My predecessor reasoned that the four Sections in question, which specifically authorized investment by banks in the various bonds, constituted separate authority for such investment, and that the approval of the Superintendent of Banks was therefore not required.

It follows that R.C. 165.08 constitutes an exception to the general provisions of R.C. 1107.16 (A)(22) in that it sets out separate and specific authority for investment by a bank in industrial revenue bonds. I must, therefore, conclude that the investment of bank funds in industrial revenue bonds is authorized by R.C. 165.08, and is not subject to regulations promulgated pursuant to R.C. 1107.16 (A)(22).

In specific answer to your question, it is my opinion and you are so advised, that:

1. Industrial revenue bonds issued pursuant to R.C. Chapter 165. are eligible as security for the deposit of public moneys under R.C. 165.08 in spite of the provisions of R.C. 135.18 (B)(4).
2. The investment of a bank's funds in bonds issued pursuant to R.C. Chapter 165. is authorized by R.C. 165.08, and is not subject to regulations promulgated by the Superintendent of Banks pursuant to R.C. 1107.16 (A)(22).