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Respectfully submitted,

Michael DeWine
Ohio Attorney General



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*Counsel of Appellee Joseph W. Testa,
Tax Commissioner of Ohio*

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Appendix to Appellee Tax Commissioner's Merit Brief was served upon the following by U.S. regular mail on this 19th day of March, 2015:

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Ohio School Boards Assoc. and
Ohio Assoc. of School Business Officials*



DAVID D. EBERSOLE (0087896)
Assistant Attorney General

IN THE SUPREME COURT OF OHIO

14-1798

TALAWANDA CITY SCHOOL
DISTRICT BOARD OF EDUCATION

CASE NO. _____

Appellant,

ON APPEAL FROM THE OHIO
BOARD OF TAX APPEALS

vs.

OHIO DEPARTMENT OF TAXATION

BTA CASE NO. 2012-1224

and

JOSEPH W. TESTA, TAX
COMMISSIONER OF OHIO

Appellees.

NOTICE OF APPEAL OF APPELLANT
TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION

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COUNSEL FOR APPELLEES,
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Joseph W. Testa, Tax Commissioner of
Ohio

FILED
BOARD OF TAX APPEALS
2014 OCT 17 PM 12:04

FILED
OCT 17 2014
CLERK OF COURT
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT,
TALAWANDA CITY SCHOOL DISTRICT BOARD OF EDUCATION**

Appellant, the Talawanda City School District Board of Education (the “Board of Education”), by and through counsel, hereby gives notice of its appeal as of right, pursuant to Ohio Revised Code Section 5717.04, to the Supreme Court of Ohio, from a Decision and Order of the Board of Tax Appeals, journalized in Case No. 2012-1224 on September 26, 2014. A true copy of the Decision and Order of the Board of Tax Appeals being appealed is attached hereto and incorporated herein as Exhibit A.

Appellant complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that Section 3313.44 of the Revised Code did not exempt from real property taxation the 34 acres of parcel number H3510-038-000-012 that is leased for farming purposes.

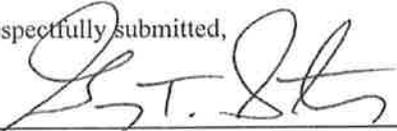
2. The Ohio Board of Tax Appeals erred and abused its discretion when it ignored the Ohio Constitution (specifically Section 2 of Article XII) and relevant Ohio Supreme Court precedent interpreting a 1931 amendment to Section 2 of Article XII of the Ohio Constitution, and improperly imposed a specific use component to Section 3313.44 of the Revised Code that is contrary to the plain language of the statute and the holdings of this Court.

3. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the subject property was not used for school purposes or entitled to real property tax exemption pursuant to Sections 5709.07 or 5709.08 of the Ohio Revised Code.

4. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that changes to the property that occurred in 2010 were not relevant to the instant appeal.

5. The Ohio Board of Tax Appeals erred and abused its discretion when it concluded that the Board of Education's appeal only concerned tax years 2008 through 2010.

Respectfully submitted,

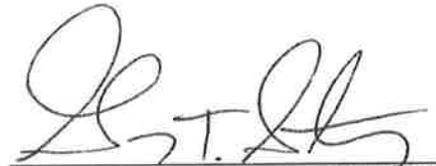


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*Attorney for the Talawanda City School
District Board of Education*

PROOF OF SERVICE UPON OHIO BOARD OF TAX APPEALS

I certify that a true and accurate copy of the foregoing Notice of Appeal of Appellant Talawanda City School District Board of Education was filed with the Ohio Board of Tax Appeals, State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio 43215 as evidenced by the date stamp set forth hereon.



Gary T. Stedronsky (0079866)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served by certified mail to: **David D. Ebersole**, 30 East Broad Street, 25th Floor, Columbus, OH 43215 on this the 17th day of October, 2014.


Gary T. Stedronsky (0079866)

OHIO BOARD OF TAX APPEALS



TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO, (et. al.),

Appellee(s).

CASE NO(S). 2012-1224

(EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION
Represented by:
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ENNIS, ROBERTS & FISCHER CO., LPA
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO
Represented by:
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ASSISTANT ATTORNEY GENERAL
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COLUMBUS, OH 43215

Entered Friday, September 26, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals from a final determination of the Tax Commissioner, in which he denied exemption of approximately 34 acres of certain real property, i.e., parcel number H3510-038-000-0012, located in Butler County, Ohio, for tax year 2010, and remitted penalties charged against the unexempted portion of the parcel for tax years 2008 and 2009. This matter is now considered upon the notice of appeal, the statutory transcript certified by the commissioner, the record of this board's hearing, and the parties' briefs.

The subject property consists of approximately 34 acres that are part of a larger parcel acquired by the appellant in 2009 to build a new high school. The seller was permitted to remain on a portion of the land, though appellant exercised an early termination clause that required him to vacate the property in September 2009 so that construction could begin. In order to avoid the cost to maintain the portion of the property at issue in the instant appeal, the 34 acres were leased to a local farmer at an annual rate of \$65 per acre. This lease was terminated early and appellant entered into a new lease with Adam Smith, allowing him to farm a 17-acre portion of the subject property, on which he farms soybeans and corn.

The portion of the 34 acres not being farmed by Mr. Smith was restored to its natural state and functions as a nature preserve. As part of Mr. Smith's lease, he is required to maintain trails that were created around the farm and through the preserve area. These trails provide access for students from the high school and nearby Miami University to study the plants and trees along the trails.

Appellant applied for exemption from real property exemption under R.C. 3313.44, which provides that "[r]eal or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." The commissioner granted exemption for the portion of the property used for the school and grounds, but determined that the 34 acres leased for farming purposes should remain on the tax list. Appellant asserts that the Tax Commissioner improperly imposed a specific use component to the statute that does not comport with its plain language.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

This board has previously considered whether land owned by a school board but leased for farming qualifies for exempt status. See *London City Schools Board of Education v. Zaino* (Jan. 12, 2001), 2000-B-1478, unreported. After a review of relevant Supreme Court precedent as well as this board's previous decisions on the issue, we held that "not only must title to a subject property be vested in a school board, but also that the property be used for school purposes." *Id.* at 9. Thus, we reject appellant's argument against application of the use requirement and consider whether the subject property was used for school purposes.

In the instant appeal, there is no dispute as to the ownership of the subject property. Thus, we look to the use of the property to determine whether it should be granted an exemption. The record shows that in 2009 and up until some point in 2010, 34 acres were leased to a farmer for the cultivation of corn and soybeans. Although appellant asserts that it leased this property to avoid the cost of maintenance and not for the rental income, the ultimate user of the property, the farmer, presumably did so intending to earn a profit. We note that the changes that took place in 2010, i.e., the restoration of a portion of the area to a nature preserve and the addition of the trails, changed the use of a portion of the property such that only 17 acres were farmed commercially. As these changes took place after the 2010 tax lien date, they are not relevant to the instant appeal, which only concerns tax years 2008 through 2010.

Based upon the foregoing, we find that the commissioner's determination was reasonable and lawful. Accordingly, the final determination must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson	<i>EW</i>	
Mr. Johrendt	<i>MJD</i>	
Mr. Harbarger	<i>JH</i>	

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION, (et. al.),)
Appellant(s),)
vs.)
JOSEPH W. TESTA, TAX COMMISSIONER OF)
OHIO, (et. al.),)
Appellee(s).)

CASE NO(S). 2012-1224
(EXEMPTION)
DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- TALAWANDA CITY SCHOOL DISTRICT
BOARD OF EDUCATION
Represented by:
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For the Appellee(s)

- JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO
Represented by:
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ASSISTANT ATTORNEY GENERAL
30 EAST BROAD STREET, 25TH FLOOR
COLUMBUS, OH 43215

Entered Friday, September 26, 2014

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

Appellant appeals from a final determination of the Tax Commissioner, in which he denied exemption of approximately 34 acres of certain real property, i.e., parcel number H3510-038-000-0012, located in Butler County, Ohio, for tax year 2010, and remitted penalties charged against the unexempted portion of the parcel for tax years 2008 and 2009. This matter is now considered upon the notice of appeal, the statutory transcript certified by the commissioner, the record of this board's hearing, and the parties' briefs.

The subject property consists of approximately 34 acres that are part of a larger parcel acquired by the appellant in 2009 to build a new high school. The seller was permitted to remain on a portion of the land, though appellant exercised an early termination clause that required him to vacate the property in September 2009 so that construction could begin. In order to avoid the cost to maintain the portion of the property at issue in the instant appeal, the 34 acres were leased to a local farmer at an annual rate of \$65 per acre. This lease was terminated early and appellant entered into a new lease with Adam Smith, allowing him to farm a 17-acre portion of the subject property, on which he farms soybeans and corn.

The portion of the 34 acres not being farmed by Mr. Smith was restored to its natural state and functions as a nature preserve. As part of Mr. Smith's lease, he is required to maintain trails that were created around the farm and through the preserve area. These trails provide access for students from the high school and nearby Miami University to study the plants and trees along the trails.

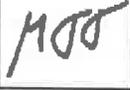
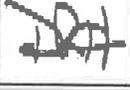
Appellant applied for exemption from real property exemption under R.C. 3313.44, which provides that "[r]eal or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." The commissioner granted exemption for the portion of the property used for the school and grounds, but determined that the 34 acres leased for farming purposes should remain on the tax list. Appellant asserts that the Tax Commissioner improperly imposed a specific use component to the statute that does not comport with its plain language.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

This board has previously considered whether land owned by a school board but leased for farming qualifies for exempt status. See *London City Schools Board of Education v. Zaino* (Jan. 12, 2001), 2000-B-1478, unreported. After a review of relevant Supreme Court precedent as well as this board's previous decisions on the issue, we held that "not only must title to a subject property be vested in a school board, but also that the property be used for school purposes." *Id.* at 9. Thus, we reject appellant's argument against application of the use requirement and consider whether the subject property was used for school purposes.

In the instant appeal, there is no dispute as to the ownership of the subject property. Thus, we look to the use of the property to determine whether it should be granted an exemption. The record shows that in 2009 and up until some point in 2010, 34 acres were leased to a farmer for the cultivation of corn and soybeans. Although appellant asserts that it leased this property to avoid the cost of maintenance and not for the rental income, the ultimate user of the property, the farmer, presumably did so intending to earn a profit. We note that the changes that took place in 2010, i.e., the restoration of a portion of the area to a nature preserve and the addition of the trails, changed the use of a portion of the property such that only 17 acres were farmed commercially. As these changes took place after the 2010 tax lien date, they are not relevant to the instant appeal, which only concerns tax years 2008 through 2010.

Based upon the foregoing, we find that the commissioner's determination was reasonable and lawful. Accordingly, the final determination must be, and hereby is, affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



A.J. Groeber, Board Secretary

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOL DISTRICT
BOARD OF EDUCATION, (et. al.),

CASE NO(S). 2012-2661

Appellant(s),

(EXEMPTION)

vs.

DECISION AND ORDER

JOSEPH W. TESTA, TAX COMMISSIONER OF
OHIO, (et. al.),

Appellee(s).

APPEARANCES:

For the Appellant(s)

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Entered Friday, January 23, 2015

Mr. Williamson, Mr. Johrendt, and Mr. Harbarger concur.

This matter is considered by the Board of Tax Appeals upon the filing of a notice of appeal by the above-named appellant, Westerville City School District Board of Education ("BOE"). The BOE appeals from a final determination of the Tax Commissioner wherein its application for real property exemption of parcel 080-008480-00 in Franklin County for tax year 2011 was granted, in part and denied, in part; however, penalties charged through June 20, 2012, were remitted. In making our determination herein, we rely upon the statutory transcript certified to this board by the Tax Commissioner ("S.T.") and the briefs of counsel, as all parties hereto waived the right to appear at this board's scheduled hearing.

The findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. Consequently, it is incumbent upon a taxpayer challenging a determination of the commissioner to rebut the presumption and to establish a clear right to the requested relief. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. In this regard, the taxpayer is assigned the burden of

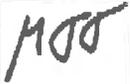
showing in what manner and to what extent the commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The rule in Ohio is that all real property is subject to taxation. R.C. 5709.01. Exemption from taxation is the exception to the rule. *Seven Hills Schools v. Kinney* (1986), 28 Ohio St.3d 186. The burden of establishing that real property should be exempt is on the taxpayer. Exemption statutes must be strictly construed. *Am. Soc. for Metals v. Limbach* (1991), 59 Ohio St.3d 38, *Faith Fellowship Ministries, Inc. v. Limbach* (1987), 32 Ohio St.3d 432; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199; *Goldman v. Robert E. Bentley Post* (1952), 158 Ohio St. 205; *Natl. Tube Co. v. Glander* (1952), 157 Ohio St. 407; and *Willys-Overland Motors, Inc. v. Evatt* (1943), 141 Ohio St. 402.

The BOE purchased the subject property, which consists of approximately 9 acres of land on which an office building is located, in November 2010. A portion of the building is leased to the University of Dayton for "general office use and/or classroom space or for other university-related purposes." S.T. at 1. The BOE uses a portion of the building for its own offices and the remainder of the building is leased to a for-profit corporation, Triad Architects, Inc. ("Triad"). The BOE seeks exemption for the only portion of the subject property that was denied, i.e., the portion leased to Triad, pursuant to R.C. 3313.44, which provides that "[r]eal or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation." That statutory provision, effective September 13, 2010, amended the earlier version which provided that "[r]eal or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

The BOE contends that the commissioner decided the instant matter pursuant to the former version of R.C. 3313.44 and associated case precedent and that pursuant to the amended statutory language under consideration, the subject property qualifies for exemption, in its entirety, because it is real property "owned" by a board of education. Based upon this board's review, we conclude that the changes effected to R.C. 3313.44 addressed the issue of ownership and under both versions of the statute, the "use" to which the property is put was not addressed. Therefore, we believe it is appropriate to continue to apply such statute, as the courts and this board have done previously, requiring that the property in question be used for exempt purposes. See *State, ex rel. Boss v. Hess* (1925), 113 Ohio St. 52; *London City Schools Bd. of Edn. v. Zaino* (Jan. 12, 2001), BTA No. 2000-B-1478, unreported; *Bd. of Edn. of the City of Columbus School Dist. v. Tracy* (Apr. 23, 1993), BTA No. 1992-A-598, unreported; *Bd. of Edn. of the Groveport Madison Local Schools v. Limbach* (Nov. 29, 1991), BTA Nos. 1989-E-39, et seq., unreported. Rental of the subject property, to a for profit corporation for \$27,115.20 annually, does not constitute an exempt use of the property.

Therefore, based upon the foregoing, this board finds that the Tax Commissioner's conclusions were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be and hereby is affirmed.

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Mr. Johrendt		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary

OHIO BOARD OF TAX APPEALS

London City Schools)
Board of Education,)
)
Appellant,)
)
vs.)
)
Thomas M. Zaino,)
Tax Commissioner of Ohio,)
)
Appellee.)

CASE NO. 2000-B-1478

(EXEMPTION)

DECISION AND ORDER

APPEARANCES:

For the Appellant

- Thomas P. Coyne, Superintendent
London City Schools
Board of Education
60 South Walnut Street
London, Ohio 43140

For the Appellee

- Betty D. Montgomery
Attorney General of Ohio
Richard C. Farrin
Assistant Attorney General
State Office Tower – 16th Floor
30 East Broad Street
Columbus, Ohio 43266-0410

ENTERED: January 12, 2001

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed by the London City Schools Board of Education (“appellant”) from a journal entry of the Tax Commissioner which denied appellant’s application for the exemption of certain real property from taxation. The Commissioner’s journal entry reads, in pertinent part:

“Applicant argues that property owned by a public school district retains its tax exempt status even though it is being leased, because the rental income is deposited into applicant’s general education fund. This theory relies on *In re Univ. of Cincinnati* (1950), 153 Ohio St. 142, and more recently, *State ex rel. Univ. of Cincinnati v. Limbach* (1990), 51 Ohio St.3d 6, wherein the Supreme Court found that university property rented to a third party is tax exempt if the proceeds from the property support the university. However, state university property and local school district property are subject to different exemption statutes. The University property was found to be exempt pursuant to R.C. 3345.17, which reads:

“All property, personal, real or mixed of the boards of trustees and of the housing commissions of the state universities, the medical college of Ohio at Toledo, the northeastern Ohio universities college of medicine, and of the state held for the use and benefit of any such institution, which is used for the support of such institution, is exempt from taxation so long as such property is used for the support of such university or college.’

“Neither R.C. 3313.44, which exempts property vested in a board of education, nor R.C. 5709.07, which exempts property used for public schoolhouses, contains the phrase ‘used for the support of such institution’ when describing exempt property. To the contrary, R.C. 5709.07 specifically excludes from exemption property that is leased or otherwise used with a view to profit.

“In *Hubbard Press v. Tracy* (1993), 67 Ohio St.3d 564, the Supreme Court held that ‘(i)t is only the use of property in charitable pursuits that qualifies for tax exemption, not the utilization of receipts or proceeds that does so.’ Although the Supreme Court was referring to charitable pursuits, the underlying purpose is the same here. Applicant may use the proceeds from the lease for educational purposes, the property is used for private farming and consequently does not qualify for real property tax exemption.

“The Tax Commissioner finds that the property described in the application is not entitled to be exempt from taxation and the application is therefore denied for the reasons set forth in the attached recommendation, which is incorporated into this entry.

“The Tax Commissioner further orders that all penalties charged for these tax years be remitted.”

The appellant’s argument is well summarized in its objection to the Recommendation of the Attorney Examiner which reads, as follows:

“Under I. Factual Background of the recommendation, it states, ‘Applicant states that the exempt use of the property, which is the subject of this application, began on January 12, 1999, but does not give a description of that exempt use or a reason for the significance of that date.’ To clarify the significance of January 12, 1999, that is the date that the property was donated to London Board of Education. Under ORC Sec. 3313.44 (copy attached) it states, ‘Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.’ Once the land was donated to the London Board of Education, it was exempt from taxation.

“Additionally, please refer to ORC Sec. 5709.07(B) (copy attached). This section states,

““This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as

such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict.’

“This section indicates that the property is tax exempt as long as the rents, profits or income of the property is used for the support of free education by such municipal corporation, district or subdistrict. The rental income from this property is being deposited into our general fund, which is exclusively used for educational purposes.

“According to the 1999-2000 Handbook of Ohio School Law, Baker and Carey, 1999, Page 566 (copy attached), ‘...Supreme Court held that property becomes exempt from taxation as soon as title vests in the board of education, and that no actual use for school purposes is required.’ Please reference case law – *Bd. of Educ. v. Board of Tax Appeals* 149 OS 564, 37 OO 272, 80 NE2d 156 (1948). It also states, ‘...the Supreme Court upheld the constitutionality of a statute which allowed an educational institution to retain its tax exemption on school property when it rented such property to third parties, so long as the profits from such rentals were used for educational purposes.’ Please reference case law – *In re Univ. of Cincinnati*, 153 OS 142, 41 OO 197, 91 NE2d 502 (1950).

“I believe after you review both cases listed above and Ohio Revised code Sec. 3313.44 & Sec. 5709.07(B), you will change your recommendation. The London Board of Education owns parcel #31-03399-002 and is tax exempt according to Ohio Revised Code Sec. 3313.44. The rental income from the property is being deposited into our general fund exclusively for educational purposes within the guidelines of ORC Sec. 5709.07(B).” (S.T. 6, 7.)

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified by the Tax Commissioner, and the evidence adduced at the hearing.

The appeal involves appellant's application for exemption of real property from taxation for tax year 1999. The record reflects that the subject property (parcel no. 31-03399-002) was acquired by appellant on December 2, 1998 and is located in the London City Schools District. It consists of 43.7 acres of vacant land which is rented as farmland. For calendar year 1999, appellant's total rentals were \$4,558. These rental proceeds were deposited into the school district's general fund for educational purposes. Appellant expects the land to be continued to be rented as farmland until a bond levy may be passed. (S.T. 12)

At the Board's evidentiary hearing, Mr. Thomas Coyne, Superintendent of the London City Schools, testified on behalf of the appellant. He stated that future plans for the land could include a new school building but there was nothing formally planned to date since funding had not yet materialized. He also mentioned several other possible educational uses for the future. He argued that it would not make sense to tax the school district on its rental income since it is used for school purposes. (R. 10-12.)

The appellant seeks exemption pursuant to R.C. 3313.44 and R.C. 5709.07(B). (S.T. 11,12.) Section 3313.44 provides:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

R.C. 5709.07 reads as pertinent to the instant appeal:

"(A) The following property shall be exempt from taxation:

"(1) Public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, *and not leased or otherwise used with a view to profit*;

“ *** *** ***

“(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district or subdistrict.”
(Emphasis added.)

The Supreme Court considered the application of R.C. 3313.44, formerly Section 4843-16, General Code, in *Board of Education of City School District of City of Cincinnati v. Board of Tax Appeals* (1948), 149 Ohio St. 564. The Board of Tax Appeals had denied the application for exemption, holding that the schoolhouse must be in existence on the property before it can be so exempted. The Court found from the record that improvements necessary for, and dedicated to the use of the property for school purposes had been undertaken prior to the tax lien date. The Court’s ruling as announced in the syllabus was as follows:

Real property, title to which is vested in and held by a board of education for school purposes and upon which funds have been expended and improvements made preparatory to the construction of school buildings thereon, may be exempted from taxation pursuant to the provisions of Section 2, Article XII of the Constitution, and of Section 4834-16, General Code, even though no schoolhouse has been constructed on such property.

It is apparent from the Court’s decision in *Cincinnati City Bd. of Education, supra*, that there had been no private use of such property. In *Division of Conservation and Natural Resources of Ohio v. Board of Tax Appeals*, (1948), 149 Ohio St. 33, the Supreme Court by its ruling announced in the syllabus, held:

“Real property owned by the state, and rented by it to a private citizen, who uses it exclusively for private purposes, is not exempt from taxation under Section 5351, General Code [now R.C. 5709.08].

The land in question was purchased by the state but leased to a person for operation of a private fish hatchery, and the Board’s denial of exemption was affirmed.

The Board has also considered the application of R.C. 3314.44 and R.C. 5709.07 to a claim for exemption where property, owned by a school board, was used by a individual as a private residence. The Board also considered the contention made in the instant appeal that rental income derived from a lease was used for a public benefit relying on language which now appears as Division (B) of R.C. 5709.07. In *Gallipolis City Schools v. Robert R. Kinney, Commissioner of Tax Equalization* (April 25, 1983) B.T.A. Case No. 81-D-377, unreported, the Board held:

“ * * * the subject property must be used exclusively for a public schoolhouse or other exclusively public school purpose before public-owned property is entitled to real property exemption. Further, in such context, mere title to property, alone, without a concomitant application of such property to a public purpose, in terms of physical use, possession and application, does not qualify for exemption on the basis the (sic) there might be an application of the rents, issues, profits, or income from a non-public use for public purposes.”

The Board also considered the constitutionality and application of R.C. 5709.07(B) [formerly Section 5349, General Code]:

“It might be argued that the rental income from the subject property, as of tax lien date, was being used and exclusively applied for the support of public education and, therefore, there was a public benefit being derived from Appellant’s ownership interests in the property. However, assuming the rental incomes are used for a

public benefit, such real property would not thereby be exempt.

“R.C. 5709.07 [formerly, G.C. Sec. 5349], reads, in part:

“* * * leaseholds, or other estates or property, real or personal, the rents, income, profits, and income of which is given to a * * * school district or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income thereof is used and exclusively applied for the support of free education by such * * * district, or subdistrict.’

“The Supreme Court, in interpreting such provision under former Section 5349, General Code, by syllabus in the case of *State, ex rel. Boss v. Hess* (1925), 113 Ohio St. 52, held:

“The provision of Section 5349, General Code, “leaseholds, or other estates of property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for the support of free education by such city, village, district or subdistrict,” is in conflict with Section 2 of Article XII of the Constitution of Ohio, in so far as it applies to property, real and personal, not used for a public schoolhouse or other exclusively public school purposes.’

“In the case *sub judice*, the subject property was not used for a public schoolhouse or other exclusively public school purpose on tax lien date; it was privately used.”

Further, in *Board of Education of the Groveport Madison Local Schools v. Joanne Limbach, Tax Commissioner of Ohio* (November 29, 1991) B.T.A. Case Nos. 89-E-39 through 42, unreported, even though there was no question that ownership of the subject property was “vested” in the school board, the Board found that it was the specific use of the property (for physical education activities and as a land laboratory in conjunction with the study of biology) “which qualifies the property for the exemption provided by section 3313.44”.

The prior decisions of this Board and the Supreme Court recognize that not only must title to a subject property be vested in a school board, but also that the property be used for school purposes. See *Board of Education of the City of Columbus School District v. Tracy* (April 23, 1993), B.T.A. Case No. 92-A-598, unreported, property used for private parking not entitled to exemption. While in the instant appeal title is vested in the school board, the record establishes that the subject property was not being used for school purposes when it was used for private farming. On the contrary, it was being used privately, in a profit-making endeavor on behalf of a private entity and the school district.

R.C. 5709.07(A)(1) clearly provides that property leased or used with a view to profit is excluded from exempt status.

Thus, based upon the prior holdings of this Board and the Supreme Court, this Board finds that the property for which exemption is sought was not used as a public schoolhouse, and such property was under a farm lease and used with a view to profit, contrary to the provisions of R.C. 5709.07(A)(1). The decision of the Tax Commissioner was supported by the evidence and in accordance with applicable law. The appellant has failed to establish any error committed by the Tax Commissioner. See *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121.

It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed. ohiosearchkeybta

1993 WL 141931 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

BOARD OF EDUCATION OF THE CITY OF COLUMBUS SCHOOL DISTRICT, APPELLANT

v.

ROGER W. TRACY, TAX COMMISSIONER OF OHIO, APPELLEE

CASE NO. 92-A-598

April 23, 1993

***1 (EXEMPTION)**

DECISION AND ORDER

APPEARANCES:

For the Appellant

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For the Appellee

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This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein on June 17, 1992 by the above-named appellant from a decision of the Tax Commissioner of the state of Ohio, dated June 8, 1992. Therein, the Tax Commissioner granted in part and denied in part appellant's application for exemption of certain real property from taxation for tax years 1990, 1991 and 1992.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to the Board by the Tax Commissioner. By letter dated January 28, 1993, appellant waived oral hearing and the filing of briefs herein and requested that the matter be decided on the record currently before the Board.

The subject property is land connected to a public middle school, specifically an athletic field and a parking lot, and is identified as parcel number 10-231-0 in Franklin County and the Columbus City School District taxing district. The Tax Commissioner found the subject exempt in tax years 1990 and 1992 and split-listed it in tax year 1991, with only the portion of the parcel

encompassing the athletic field exempted. The remainder of the parcel, which was used as a commercial parking lot, was denied exemption since it was not used for "school purposes."

Specifically herein, in the summer of 1990, the principal of the subject middle school entered into an oral agreement with Republic Parking to allow private parking on the lot. Half of the parking proceeds were kept by the school and half went to Republic for monitoring the parking lot during working hours. According to representations made by its counsel, all of the revenue generated from the parking lot was deposited into the school's student activities fund and was or will be used for school purposes. The school board neither gave its permission nor had any knowledge of such an arrangement and immediately terminated the agreement when it became aware of same in August 1991.

Appellant argues that regardless of the use to which the land was put, the entire parcel should have been granted an exemption, as it was for the tax years 1990 and 1992, since it was land owned by a school board, pursuant to the provisions of R.C. 3313.44. That section specifically provides that:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

*2 The Supreme Court considered this section previously in *Board of Education of City School District of City of Cincinnati v. Board of Tax Appeals* (1948), 149 Ohio St. 564. Therein, it held that property which is vested in a board of education for school purposes may be exempted from taxation even though no school building has been erected on said property. The Court found that "(t)he property in question was purchased by the board of education, a public entity engaged in a governmental function for the benefit of the public. Under a clear interpretation of Section 4834-16, General Code, the property became subject to exemption from taxation when title was vested in the board of education. The board was without authority or power to purchase it for any other purpose than a public use." *Cincinnati*, p. 568.

This Board has also previously considered the aforementioned statute when it held that property, owned by a school board but used by a private individual as a private residence, was not exempt from taxation. *Gallipolis City Schools v. Robert R. Kinney, Commissioner of Tax Equalization* (April 25, 1983) B.T.A. Case No. 81-D-377. Therein, this Board held that "... the subject property must be used exclusively for a public schoolhouse or other exclusively public school purpose before public-owned property is entitled to real property exemption. Further, in such context, mere title to property, alone, without a concomitant application of such property to a public purpose, in terms of physical use, possession and application, does not qualify for exemption on the basis the (sic) there might be an application of the rents, issues, profits, or income from a non-public use for public purposes."

Additionally, in *Board of Education of the Groveport Madison Local Schools v. Joanne Limbach, Tax Commissioner of Ohio* (November 29, 1991) B.T.A. Case Nos. 89-E-39 through 42, unreported, even though there was no question that ownership of the subject property was "vested" in the school board, this Board found that it was the specific use of the property (for physical education activities and as a land laboratory in conjunction with the study of biology) "which qualifies the property for the exemption provided by section 3313.44."

Manifestly, prior decisions of this Board and the Supreme Court recognize that not only must title to a subject property be vested in a school board, but also that the subject be used for school purposes. While, in the instant matter, title is vested in the school board, the record establishes that the subject property was not being used for school purposes when it was used as a parking lot. On the contrary, it was being used privately, in a profit-making endeavor by both a private entity and the school. Even if this Board were to consider the monies received by the school as being used for school purposes, there is nothing in this record to indicate what portion of the proceeds, if any, were received by the school as a result of this agreement and how the amounts were expended.

*3 Thus, based upon the prior holdings of this Board and the Supreme Court, this Board is constrained to apply a use test to the facts set forth herein and in doing so, finds that the decision of the Tax Commissioner was appropriate. The appellant has failed to establish the error committed by the Tax Commissioner. See *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121.

It is the Decision and Order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the State of Ohio, this day taken, with respect to the above matter.

Kiehner Johnson
Chairman

1993 WL 141931 (Ohio Bd.Tax.App.)

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1991 WL 280192 (Ohio Bd.Tax.App.)

Board of Tax Appeals

State of Ohio

BOARD OF EDUCATION OF THE GROVEPORT MADISON LOCAL SCHOOLS, APPELLANT

v.

JOANNE LIMBACH, TAX COMMISSIONER OF OHIO, APPELLEE

CASE NOS. 89-E-39, 89-E-40, 89-E-41, 89-E-42

November 29, 1991

***1 (EXEMPTION)**

DECISION & ORDER

APPEARANCES:

For the Appellant

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For the Appellee

Lee I. Fisher, Attorney General of Ohio
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This cause and matter came on to be considered by the Board of Tax Appeals upon four notices of appeal filed with the Board of Tax Appeals by the Board of Education of the Groveport Madison Local Schools (Appellant) from journal entries of the Tax Commissioner whereby that official denied appellant's applications for the exemption of real property from taxation. The notices of appeal and journal entries are incorporated herein by reference. The matter was submitted to the Board of Tax Appeals upon the notices of appeal, the statutory transcript certified herein by the Tax Commissioner, the evidence adduced at the hearings conducted herein, and the briefs filed by counsel for the parties. At the hearing conducted herein on September 25, 1990,¹ the hearing examiner granted appellant's motion to consolidate the four appeals.

The appeals involve applications for the exemption of real property from taxation for tax year 1984, and the remission of penalties for tax year 1983. The parcels are located in the Madison Township taxing district of Franklin County and are identified on the auditor's records as parcels 180-1113(0), 180-1114(8), 180-1115(5), and 180-116(4).

The hearing examiner for the Tax Commissioner described parcel 180-116(4) as a thirty-five acre tract which was purchased in June, 1974 for possible future use as a school when student enrollment should necessitate such construction.² The land has remained vacant. The hearing examiner described parcels 180-1113, 180-1114, and 180-1115 as property being held for possible future development as school administrative offices. The examiner recommended denial because the appellant did not have the plans nor the funding available to develop these parcels. The Tax Commissioner denied exemption for these parcels. The Tax Commissioner granted exemption under R.C. section 3313.44 for parcel 180-1112(2). A school building is located on this parcel. (Exhibit H)

The appellant has requested exemption pursuant to R.C. sections 3313.44 and 5709.07. Section 3313.44 provides:

“Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.”

Section 5709.07 provides in pertinent part:

“Public schoolhouses ..., and the ground attached to such buildings necessary for the proper occupancy, use, and enjoyment thereof, ..., and all lands connected with public institutions of learning, ..., shall be exempt from taxation.”

*2 At the September 25, 1990 hearing the sole witness was Charles Barr, Superintendent of the Groveport Madison local schools. He testified that parcels 180-1113(0), 180-1114(8), and 180-1115 contain two schools, Sedalia Elementary School, and Groveport Madison Middle School North. (R 1. p. 8) He indicated that parcel 180-116(4) is the site of the schools' land lab which is used by the advanced placement sociology and biology classes.

The actual location of the school buildings proved to be inaccurate. As a result a second hearing was convened January 2, 1991.³ The Tax Commissioner submitted the testimony of Wallace E. Burkey, Supervisor of the Commercial and Agricultural Appraisal section of the Department of Taxation's division of Tax Equalization.

He identified the property record cards for the subject property. (Exhibits H, I, J, K, L, M, N, O, P, Q) (R 2, pp. 20, 22, 23, 24)

The cards show that the building is actually located on parcel 180-1112.⁴ This parcel had previously been granted exemption and is not the subject of the within proceeding. (Exhibits H, M) Parcels 180-1113(0),⁵ 180-1114(8)⁶, 180-1115(5)⁷, and 180-116(4)⁸ are in fact vacant land.

Mr. Barr's testimony regarding the use of the land did prove to be probative and competent. Exhibits 1, 2, 3, and 4, contain twelve photographs which show school children using parcels 180-1113(0), 180-1114(8), and 180-1115(5) for physical education activities. The parcels have been well maintained for this purpose. This use is consistent with a grant of exempt status pursuant to sections 5709.07 and 3313.44.

Parcel 180-116(4) has been kept in its natural state and is being used by biology classes as a land laboratory. This is also a use which is consistent with a grant of exemption pursuant to sections 5709.07 and 3313.44.

The Tax Commissioner apparently relied upon the recommendation of her hearing examiner. As previously stated, the examiner determined that the appellant purchased parcel 180-116(4) in June of 1974 for possible future use as an additional school. The examiner also determined that parcels 180-1113(0), 180-1114(8), and 180-1115(5) were being held for possible future development as school administrative offices. The examiner decided that because plans were not in place to further these purposes and funds were not available, the appellant could not satisfy a prospective use test. This is in fact incorrect.

In *County Commrs. v. Supanick* (1972), 32 Ohio St.2d 45, the county commissioners acquired property for the construction of a county hospital. Two bond issues for hospital construction were subsequently defeated by the electorate. The land remained vacant but continued to be held for hospital purposes. In granting the exemption the Court held:

“Where a board of county commissioners acquires real property with the ultimate purpose of devoting it to a specified use which would exempt it from taxation, such property is entitled to be exempted from taxation until such time as the ultimate purpose has been abandoned, or efforts to realize the ultimate purpose have ceased, or the property has been put to a non-public use, even though physical use of the property for the intended exempt purpose has not yet begun.”

*3 Although the appellant may have abandoned the plans intended for the property when it was acquired, the property was never put to a non-exempt use. The ultimate purpose for which the property is being used is one which qualifies for exemption. The property became vested in the appellant pursuant to section 3313.44 when it was acquired. It was used for school purposes prior to tax lien date which qualifies the property for the exemption provided by section 3313.44. *Board of Education of City School District of Cincinnati v. Board of Tax Appeals* (1948), 149 Ohio St. 564. Appellant continues to use the property for school purposes.

The Board therefore finds and determines the property is entitled to an exemption from real property taxation. The journal entries of the Tax Commissioner are hereby reversed.

I hereby certify the foregoing to be a true and correct copy of the action of the Board of Tax Appeals of the State of Ohio, this day taken, with respect to the above matter.

Kiehner Johnson
Chairman

Footnotes

- 1 References to the September 25, 1990 hearing record are prefaced by the designation “R. 1”
- 2 November 8, 1988 recommendation of the hearing examiner
- 3 References to the January 2, 1991 hearing record are prefaced by the designation “R. 2”
- 4 See Exhibits E, H, M
- 5 See, Exhibits D, E, F, I, N
- 6 See Exhibits D, E, F, J, O
- 7 See Exhibits D, E, F, K, P
- 8 See Exhibits G, L, Q

1991 WL 280192 (Ohio Bd.Tax.App.)

1983 Ohio Tax LEXIS 495

State of Ohio -- Board of Tax Appeals

April 25, 1983; April 25, 1983

CASE NO. 81-D-377 (REAL PROPERTY TAX)

Reporter

1983 Ohio Tax LEXIS 495

Gallipolis City Schools, Appellant, vs. Robert R. Kinney, Commissioner of Tax Equalization, Appellee.

Core Terms

exempt, board of education, school district, real property, vest, subject property, public purpose, tax lien, school house, tax year, rental, rend

Counsel

For Appellant - Douglas M. Cowles, Esq., **Gallipolis** City Solicitor, 26 Locust Street, **Gallipolis**, Ohio 45631

For Appellee - Anthony J. Celebrezze, Jr., Esq., Attorney General of Ohio, Richard C. Farrin, Esq., Assistant Attorney General, State Office Tower - 15th Floor, 30 East Broad Street, Columbus, Ohio 43215

Opinion

DECISION AND ORDER

An appeal, pursuant to R.C. 5717.02, from a final determination of Robert R. Kinney, Commissioner of Tax Equalization.

On July 6, 1981, a "NOTICE OF APPEAL" was docketed on behalf of the **Gallipolis** City Schools, the body of which reads:

"The **Gallipolis** City Schools hereby gives notice of its appeal from the decision of the Commissioner of Tax Equalization, Department of Tax Equalization, State of Ohio, rendered June 10, 1981, in case number LE524, a true copy of said order being attached hereto and incorporated as if fully rewritten herein, and marked 'Exhibit A', whereby the Commission denied a real estate property tax exemption for certain real property, designated as Parcel No. 007-076-009-00, **Gallipolis** City Taxing District, Gallia County, Ohio, for the tax year 1981.

"The basis of this appeal is that the Commission's finding that the property is [*2] question was not "vested in" the **Gallipolis** City Schools on January 1, 1981, is contrary to law.

"Section 3313.44, Ohio Revised Code, states: 'Real or personal property vested in any board of education shall be exempt from taxation . . .' [Emphasis supplied].

"Prior to January 1, 1981, the *Gallipolis* City Schools received a Warranty Deed to the real property in question. The Ohio law is, and has been, that upon delivery of a correctly executed Warranty Deed, fee simple title to the property is vested in the new owner. The contrary position taken by the Commission is contrary to existing Ohio law."

By letter, dated October 17, 1981, from William N. Eachus, Esq., (then counsel for the Appellant), advised this Board that the parties agreed that there was no dispute as to the facts and that the determination of the matter rests on a question of law and that counsel for the respective parties waived their right to an additional evidence hearing, as authorized by R.C. 5717.02. Briefs were subsequently authorized and filed by the respective parties.

Appellant's brief filed with this Board states, in pertinent part:

"I. STATEMENT OF FACTS:

"The facts in this case are [*3] not contested. At the time the School District purchased the property in November, 1980, said property consisted of a 30' X 75' lot on which was constructed a one and one-half story house and shed. The School District acquired the property in November, 1980, having received a duly executed deed that was promptly recorded, with the intent of razing the structures and using the real estate as a parking lot. At the time of the purchase, the School Board intended to raze the structures as soon as the private individual who was residing in the premises and paying a monthly rental charge of \$75.00 per month could be moved. The property was not vacated until January 12, 1981.

"Subsequent to the property being vacated, the School District removed the structures from the property and is now using the same as a parking lot. "

The final determination of the Commissioner of Tax Equalization, rendered by "journal Entry," dated June 10, 1981, a copy of which was attached as "Exhibit A" to the Appellant's notice of appeal and a copy of which was included as part of the certified transcript, as prescribed by R.C. 5717.02, duly filed with this Board on July 22, 1981, states, in part:

"This matter [*4] came before the Commissioner of Tax Equalization upon the filing of an application for real property tax exemption by the *Gallipolis* City School District.

"The property in question consists of a one and one-half story house and a shed located on a lot that is 30 by 75 feet in size. The School District acquired the property in November, 1980, and intends to use the property for a parking lot after the buildings have been removed.

"However, from the time of acquisition until January 12, 1981, the property in question was occupied by a private individual for private residential purposes at a rental charge of \$75 per month.

"Section 3313.44 of the Revised Code provides real property tax exemption for 'real . . . property vested in any board of education. '

"The house and lot in question were not, on tax lien day of tax year 1981, the year for which exemption is requested, 'vested in' the applicant board of education. The property was vested in a private person who used the property for private purposes. As such the property may not be exempted from taxation for tax year 1981.

"It is the finding of the Commissioner that the property in question is not entitled to real property tax [*5] exemption and the application for exemption for tax year 1981 is hereby denied."

It is at least evident that the objective facts are not in dispute, although the legal effect of such facts is.

R.C. 3313.44 [formerly, G.C. § 4834-16], cited by the Appellant in support of its claim for exemption, states:

"Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution."

The meaning and import of R.C. 3313.44, being of the same wording as under former Section 4834-16, of the General Code, was delared in Board of Education of City School District of City of Cincinnati, v. Board of Tax Appeals (1948), 149 Ohio St. 564. The issue in that case was clearly stated by Justice Hert, as well as the positions taken by the respective parties (at page 566):

"The sole issue is whether real property, title to which is vested in and held by a board of education for school purposes and upon which funds have been expended and improvements made preparatory to the construction of a school building thereon, may be exempted from taxation pursuant to the provisions of Section [*6] 2, Article XII of the Constitution, and of Section 4834-16, General Code, even though no schoolhouse has been constructed on such property, or whether such real property must remain taxable until a schoolhouse is actually erected thereon.

"The board of education takes the position that, pursuant to the provision of Section 4834-16, General Code, real property purchased by the board for public-school purposes constitutes public property and as such is eligible for exemption from taxation as and when it is wholly devoted to public use, and that this occurs as soon as the board begins to develop the property for school purposes and all other use of the property has come to an end.

"On the other hand, the Board of Tax Appeals takes the position that, under Section 2, Article XII of the Constitution, even though property is owned by a board of education for public-school purposes it may not be exempted from taxation until such time as a schoolhouse actually exists upon the property."

(underlining emphasis added)

As to the facts in that case, it states (at page 567):

"This court concludes from the record that improvements on the property necessary for its use for school purposes [*7] were begun before April 13, 1947, tax lien day; that such improvements were necessary and proper in the dedication to and in the use of the property for school purposes; that in the acquisition and improvement of this property it became public property used exclusively for a public

purpose; and that it was from that time forward devoted to no other use.

"* * *

"This property not only became public property, but was used exclusively for a public purpose and was exemptible from taxation under the express provisions of the Constitution and statutes. * * *"

(underlining emphasis added)

It is evident, under the facts of that case, that the subject property was both owned by the board of education and that it was being, on tax lien day, used exclusively for a public purpose, i.e., for the construction of a public-school.

In the case, sub judice, however, the subject property was not being used by the board of education on January 1, 1981, tax lien day, for any public purpose; it was being used by a private individual as a private residence to the exclusion of any use by the board of education, apparently under a rental arrangement with such tenant who had [*8] a superior right of possession and use until January 12, 1981, at which point in time, the intervening exclusive right to the possession and use of the subject property terminated.

It might be argued that the rental income from the subject property, as of tax lien date, was being used and exclusively applied for the support of public education and, therefore, there was a public benefit being derived from Appellant's ownership interests in the property. However, assuming the rental income are used for a public benefit, such real property would not thereby be exempt.

R.C. 5709.07 [formerly, G.C. § 5349], reads, in part:

"* * * leaseholds, or other estates or property, real or personal, the rents, income, profits, and income of which is given to a * * * school district or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income thereof is used and exclusively applied for the support of free education by such * * * district, or subdistrict. "

The Supreme Court, in interpreting such provision under former Section [*9] 5349, General Code, by syllabus in the case of *State, ex rel. Boss v. Hess (1925), 113 Ohio St. 52*, held:

"The provision of Section 5349, General Code, 'leaseholds, or other estates of property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for support of free education by such city, village, district or subdistrict, ' is in conflict with Section 2 of Article XII of the Constitution of Ohio, in so far as it applies to property, real and personal, not used for a public schoolhouse or other exclusively public school purposes."

(underlining emphasis added)

In the case sub judice, the subject property was not used for a public schoolhouse or other exclusively public school purpose on tax lien date; it was privately used.

As the Supreme Court held, the subject property must be used exclusively for a public schoolhouse or other exclusively [*10] public school purpose before public-owned property is entitled to real property exemption. Further, in such context, mere title to property, alone, without a concomitant application of such property to a public purpose, in terms of physical use, possession and application, does not qualify for exemption on the basis there might be an application of the rents, issues, profits, or income from a non-public use for public purposes.

The Board of Tax Appeals finds and determines, based upon the facts presented and as a matter of law, that the subject real property did not qualify for real property tax exemption for the tax year 1981, as the Commissioner of Tax Equalization so determined.

IT IS ORDERED that the action of the Commissioner of Tax Equalization, rendered by Journal Entry, dated June 10, 1981, be, and hereby is, affirmed.

IT IS FURTHER ORDERED that a certified copy of this decision and order be sent to each of the parties hereto by and through their respective counsel.

88 N.E.2d 808
Court of Appeals of Ohio, Eighth
District, Cuyahoga County.

STATE ex rel. BACIAK
v.
BOARD OF EDUCATION OF
CLEVELAND CITY SCHOOL DIST. et al.

July 18, 1949.

Action by the State of Ohio on the relation of Walter Baciak against the Board of Education of the Cleveland City School District, and others, to determine the legality of a lease executed by the Board of Education and the County Child Welfare Board.

The Court of Common Pleas rendered judgment in favor of the defendants on the petition and opening statements of the plaintiff and the plaintiff appealed.

The Court of Appeals, McNamee, J., held that it is incumbent on the Board of Education while holding title to the property to preserve its availability for school purposes where a present or probable future need therefor exists or is likely to arise and remanded the cause to Common Pleas Court with instructions to overrule the motion and for further proceedings according to law.

West Headnotes (6)

[1] **Appeal and Error**

↔ Dismissal, Nonsuit, Demurrer to Evidence, or Direction of Verdict

On appeal on questions of law from a judgment of the court of common pleas rendered in favor of defendants on petition and opening statement of plaintiff, court is confined to a consideration of the facts as stated by the plaintiff, which must be accepted as true.

Cases that cite this headnote

[2] **Education**

↔ Construction of grant; reversion to grantor

A board of education holds title to property of a school district in trust for school purposes.

Cases that cite this headnote

[3] **Education**

↔ Construction of grant; reversion to grantor

It is incumbent on board of education, while holding title to school property, to preserve its availability for school purposes where a present or probable future need therefore exists or is likely to arise. Gen.Code, §§ 4834, 4839 to 4839-3.

Cases that cite this headnote

[4] **Education**

↔ Sale or lease

Where a board of education leases a wing of a school building to another public agency for an extended and definite term, and authorizes the lessee to make structural changes in the leased portion of the building at lessee's expense, board cannot on such facts alone, successfully maintain that it has acted within the scope of its statutory authority. Gen.Code, §§ 4834, 4839 to 4839-3.

Cases that cite this headnote

[5] **Trial**

↔ Scope and effect of opening statement

In ruling on a motion to direct a verdict for the defendant on the opening statement of the plaintiff's counsel, the trial court must interpret the statement most favorably to the plaintiff and must assume the truthfulness of the facts stated therein and must give a reasonable and liberal construction to the statement so that it may be allowed to stand.

Cases that cite this headnote

[6] **Trial**

↔ Scope and effect of opening statement

Where taxpayer's petition and opening statement disclosed that board of education leased a portion of a school building for five years for purposes other than those specified by statute, and gave

lessee right to make structural alterations and remodel such portion of building to render it suitable to receiving home for children, rendition of judgment for defendants on petition and opening statements was improper.

Cases that cite this headnote

Attorneys and Law Firms

***808** Frank J. Kmiecek, C. P. Mauk, Horwitz, Kiefer & Harmel, George P. Baer, Cleveland, for plaintiff appellant.

Lee C. Howley, Director of Law, Chas. W. White, Asst., Frank T. Cullitan, County Prosecutor, Ralph W. Edwards, Asst., Saul S. Danaceau, Asst., Victor M. Todia, Cleveland, for defendant appellee.

Opinion

McNAMEE, Judge.

The parties will be referred to as they appeared in the trial court.

This is an appeal on questions of law from a judgment of the Court of Common Pleas rendered in favor of the defendants, upon the petition and opening statement of the plaintiff. Counsel for all parties made opening statements in the trial court and it was not until the plaintiff's first witness was called that the defendants made their motions for judgment upon the plaintiff's petition and opening statement.

***809 [1]** The Bill of Exceptions contains all of the opening statements but under the well settled principles that govern, this court is confined to a consideration of the facts as stated by the plaintiff, which in the present posture of the case must be accepted as true.

These facts are: That plaintiff as a taxpayer brings this action on behalf of himself and other taxpayers of the school district; that he made the necessary request upon the law director and county prosecutor to institute the suit; that the board of education of the city of Cleveland executed a lease for the north wing of Tremont Public School to the County Child Welfare Board for use as a receiving home for neglected and dependant children for a term of five years with an option to the lessee to renew the lease for an additional five years. Pursuant to a contract between the parties, the lessee

is granted the right to alter and remodel the north wing of the school to render it suitable for use as a receiving home for children. The cost of this work estimated at between \$130,000.00 and \$150,000.00 is to be borne entirely by Cuyahoga County.

At the time this suit was instituted, the work of remodeling the north wing was in progress.

The gist of plaintiff's claim is that the contract and lease are illegal for the reason that the Board of Education exceeded its authority in permitting a public agency to occupy a school building for purposes other than those specified in Section 4839, G. C. Section 4839-1, Section 4839-2, Section 4839-3, G. C. No question was raised as to the authority of either of the other defendants to enter into the lease and contract.

The trial court held:

'* * * the court finds that the defendants and each of them have acted in the premises within their respective lawful authority; and that the well-pleaded allegations of the petition and the facts shown by the opening statement on behalf of the plaintiff are insufficient to constitute a cause of action against the defendants or any of them, whereby the several motions of the defendants should be well taken.'

The parties are not in agreement as to the precise question of law involved in this appeal. The defendant Board of Education poses the question as follows:

'* * * that a school board is without authority to lease a portion of a school building for use as a receiving home for dependent children or otherwise, and notwithstanding the same may not now or in the foreseeable future be needed for school purposes.'

But there is nothing in the record that indicates that the leased portion of the school will not be needed for school purposes in the foreseeable future or within the period of the lease.

Plaintiff states the issue to be whether a Board of Education may, lease a portion of a school building for uses other than school purposes, considering 'that the premises so leased will not thereafter be available for any school purposes.' Plaintiff's interpretation of the stated facts is a reasonable one. It is fairly to be inferred that the adaptation of the north wing of the school to the purposes and needs of a receiving home for neglected and dependent children will seriously impair, if not entirely destroy, its availability thereafter for school purposes.

Expensive alterations are contemplated as evidenced by the substantial sum of money to be expended by the County for such purposes and in view of the cost entailed it may be assumed that the Child Welfare Board proposes to occupy the premises for the full term of the lease.

The record is silent as to what provision, if any, has been made that will insure the reconversion of the leased premises to school purposes, free of expense to the Board of Education, in the event the need therefor arises at or before the expiration of the lease.

[2] A Board of Education holds title to property of a school district in trust for school purposes. *Weir v. Day*, 35 Ohio St. 143.

‘The board of education of the state hold the property intrusted to their custody only as a public agency of the state. Although *810 the title to school grounds and other school property is, by the express terms of the statute, vested in the board of education, it is not the private property of the board; it is authorized to hold it for the state for the promotion and advancement of the education of the youth of the commonwealth, and its control is limited according to the will of the sovereign power.’ 36 Ohio Juris. Sec. 166, page 198. *Board of Education of Cincinnati v. Volk*, 72 Ohio St. 469, 74 N.E. 646.

The general grant of powers to a Board of Education is contained in Section 4834, G.C. which reads as follows:

‘The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property and of exercising such other powers and privileges as are conferred upon it by law.’

A legislative policy to permit the use of school houses for other purposes at times and under circumstances that protect against interference with their primary use for school purposes, is evidenced by Sections 4839, 4839-1, 4839-2, and 4839-3, General Code.

[3] Defendant, Board of Education, asserts that it possesses ample authority deriving from Sections 4834 and Section 4839, G.C. et seq., to enter into the transaction here drawn into question. For reasons presently stated, the issues raised by

these claims cannot be determined in this appeal. Consistent with its fiduciary duties as the owner of school property, it is incumbent upon the Board of Education, while holding title to the property, to preserve its availability for school purposes where a present or probable future need therefor exists or is likely to arise.

[4] Where a Board of Education leases a wing of a school building to another public agency for an extended and definite term, and authorizes the lessee to make structural changes in the leased portion of the building at the lessee's expense, it cannot on these facts alone, successfully maintain that it has acted within the scope of its statutory authority. Whether additional facts showing that without cost to the Board adequate provision has been made for the reconversion of the property and its re-adaptation for school purposes if and when the need therefor arises, would bring the case within the statutory authority of the Board, is a question upon which we express no opinion. All that we decide on this appeal is whether the trial court erred in rendering judgment for the defendants upon the petition and opening statement of plaintiff and in holding upon the facts therein stated that the Board of Education acted within its authority.

‘It is generally agreed that the court should exercise great caution in directing a verdict on the opening statement of counsel, and the granting of such a motion will be upheld only where it is clear that all the facts expected to be proved and that have been stated do not constitute a cause of action; otherwise the trial court's action may be reversed by the reviewing court.’

[5] The following statement also appears at pages 885 and 886 of the text: in 39 Ohio Jurisprudence: ‘In ruling on a motion to direct a verdict for the defendant on the opening statement of the plaintiff's counsel, the trial court must interpret the statement most favorably to the plaintiff, or, in the language of some cases, must give it the most liberal construction possible in favor of the plaintiff. The truthfulness of the facts stated therein is to be assumed and a reasonable and liberal construction is to be given the statement so that it may be allowed to stand, in order that the well-known principle that every litigant should have his day in court may be vindicated.’ Nothing should be taken against the party making the statement. *Tyler v. Vistula Realty Co.*, 31 Ohio App. 1, 166 N.E. 240.

[6] The foregoing rules operate with no less force in an action by a taxpayer seeking injunctive relief than in an ordinary action at law. Their application here *811 compels

the conclusion that defendants' motion for judgment upon the petition and opening statement of plaintiff ought to have been overruled.

upon the petition and opening statement of plaintiff and for further proceedings according to law. Exceptions.

SKEEL, P. J., and HURD, J., concur.

Accordingly this cause is remanded to common pleas court with instructions to overrule defendants' motion for judgment

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1975 WL 180420

Only the Westlaw citation is currently available.

CHECK OHIO SUPREME COURT RULES
FOR REPORTING OF OPINIONS AND
WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Seventh
District, Mahoning County.

BOARD OF EDUCATION OF THE
CANFIELD LOCAL SCHOOL
DISTRICT, PLAINTIFF-APPELLEE,

v.

STEPHEN R. OLENICK, IN HIS
OFFICIAL CAPACITY AS MAHONING
COUNTY AUDITOR, DEFENDANT
BOARD OF EDUCATION OF THE
MAHONING COUNTY JOINT VOCATIONAL
SCHOOL DISTRICT, DEFENDANT
BOARD OF TAX APPEALS, OHIO DEPARTMENT
OF EDUCATION, DEFENDANTS-APPELLANTS.

Case No. 75 C. A. 3. | April 7, 1975.

Attorneys and Law Firms

Nicholas A. Pittner, Columbus, Ohio, for Plaintiff-Appellee.

John Kicz, Assistant Prosecuting Attorney, for Defendants.

Mary Ann Gall and Ronald Noga, Assistants Attorney
General, Columbus, Ohio, for Defendant-Appellant, Board of
Tax Appeals.

Carl F. Noll, Assistant Attorney General, Columbus, Ohio,
for Defendant-Appellant, Ohio Department of Education.

Before Hon. John J. Lynch, Hon. Joseph E. O'Neill, Hon.
Joseph Donofrio, JJ.

OPINION.

LYNCH, P. J.

TOPIC INDEX.

*1 Taxation - Exemption - Real property held for school purposes - School building - Board of Tax Appeals - R. C. 5713.08 - Education - Foundation program - Certification of tax duplicate of each school district by Board of Tax Appeals - R. C. 3312.10 (A) - Administrative law - Agency speaking through its order - Records - Correcting to conform to truth - Nunc pro tunc correction entitled to same respect as original record.

SYLLABUS.

1. As a court speaks through a journal entry an administrative agency speaks through its orders.
2. The Board of Tax Appeals has the authority to exempt an uncompleted planned school building whose dimensions, type of building and location on the school property are furnished on the application for exemption and plans have so progressed that groundbreaking occurred before the approval of such application.

The question in this case is whether defendant, Board of Tax Appeals, erred in including the value of the building of the Mahoning County Joint Vocational School District amounting to \$2,746,090.00 in the tax duplicate of the Canfield Local School District for the 1973 tax year when it certified the tax duplicate of such school district to the defendant, Ohio Department of Education, pursuant to R. C. 3317.10. Plaintiff raised this question by filing a complaint for declaratory judgment and injunctive relief.

The trial court sustained the motion for summary judgment of the plaintiff, Board of Education of the Canfield Local School District, and ordered defendant, Board of Tax Appeals, to correct its records by subtracting such sum and to certify the sum of \$41,853,034.00 for the Canfield Local School District to defendant, Ohio Department of Education, who was ordered to compute and to cause payment of school foundation payments to the Canfield Local School District for the fiscal year from July 1, 1974, through June 30, 1975, based upon the sum of \$41,853,034.00.

Both the Board of Tax Appeals and the Ohio Department of Education are appealing the decision of the trial court.

On November 23, 1970, the Mahoning County Joint Vocational School District filed with the Board of Tax Appeals an application for exemption of 158.05 acres of land

located in the Canfield Village Taxing District, which was acquired on June 5, 1969, for the purpose of constructing a Joint Vocational School, which would be thirty feet wide by sixty feet long pole building with metal sides. It was noted that sewer and water lines had been constructed on the site, and that building construction was about to begin. A sketch of the land was attached on which the site of the building was indicated with an "x". The application was signed November 13, 1970.

On December 4, 1970, the Board of Tax Appeals granted this application and consented to the exemption for the requested 158.05 acres pursuant to R. C. 3313.44.

*2 No taxes have been collected from the Mahoning Joint Vocational School District property since December 4, 1970.

In 1973 the Mahoning County Auditor assessed the building of the Mahoning County Joint Vocational School District at \$2,746,090.00, which was included as taxable real property on the Auditor's tax list and duplicate and was certified to the Board of Tax Appeals. This increased the aggregate value of taxable real and personal property of the Canfield Local School District to \$44,599,124.00, which represents an increase of over 6.5% in such valuation if the \$2,746,090.00 value of the Mahoning County Joint Vocational School District was excluded.

On April 15, 1974, the Mahoning County Joint Vocational School District filed with the Board of Tax Appeals applications for exemption of the building, which was listed on the tax duplicate with a value of \$2,746,090.00, and for a remission of taxes for the 1973 tax year. The building was described as a thirty foot wide by sixty foot long pole building with metal sides, which is the identical description in the November 23, 1970, application. However, the following details were added: "204,000 sq. ft. masonry, reinforced concrete on steel frame building - primarily one story with one-sixth of area two stories."

On April 24, 1974, the Board of Tax Appeals granted these applications and consented to the exemption of the requested building pursuant to R. C. 3313.44 and to the remission of taxes for the 1973 tax year because such building was being used for a tax exempt purpose.

In the affidavit of Robert P. Shreve, formerly the superintendent of the Mahoning County Vocational School District and presently Superintendent of Schools for

Mahoning County, which was filed with plaintiff's motion for summary judgment, it was stated that at the time of the November 23, 1970, application for tax exemption of the subject property, all construction drawings were completed and preparations were under way for the immediate construction of a school building on the property; that water and sewer lines had been extended to the site and other building plans were under way; that groundbreaking was in November, 1970; that the application filed with the Board of Tax Appeals fully disclosed the status and purpose of the construction; that at all times Mr. Shreve believed that the exemption granted by the Board of Tax Appeals on December 4, 1970, was and continued to be an exemption of all property and improvements of the Mahoning County Joint Vocational School District; that no real property taxes have been paid by the Mahoning County Joint Vocational District nor has the property been used for any purpose other than school purposes since its acquisition in 1969, and that the second application of the Mahoning County Joint Vocational School District was filed April 15, 1974, because it was advised by employees of the Board of Tax Appeals that such application was necessary to correct the erroneous listing of the value of the school building as "taxable" property instead of "exempt" property.

In the affidavit of James Watkins, superintendent of the Canfield Local School District, which was filed with plaintiff's motion for summary judgment, it was stated that the Canfield Local School District will receive during the 1975 fiscal year approximately \$70,000.00 less than it would receive if the school foundation payments were calculated by excluding the \$2,746,090.00 valuation for the Mahoning County Joint Vocational School District from the tax duplicate of such school district.

*3 Plaintiff's position is that defendant, Mahoning County Auditor, erroneously included the value of the Mahoning County Joint Vocational School District building amounting to \$2,746,090.00 as taxable real property on the Auditor's tax list and duplicate which was certified to the Board of Tax Appeals when such property should have been included on the Auditor's list of exempt property. When plaintiff became aware of this after December 31, 1973, it advised the Mahoning County Auditor, the Board of Tax Appeals, and the Ohio Department of Education.

The Mahoning County Auditor voluntarily changed his records to show that this property is exempt property and has urged the Board of Tax Appeals and the Ohio Department of

Education to do likewise. However, the position of the Board of Tax Appeals is that it has no authority to change its records to show that this property is exempt. The position of the Ohio Department of Education is that it has no authority to change the figures for tax duplicates of any school district that is submitted by the Board of Tax Appeals.

Both defendant, Board of Tax Appeals, and defendant, Ohio Department of Education, filed motions to dismiss the complaint for the reason that the complaint failed to state a cause upon which relief could be granted. The trial court overruled both of these motions.

Defendant, Board of Tax Appeals, filed a motion for summary judgment, which was overruled by the trial court.

The motion of plaintiff for summary judgment was sustained by the trial court.

The assignments of error of defendant, Board of Tax Appeals are as follows:

"1. The common pleas court erred in overruling the motion to dismiss the defendant-appellant Board of Tax Appeals.

"2. The common pleas court erred in overruling the motion for summary judgment of defendant-appellant Board of Tax Appeals.

"3. The common pleas court erred in unconditionally ordering the defendant-appellant Board of Tax Appeals to correct its real property tax records to show that the aggregate value of taxable property in the Canfield Local School District as of December 31, 1973, was \$41,853,034.00 and to certify that value to the Department of Education."

Since all these assignments of error are discussed together in its brief, we will follow the same procedure.

We hold that the building of the Mahoning County Joint Vocational District was being used for a tax exempt purpose for the 1973 tax year which is at issue in this case. R. C. Sections 3313.44, 5709.07, and 5713.07 clearly exempt this property. Defendant, Board of Tax Appeals, found this to be a fact in its April 24, 1974, journal entry in remitting taxes for the 1973 tax year and admitted this fact in its answer.

The pertinent part of R. C. 3317.10 is as follows:

*4 "(A) On or before the first day of July of each year, the department of taxation shall certify to the state board of education the amount of the tax duplicate of each school district of the state for the calendar year ending on the thirty-first day of December immediately preceding. The amounts so certified shall be used in the calculation of the distribution of moneys provided in section 3317.02 of the Revised Code, * * *."

The pertinent part of R. C. 5713.08 is as follows:

"The county auditor shall make a list of all real . . . property in his county, . . . which is exempted from taxation under sections . . . 3313.44, . . ., and 5709.07 to 5709.18, inclusive, of the Revised Code. . . . No additions shall be made to such exempt lists nor additional items of property exempted under such sections without the consent of the board of tax appeals * * *."

Thus, defendant, Board of Tax Appeals, has the statutory authority to declare, administratively, what property eligible for exemption is exempt from taxation.

The question in this case is whether defendant, Board of Tax Appeals, included the building of the Mahoning County Joint Vocational District in its December 4, 1970, journal entry. Defendant, Board of Tax Appeals contends that the building did not exist on December 4, 1970; that land and buildings are divisible for purposes of real property taxation; that its December 4, 1970, journal entry only granted exemption for the land and that a separate application was necessary to obtain tax exemption for the building.

As a court speaks through a journal entry, an administrative agency speaks through its orders. *Hurless v. Mead Corp.*, 29 Ohio App.2d 264 at page 269, 281 N.E.2d 38; 1 O Jur 2d, Administrative Law and Procedure, Section 128, Page 514.

In the instant case both the December 4, 1970, and April 24, 1974, orders of the Board of Tax Appeals which exempted property of the Mahoning County Joint Vocational School District from taxation are on printed forms with the heading

"Journal Entry on Application for Exemption from Taxation". There are blank spaces for dates, the names of the applicant, and the taxing district, the purpose of the property, the Revised Code Section number under which the tax exemption is granted, and a relatively wide space for a description of the property. The printed part finds that the "described property" belongs to the applicant and is legally exempt from taxation.

In both the December 4, 1970, and April 24, 1974, journal entries the property is described as Canfield Out Lots 72, 23 and 24 which total 158.05 acres with a notation of "School" on such description. The only difference in the description of the property worthy of comment is that the December 4, 1970, journal entry has a notation "See Map Application", which does not appear on the April 24, 1970, journal entry. An examination of the map included in the November 23, 1970, application reveals that such map shows the location of the building with the following notation: "X Bldg."

We find from the November 23, 1970, application of the Mahoning County Joint Vocational School District and the affidavit of Robert B. Shreve that the purpose of such application was to request tax exemption for both the land and the planned school building for which groundbreaking had taken place by the time of the December 4, 1970, journal entry.

*5 We further find that defendant, Board of Tax Appeals, in its December 4, 1970, journal entry perfunctorily consented to the exemption prayed for in the November 23, 1970, application and did not limit such exemption to the land as it now contends with self-righteous indignation. Thus, this journal entry supports Dr. Shreve's belief that such journal entry exempted the building improvement on the land of the Mahoning County Joint Vocational School District.

R. C. 4701.02 provides that "real property" as used in R. C. Chapter 57 includes the land itself and all "buildings, structures, improvements and fixtures of whatever kind on the land".

Inferentially, defendant, Board of Tax Appeals, has raised the legal question of whether it had the legal authority to prospectively grant exemption to a school building that was not completed when it consented to an application to exempt the property on which such building was planned and where groundbreaking had already taken place. However, no authority has been cited that would prohibit the Board of Tax Appeals from doing so, and this court is unaware of any.

R. C. Section 5713.08 provides that the county auditor shall not add any additional items of property without the consent of the Board of Tax Appeals. However, in the instant case, we find that the Board of Tax Appeals had given consent to the tax exemption of the building at issue in its December 4, 1970, journal entry. The only question is whether it had the legal authority to grant such consent.

In Board of Education of City School District of City of Cincinnati v. Board of Tax Appeals, 149 Ohio St. 564, 80 N.E.2d 156, the court on page 568 said as follows:

"In the opinion of this court, a distinction must be made in the exemption of private property which is ultimately used for a charitable purpose and property purchased by public authorities for a public purpose and being prepared to serve the public use. The property in question was purchased by the board of education, a public entity engaged in a governmental function for the benefit of the public. Under a clear interpretation of Section 4834-16, General Code, the property became subject to exemption from taxation when title vested in the board of education. The board was without authority or power to purchase it for any other purpose than a public use. Section 4834, General Code."

In Dennison University v. Board of Tax Appeals, 2 Ohio St.2d 17, 205 N.E.2d 896, the court on page 28 said as follows:

"It would be unreasonable to tax facilities for public education that tax dollars have provided."

We hold that the Board of Tax Appeals has the authority to exempt an uncompleted planned school building whose dimensions, type of building and location on the school property are furnished on the application for exemption and plans have so progressed that groundbreaking occurred before the approval of such application.

*6 R. C. 319.35 provides, in part, as follows:

“From time to time the county auditor shall correct all clerical errors which he discovers in the tax lists and duplicates . . . when property exempt from taxation has been charged with tax, * * *.”

Thus, the county auditor has statutory authority to correct his records and to apprise the Board of Tax Appeals of any error.

The first three paragraphs of the syllabus of *State, ex rel. Wuebker v. Bockrath*, 152 Ohio St. 77, 87 N.E.2d 462 are as follows:

“1. A record must speak the truth and when it does not do so those who have the authority and power may correct the record to make it conform to the truth.

“2. A nunc pro tunc correction of an earlier record is entitled to the same respect as if it were the original record.

“3. The record of an administrative board may be corrected to conform to the actual truth, after the time when it should have been made.”

In *Village of Vinton v. James*, 108 Ohio St. 220, 140 N.E. 909, the court on pages 231-232 states as follows:

“It is in accord with the spirit of the law to permit the amendment of errors in records after the proper time for the making of the record has passed.”

Thus, defendant, Board of Tax Appeals, has the authority to correct the tax duplicate of the Canfield Local School District by removing the valuation of the Mahoning County Joint Vocational School District building from such tax duplicate because of the tax exemption of such building granted December 4, 1970.

Defendant, Board of Tax Appeals uses its April 24, 1974, journal entry as a reason why it was necessary to have a separate application to exempt the school building. Such application was filed because employees of the Board of Tax Appeals suggested that it be done. However, we find that the April 24, 1974, journal entry is superfluous on the question of the tax exemption of the subject building, because such

building was exempted by the December 4, 1970, journal entry.

We find that plaintiff has acted diligently in seeking the correction of the tax records of both Mahoning County and the Board of Tax Appeals. The complaint was filed on June 18, 1974, which is within the statutory time prescribed by R. C. 3317.10 (A) in which the Board of Tax Appeals must certify to the Ohio Department of Education the amount of the tax duplicate of each school district of the state for the 1973 tax year.

We overrule all three assignments of error of defendant, Board of Tax Appeals.

The first assignment of error of defendant, Ohio Department of Education is similar to the first assignment of error of defendant, Board of Tax Appeals, which we have already discussed. The other assignments of error are as follows:

“2. The common pleas court erred in entering an unconditional order against the Ohio Department of Education requiring it to cause payment to the plaintiff of certain moneys under Ohio's school foundation program in the absence of the certification from the State Department of Taxation as required by Section 3317.10 (A), Ohio Revised Code.

*7 “3. The common pleas court erred in unconditionally ordering the Ohio Department of Education to cause payment of certain school foundation moneys when any payment of any such moneys is subject to the approval of the State Controlling Board, pursuant to Section 3317.01, Ohio Revised Code.”

We recognize the application of R. C. Sections 3317.10 (A) and 3317.01 to the Ohio Board of Education and will modify the last two paragraphs of the trial court's journal entry.

Judgment affirmed as to defendant, Board of Tax Appeals. Judgment modified as to defendant, Ohio Department of Education, by the following changes to the trial court's journal entry:

“The Board of Tax Appeals is hereby ordered to correct its records to show that the aggregate value of taxable real and personal property on the Canfield Local School District as of December 31, 1973, is \$41,853,034.00 and to certify that value to the Ohio Department of Education pursuant to R. C. 3317.10 (A).

“Upon receipt of the corrected amount of the tax duplicate of the Canfield Local School District as of December 31, 1973, from the Board of Tax Appeals, the Ohio Department of Education is hereby ordered to compute payment of school foundation payments to the Canfield Local School District for the fiscal year from July 1, 1974, through June 30, 1975, based upon the corrected aggregate value of taxable real and personal property within such district as of December 31, 1973, and to cause payment of school foundation payments on the basis of the corrected figures with the approval of the controlling board pursuant to R. C. 3317.01.”

O'Neill, J., Concur.

Donofrio, J., Concur.

O'NEILL, J., CONCURRING.

O'NEILL, J.

I agree with the final conclusion of the majority opinion, but differ somewhat with the text.

Primarily, I am of the opinion that the real property herein was legislatively exempted from taxation from the date upon which title was placed in the name of the Joint Vocational School. This reasoning is clearly pointed out in Board of Education of City School District of City of Cincinnati v. Board of Tax Appeals, 149 Ohio St. 564, 80 N.E.2d 156. Revised Code Section 5709.07 states specifically that public schoolhouses shall be exempt from taxation. Procedurally, there is and was no way whereby the County Auditor, in the absence of approval by the Board of Tax Appeals, could exempt the property. However, when the matter came before the Board, I see no reason why the Board could not take recognition of the legislative exemption and order that the records, pertinent, illustrate such exemption from the first date upon which the property was determined to use as a public schoolhouse.

Baldwin's Ohio Revised Code Annotated
General Provisions
Chapter 1. Definitions; Rules of Construction (Refs & Annos)
Definitions

R.C. § 1.01

1.01 "Revised Code"

Effective: June 29, 2011

Currentness

All statutes of a permanent and general nature of the state as revised and consolidated into general provisions, titles, chapters, and sections shall be known and designated as the "Revised Code", for which designation "R.C." may be substituted. Except as otherwise provided in section 1301.107 of the Revised Code, Title, Chapter, and section headings and marginal General Code section numbers do not constitute any part of the law as contained in the "Revised Code".

The enactment of the Revised Code shall not be construed to affect a right or liability accrued or incurred under any section of the General Code prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any section of the General Code, nor to affect an indictment or prosecution therefor. For such purposes, any such section of the General Code shall continue in full force notwithstanding its repeal for the purpose of revision.

CREDIT(S)

(2011 H 9, eff. 6-29-11; 1953 H 1, eff. 10-1-53)

Notes of Decisions (5)

R.C. § 1.01, OH ST § 1.01

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1.47 Intentions in the enactment of statutes, OH ST § 1.47

Baldwin's Ohio Revised Code Annotated
General Provisions
Chapter 1. Definitions; Rules of Construction (Refs & Annos)
Statutory Provisions

R.C. § 1.47

1.47 Intentions in the enactment of statutes

Currentness

In enacting a statute, it is presumed that:

(A) Compliance with the constitutions of the state and of the United States is intended;

(B) The entire statute is intended to be effective;

(C) A just and reasonable result is intended;

(D) A result feasible of execution is intended.

CREDIT(S)

(1971 H 607, eff. 1-3-72)

Notes of Decisions (69)

R.C. § 1.47, OH ST § 1.47

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Baldwin's Ohio Revised Code Annotated
Title III. Counties
Chapter 321. Treasurer (Refs & Annos)
Miscellaneous Provisions

R.C. § 321.34

321.34 Advance payment to local authorities

Effective: April 7, 2009

Currentness

(A)(1) When the local authorities by resolution so request, the county auditor shall pay township fiscal officers, treasurers of municipal corporations, the treasurer of any board of education, and the treasurer of any other political subdivision or taxing district whose funds derived from taxes or other sources are payable by law to the county treasurer, any money that may be in the county treasury to the accounts of the local authorities, respectively, and lawfully applicable to the purpose of the current fiscal year in which the request is made. The auditor and county treasurer shall retain any amounts needed to make the payments of obligations of local political subdivisions or taxing districts as are required by law to be paid directly by the county authorities.

(2)(a) For purposes of this section, in addition to the moneys payable under division (A)(1) of this section, money in the county treasury to the account of a board of education that is to be included in the settlement required under division (C) of section 321.24 of the Revised Code shall be paid to the treasurer when the board of education, by resolution, so requests.

(b) The money becomes lawfully applicable to the purposes of the fiscal year in which the request is made upon the adoption of the resolution making the request if that resolution specifies the board's intent to use the money for the purposes of the fiscal year in which the request is made.

(B) The auditor, in making the advance payment, shall draw separate warrants for the payments for that part of the funds allocated to the general fund of the subdivision and the part allocated to service the debt charges of the subdivision. That part of the advance payment allocated to the servicing of debt charges shall be payable to the officer, board of trustees, or commission of the subdivision charged with the payment and retirement of the bonds and notes of such subdivision, and shall be used for no other purpose. Any officer, board, or commission receiving the advance payment shall return a certificate, in the form prescribed by the tax commissioner, to the auditor that the funds so advanced and received have been paid into the bond retirement fund.

(C) Upon the request, in like form, of any board of public library trustees or board of township park commissioners for which a share of the undivided classified property taxes collected in the county has been allowed and fixed by the budget commission, the auditor may, prior to the first day of April, in any year, pay to the treasurer of the board, from any undivided tax funds in the county treasury, an amount not exceeding twenty-five per cent of the board's share of the undivided classified property taxes; but the auditor and county treasurer shall retain an amount sufficient to meet all other requests for payments which have been made under this section or can be reasonably anticipated prior to such first day of April. On or after the first day of April, all amounts paid out of undivided tax funds shall be reimbursed to the funds from which they have been paid and charged against the share of the board of library trustees or board of township park commissioners in the undivided classified property tax fund.

321.34 Advance payment to local authorities, OH ST § 321.34

(D) The request of a local authority for payment or advance payment under this section of any money in the county treasury to the accounts of the local authorities in no way abrogates the right of a county treasurer to advance payment of current year unpaid taxes or current year delinquent taxes under section 321.341 of the Revised Code, and to retain the penalties and interest on those taxes upon their collection as authorized by that section. Nothing in this section prohibits a county treasurer from making an advance payment to a local authority under section 321.341 of the Revised Code, notwithstanding that a local authority has not requested advance payment by resolution as otherwise provided in this section.

CREDIT(S)

(2008 S 353, eff. 4-7-09; 2005 S 107, eff. 12-20-05; 1989 H 100, eff. 7-1-89; 1985 H 201; 1984 H 747; 1979 H 1; 1953 H 1; GC 2692)

Notes of Decisions (6)

R.C. § 321.34, OH ST § 321.34

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Baldwin's Ohio Revised Code Annotated
Title III. Counties
Chapter 321. Treasurer (Refs & Annos)
Miscellaneous Provisions

R.C. § 321.341

321.341 Advance payments to taxing districts

Effective: April 7, 2009

Currentness

(A) Within one hundred twenty days after the last day on which the first installment of current taxes may be paid without penalty, the county treasurer of a county in which a county land reutilization corporation is organized under Chapter 1724. of the Revised Code, in the treasurer's sole discretion, may advance the payment of current year unpaid taxes that are due and payable to any of the taxing districts, upon presentation of the warrant by the county auditor. The treasurer may make advance payment of the current year unpaid taxes from one or more of the following:

- (1) Collections of taxes and assessments during the one-hundred-twenty-day period;
- (2) A line of credit established under section 307.781 or sections 135.341 and 321.36 of the Revised Code, or both;
- (3) Proceeds from the issuance of notes under section 133.082 of the Revised Code;
- (4) Any other source of funds lawfully available for that purpose.

(B) Within one hundred twenty days after the last day on which the second installment of current taxes may be paid without penalty, the county treasurer, in the treasurer's sole discretion, may advance the payment of current year delinquent taxes to any of the taxing districts, upon presentation of the warrant by the county auditor. The treasurer may make advance payment of the current year delinquent taxes from one or more of the following:

- (1) Collections of taxes and assessments during the one-hundred-twenty-day period;
- (2) A line of credit established under section 307.781 or sections 135.341 and 321.36 of the Revised Code, or both;
- (3) Proceeds from the issuance of notes under section 133.082 of the Revised Code;
- (4) Any other source of funds lawfully available for that purpose.

(C) All advance payments made under this section shall be made in the same manner provided for advance payments under section 321.34 of the Revised Code. The county treasurer shall give notice by electronic or other means to a taxing district any

321.341 Advance payments to taxing districts, OH ST § 321.341

time an advance payment is made to the district under this section. Upon the collection of the current year unpaid taxes and current year delinquent taxes upon which advances were made under this section from sources other than their collection, the treasurer shall deposit those current year unpaid taxes and current year delinquent taxes into a special account and shall apply them to the repayment of any moneys borrowed for the purpose of making those advance payments, including, but not limited to, delinquent tax anticipation notes issued under section 133.082 of the Revised Code, including the interest thereon; or the reimbursement of draws under a line of credit and the payment of the interest due thereon, that funded the advance payment in either or both cases. The treasurer shall be entitled to retain, upon collection, any penalty and interest that was or will be charged on the current year unpaid taxes and the current year delinquent taxes advanced under this section. The treasurer shall deposit all such penalties and interest collected in the county land reutilization corporation fund established under section 321.263 of the Revised Code. No taxing district receiving advance payment under division (A) or (B) of this section shall be entitled to receive payment of penalties or interest when penalties or interest are collected by the treasurer on those current year unpaid taxes and current year delinquent taxes so advanced.

(D) As used in the section:

- (1) "Current taxes" has the same meaning as in section 323.01 of the Revised Code.
- (2) "Current year unpaid taxes" means the aggregate amount of the first installment of current taxes that remain unpaid after the last day on which the first installment of such taxes may be paid without penalty.
- (3) "Current year delinquent taxes" means the aggregate amount of current taxes that remain unpaid after the last day on which the second installment of such taxes may be paid without penalty.

CREDIT(S)

(2008 S 353, eff. 4-7-09)

R.C. § 321.341, OH ST § 321.341

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3313. Boards of Education (Refs & Annos)
Powers and Duties

R.C. § 3313.17

3313.17 Corporate powers of the board

Currentness

The board of education of each school district shall be a body politic and corporate, and, as such, capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing, and disposing of real and personal property, and taking and holding in trust for the use and benefit of such district, any grant or devise of land and any donation or bequest of money or other personal property.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4834)

Notes of Decisions (226)

R.C. § 3313.17, OH ST § 3313.17

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3313.44 School property exempt from taxation, OH ST § 3313.44

Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3313. Boards of Education (Refs & Annos)
Schoolhouses and Lands; Equipment

R.C. § 3313.44

3313.44 School property exempt from taxation

Effective: September 13, 2010

Currentness

Real or personal property owned by or leased to any board of education for a lease term of at least fifty years shall be exempt from taxation.

CREDIT(S)

(2010 S 181, eff. 9-13-10; 1953 H 1, eff. 10-1-53; GC 4834-16)

Notes of Decisions (20)

R.C. § 3313.44, OH ST § 3313.44

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3345. State Universities--General Powers (Refs & Annos)
Miscellaneous Provisions

R.C. § 3345.17

3345.17 Exemption from taxation

Effective: April 29, 2011

Currentness

All property, personal, real, or mixed of the boards of trustees and of the housing commissions of the state universities, the northeast Ohio medical university, and of the state held for the use and benefit of any such institution, which is used for the support of such institution, is exempt from taxation so long as such property is used for the support of such university.

CREDIT(S)

(2011 H 139, eff. 4-29-11; 2006 H 478, eff. 7-1-06; 2005 H 16, eff. 5-6-05; 1973 S 72, eff. 11-23-73; 132 v S 426, H 60, H 134; 131 v S 212, S 395; 130 v Pt 2, H 2, H 7; 130 v S 271)

Notes of Decisions (20)

R.C. § 3345.17, OH ST § 3345.17

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Baldwin's Ohio Revised Code Annotated
Title XXXIII. Education--Libraries
Chapter 3349. Municipal Educational Institutions (Refs & Annos)
Taxation, Funds, and Capital Construction

R.C. § 3349.17

3349.17 Exemption from taxation

Currentness

All property, personal, real, or mixed, located within the county in which a university, college, or other educational institution of any municipal corporation is located, given to or received by the board of directors of such a municipal university, college, or other educational institution, the rents, issues, profits, and income of which are used exclusively for the use, endowment, or support of such institution, shall be exempted from taxation so long as such property or the rents, issues, profits, or income thereof is used for and exclusively applied to the endowment or support of such institution.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4003-15)

Notes of Decisions (1)

R.C. § 3349.17, OH ST § 3349.17

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Baldwin's Ohio Revised Code Annotated Title LVII. Taxation (Refs & Annos) Chapter 5709. Taxable Property--Exemptions (Refs & Annos) Miscellaneous Exemptions

R.C. § 5709.07

5709.07 Exemption of schools, churches, and colleges

Effective: September 29, 2011

Currentness

(A) The following property shall be exempt from taxation:

(1) Real property used by a school for primary or secondary educational purposes, including only so much of the land as is necessary for the proper occupancy, use, and enjoyment of such real property by the school for primary or secondary educational purposes. The exemption under division (A)(1) of this section does not apply to any portion of the real property not used for primary or secondary educational purposes.

For purposes of division (A)(1) of this section:

(a) "School" means a public or nonpublic school. "School" excludes home instruction as authorized under section 3321.04 of the Revised Code.

(b) "Public school" includes schools of a school district, STEM schools established under Chapter 3326. of the Revised Code, community schools established under Chapter 3314. of the Revised Code, and educational service centers established under section 3311.05 of the Revised Code.

(c) "Nonpublic school" means a nonpublic school for which the state board of education has issued a charter pursuant to section 3301.16 of the Revised Code and prescribes minimum standards under division (D)(2) of section 3301.07 of the Revised Code.

(2) Houses used exclusively for public worship, the books and furniture in them, and the ground attached to them that is not leased or otherwise used with a view to profit and that is necessary for their proper occupancy, use, and enjoyment;

(3) Real property owned and operated by a church that is used primarily for church retreats or church camping, and that is not used as a permanent residence. Real property exempted under division (A)(3) of this section may be made available by the church on a limited basis to charitable and educational institutions if the property is not leased or otherwise made available with a view to profit.

(4) Public colleges and academies and all buildings connected with them, and all lands connected with public institutions of learning, not used with a view to profit, including those buildings and lands that satisfy all of the following:

(a) The buildings are used for housing for full-time students or housing-related facilities for students, faculty, or employees of a state university, or for other purposes related to the state university's educational purpose, and the lands are underneath the buildings or are used for common space, walkways, and green spaces for the state university's students, faculty, or employees. As used in this division, "housing-related facilities" includes both parking facilities related to the buildings and common buildings made available to students, faculty, or employees of a state university. The leasing of space in housing-related facilities shall not be considered an activity with a view to profit for purposes of division (A)(4) of this section.

(b) The buildings and lands are supervised or otherwise under the control, directly or indirectly, of an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended, and the state university has entered into a qualifying joint use agreement with the organization that entitles the students, faculty, or employees of the state university to use the lands or buildings;

(c) The state university has agreed, under the terms of the qualifying joint use agreement with the organization described in division (A)(4)(b) of this section, that the state university, to the extent applicable under the agreement, will make payments to the organization in amounts sufficient to maintain agreed-upon debt service coverage ratios on bonds related to the lands or buildings.

(B) This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state; but leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a municipal corporation, school district, or subdistrict in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge shall be exempt from taxation as long as such property, or the rents, issues, profits, or income of the property is used and exclusively applied for the support of free education by such municipal corporation, district, or subdistrict. Division (B) of this section shall not apply with respect to buildings and lands that satisfy all of the requirements specified in divisions (A)(4)(a) to (c) of this section.

(C) For purposes of this section, if the requirements specified in divisions (A)(4)(a) to (c) of this section are satisfied, the buildings and lands with respect to which exemption is claimed under division (A)(4) of this section shall be deemed to be used with reasonable certainty in furthering or carrying out the necessary objects and purposes of a state university.

(D) As used in this section:

(1) "Church" means a fellowship of believers, congregation, society, corporation, convention, or association that is formed primarily or exclusively for religious purposes and that is not formed for the private profit of any person.

(2) "State university" has the same meaning as in section 3345.011 of the Revised Code.

(3) "Qualifying joint use agreement" means an agreement that satisfies all of the following:

(a) The agreement was entered into before June 30, 2004;

5709.07 Exemption of schools, churches, and colleges, OH ST § 5709.07

(b) The agreement is between a state university and an organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended; and

(c) The state university that is a party to the agreement reported to the Ohio board of regents that the university maintained a headcount of at least twenty-five thousand students on its main campus during the academic school year that began in calendar year 2003 and ended in calendar year 2004.

CREDIT(S)

(2011 H 153, eff. 9-29-11; 2005 H 66, eff. 6-30-05; 1988 S 71, eff. 5-31-88; 1953 H 1; GC 5349)

Notes of Decisions (251)

R.C. § 5709.07, OH ST § 5709.07

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Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
Miscellaneous Exemptions

R.C. § 5709.08

5709.08 Exemption of government and public property

Currentness

(A)(1) Real or personal property belonging to the state or United States used exclusively for a public purpose, and public property used exclusively for a public purpose, shall be exempt from taxation.

(2) For purposes of division (A)(1) of this section, real and personal property owned by the state, even when the property is leased or otherwise operated by a private party, and used as public service facilities described in section 1501.07 of the Revised Code, as concessions or other special projects described in division (F) of section 1531.06 of the Revised Code, as refuge harbors or marine recreational facilities described in section 1547.72 of the Revised Code, or areas described in section 1503.03 of the Revised Code, is hereby declared to be public property "used exclusively for a public purpose."

(B) Real and personal property, when devoted to public use and not held for pecuniary profit, owned by an adjoining state or any political subdivision or agency of such adjoining state, which would be exempt from taxation if owned by the state of Ohio or a political subdivision or agency thereof, shall be exempt from taxation providing that such adjoining state exempts from taxation real and personal property devoted to public use and not held for pecuniary profit, owned by the state of Ohio or any political subdivision or agency thereof, which would be exempt from taxation if owned by the adjoining state or political subdivision or agency thereof.

CREDIT(S)

(2006 H 530, eff. 3-30-06; 1989 S 72, eff. 11-2-89; 1983 H 260; 1982 H 379; 1976 H 920; 1953 H 1; GC 5351)

Notes of Decisions (118)

R.C. § 5709.08, OH ST § 5709.08

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Baldwin's Ohio Revised Code Annotated Title LVII. Taxation (Refs & Annos) Chapter 5709. Taxable Property--Exemptions (Refs & Annos) Miscellaneous Exemptions

R.C. § 5709.10

5709.10 Exemption of public property used exclusively for public purpose; examples

Currentness

Market houses and other houses or halls, public squares, or other public grounds of a municipal corporation or township used exclusively for public purposes or erected by taxation for such purposes, land and multi-level parking structures used exclusively for a public purpose and owned and operated by a municipal corporation under section 717.05 of the Revised Code that charges no fee for the privilege of parking thereon, property used as a county fairgrounds that is owned by the board of county commissioners or by a county agricultural society, and property of housing authorities created and organized under and for the purposes of sections 3735.27 to 3735.50 of the Revised Code, which property is hereby declared to be public property used exclusively for a public purpose, notwithstanding that parts thereof may be lawfully leased, shall be exempt from taxation.

CREDIT(S)

(1981 H 293, eff. 3-15-82; 1978 H 184; 1953 H 1; GC 5356)

Notes of Decisions (19)

R.C. § 5709.10, OH ST § 5709.10

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5709. Taxable Property--Exemptions (Refs & Annos)
Miscellaneous Provisions

R.C. § 5709.86

5709.86 Restoring unused public property to productive use

Currentness

(A) As used in this section:

(1) "Abandoned school property" means improvements to a parcel of land, the parcel on which such improvements are situated, and adjacent parcels owned, or owned prior to a declaration under this section, by a school district, county, township, or municipal corporation that have been used for school purposes for not less than ten years but that are not currently used for school purposes.

(2) "Qualified tangible personal property" means tangible personal property used in business in or upon abandoned school property by a person to which abandoned school property is sold or leased.

(3) "Legislative authority" means the board of education of a school district, the board of commissioners of a county, the board of trustees of a township, or the legislative authority of a municipal corporation that owns, or owned prior to a declaration under this section, abandoned school property.

(B) A legislative authority, by resolution or ordinance adopted by a majority of the membership thereof, may declare abandoned school property or qualified tangible personal property, or both, as being used for the public purpose of restoring unused public property to productive use. The legislative authority thereafter may sell or lease such abandoned school property to any person. Abandoned school property and qualified tangible personal property declared to be used for a public purpose under this section are exempted from taxation for the number of years specified in the resolution or ordinance, not to exceed ten years from the day the property is purchased from the legislative authority, or, if the property is leased by the legislative authority, from the day the lease agreement takes effect. If only a portion of abandoned school property is purchased or leased, the exemption from taxation for the portion not purchased or leased does not commence until the day that portion is purchased or the day the lease agreement for that portion of the property takes effect.

The legislative authority making a declaration under this section shall certify a copy of the resolution or ordinance to the tax commissioner and to the county auditor of each county within which the abandoned school property is situated. The legislative authority or the person purchasing abandoned school property shall file applications for exemption for the abandoned school property and qualified tangible personal property in the manner prescribed by law.

CREDIT(S)

(1994 S 19, eff. 7-22-94)

R.C. § 5709.86, OH ST § 5709.86

5709.86 Restoring unused public property to productive use, OH ST § 5709.86

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)
Tax Commissioner

R.C. § 5715.27

5715.27 Application for and complaint against exemption; remittance; notice to school board; hearing

Effective: March 22, 2012

Currentness

(A)(1) Except as provided in division (A)(2) of this section and in section 3735.67 of the Revised Code, the owner, a vendee in possession under a purchase agreement or a land contract, the beneficiary of a trust, or a lessee for an initial term of not less than thirty years of any property may file an application with the tax commissioner, on forms prescribed by the commissioner, requesting that such property be exempted from taxation and that taxes, interest, and penalties be remitted as provided in division (C) of section 5713.08 of the Revised Code.

(2) If the property that is the subject of the application for exemption is any of the following, the application shall be filed with the county auditor of the county in which the property is listed for taxation:

(a) A public road or highway;

(b) Property belonging to the federal government of the United States;

(c) Additions or other improvements to an existing building or structure that belongs to the state or a political subdivision, as defined in section 5713.081 of the Revised Code, and that is exempted from taxation as property used exclusively for a public purpose;

(d) Property of the boards of trustees and of the housing commissions of the state universities, the northeastern Ohio universities college of medicine, and of the state to be exempted under section 3345.17 of the Revised Code.

(B) The board of education of any school district may request the tax commissioner or county auditor to provide it with notification of applications for exemption from taxation for property located within that district. If so requested, the commissioner or auditor shall send to the board on a monthly basis reports that contain sufficient information to enable the board to identify each property that is the subject of an exemption application, including, but not limited to, the name of the property owner or applicant, the address of the property, and the auditor's parcel number. The commissioner or auditor shall mail the reports by the fifteenth day of the month following the end of the month in which the commissioner or auditor receives the applications for exemption.

(C) A board of education that has requested notification under division (B) of this section may, with respect to any application for exemption of property located in the district and included in the commissioner's or auditor's most recent report provided under that division, file a statement with the commissioner or auditor and with the applicant indicating its intent to submit

evidence and participate in any hearing on the application. The statements shall be filed prior to the first day of the third month following the end of the month in which that application was docketed by the commissioner or auditor. A statement filed in compliance with this division entitles the district to submit evidence and to participate in any hearing on the property and makes the district a party for purposes of sections 5717.02 to 5717.04 of the Revised Code in any appeal of the commissioner's or auditor's decision to the board of tax appeals.

(D) The commissioner or auditor shall not hold a hearing on or grant or deny an application for exemption of property in a school district whose board of education has requested notification under division (B) of this section until the end of the period within which the board may submit a statement with respect to that application under division (C) of this section. The commissioner or auditor may act upon an application at any time prior to that date upon receipt of a written waiver from each such board of education, or, in the case of exemptions authorized by section 725.02, 1728.10, 5709.40, 5709.41, 5709.411, 5709.62, 5709.63, 5709.632, 5709.73, 5709.78, 5709.84, or 5709.88 of the Revised Code, upon the request of the property owner. Failure of a board of education to receive the report required in division (B) of this section shall not void an action of the commissioner or auditor with respect to any application. The commissioner or auditor may extend the time for filing a statement under division (C) of this section.

(E) A complaint may also be filed with the commissioner or auditor by any person, board, or officer authorized by section 5715.19 of the Revised Code to file complaints with the county board of revision against the continued exemption of any property granted exemption by the commissioner or auditor under this section.

(F) An application for exemption and a complaint against exemption shall be filed prior to the thirty-first day of December of the tax year for which exemption is requested or for which the liability of the property to taxation in that year is requested. The commissioner or auditor shall consider such application or complaint in accordance with procedures established by the commissioner, determine whether the property is subject to taxation or exempt therefrom, and, if the commissioner makes the determination, certify the determination to the auditor. Upon making the determination or receiving the commissioner's determination, the auditor shall correct the tax list and duplicate accordingly. If a tax certificate has been sold under section 5721.32 or 5721.33 of the Revised Code with respect to property for which an exemption has been requested, the tax commissioner or auditor shall also certify the findings to the county treasurer of the county in which the property is located.

(G) Applications and complaints, and documents of any kind related to applications and complaints, filed with the tax commissioner or county auditor under this section are public records within the meaning of section 149.43 of the Revised Code.

(H) If the commissioner or auditor determines that the use of property or other facts relevant to the taxability of property that is the subject of an application for exemption or a complaint under this section has changed while the application or complaint was pending, the commissioner or auditor may make the determination under division (F) of this section separately for each tax year beginning with the year in which the application or complaint was filed or the year for which remission of taxes under division (C) of section 5713.08 of the Revised Code was requested, and including each subsequent tax year during which the application or complaint is pending before the commissioner or auditor.

CREDIT(S)

(2011 H 225, eff. 3-22-12; 2008 H 160, eff. 6-20-08; 2003 H 95, eff. 9-26-03; 2000 H 493, eff. 10-27-00; 1990 S 332, eff. 1-10-91; 1990 S 257; 1985 H 321; 1983 H 260; 1982 S 262; 1976 H 920; 1953 H 1; GC 5616)

Notes of Decisions (67)

5715.27 Application for and complaint against exemption;..., OH ST § 5715.27

R.C. § 5715.27, OH ST § 5715.27

Current through Files 1 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

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Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)
Tax Commissioner

R.C. § 5715.271

5715.271 Burden of proof

Currentness

In any consideration concerning the exemption from taxation of any property, the burden of proof shall be placed on the property owner to show that the property is entitled to exemption. The fact that property has previously been granted an exemption is not evidence that it is entitled to continued exemption.

CREDIT(S)

(1985 H 321, eff. 10-17-85)

Notes of Decisions (7)

R.C. § 5715.271, OH ST § 5715.271

Current through Files 1 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5717. Appeals (Refs & Annos)

R.C. § 5717.02

5717.02 Appeals from final determination of the tax commissioner; procedure; hearing

Effective: October 11, 2013

Currentness

(A) Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by that decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by that decision would primarily accrue. Appeals from the redetermination by the director of development services under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner or county auditor concerning an application for a property tax exemption may be taken to the board of tax appeals by the applicant or by a school district that filed a statement concerning that application under division (C) of section 5715.27 of the Revised Code. Appeals from a redetermination by the director of job and family services under section 5733.42 of the Revised Code may be taken by the person to which the notice of the redetermination is required by law to be given under that section.

(B) The appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal, with the county auditor if the county auditor's action is the subject of the appeal, with the director of development services if that director's action is the subject of the appeal, or with the director of job and family services if that director's action is the subject of the appeal. The notice of appeal shall be filed within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner, property tax exemption determination by the commissioner or the county auditor, or redetermination by the director has been given as provided in section 5703.37, 5709.64, 5709.66, or 5733.42 of the Revised Code. The notice of appeal may be filed in person or by certified mail, express mail, facsimile transmission, electronic transmission or by authorized delivery service. If the notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. If notice of appeal is filed by facsimile transmission or electronic transmission, the date and time the notice is received by the board shall be the date and time reflected on a timestamp provided by the board's electronic system, and the appeal shall be considered filed with the board on the date reflected on that timestamp. Any timestamp provided by another computer system or electronic submission device shall not affect the time and date the notice is received by the board. The notice of appeal shall have attached to it and incorporated in it by reference a true copy of the notice sent by the commissioner, county auditor, or director to the taxpayer, enterprise, or other person of the final determination or redetermination complained of, but failure to attach a copy of that notice and to incorporate it by reference in the notice of appeal does not invalidate the appeal.

(C) A notice of appeal shall contain a short and plain statement of the claimed errors in the determination or redetermination of the tax commissioner, county auditor, or director showing that the appellant is entitled to relief and a demand for the relief to which the appellant claims to be entitled. An appellant may amend the notice of appeal once as a matter of course within sixty

days after the certification of the transcript. Otherwise, an appellant may amend the notice of appeal only after receiving leave of the board or the written consent of each adverse party. Leave of the board shall be freely given when justice so requires.

(D) Upon the filing of a notice of appeal, the tax commissioner, county auditor, or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner, auditor, or director, together with all evidence considered by the commissioner, auditor, or director in connection with the proceedings. Those appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct the hearings and to report to it their findings for affirmation or rejection.

(E) The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner, county auditor, or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make an investigation concerning the appeal that it considers proper. An appeal may proceed pursuant to section 5703.021 of the Revised Code on the small claims docket if the appeal qualifies under that section.

CREDIT(S)

(2013 H 138, eff. 10-11-13; 2011 H 225, eff. 3-22-12; 2002 S 200, eff. 9-6-02; 2000 S 287, eff. 12-21-00; 2000 H 612, eff. 9-29-00; 1994 S 19, eff. 7-22-94; 1985 H 321, eff. 10-17-85; 1985 S 124; 1983 H 260; 1981 H 351; 1977 H 634; 1976 H 920; 1973 S 174; 1953 H 1; GC 5611)

Notes of Decisions (426)

R.C. § 5717.02, OH ST § 5717.02

Current through Files 1 to 195 and Statewide Issue 1 of the 130th GA (2013-2014).

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5717. Appeals (Refs & Annos)

R.C. § 5717.04

5717.04 Appeal from decision of board of tax appeals to supreme court

Effective: October 11, 2013

Currentness

This section does not apply to any decision and order of the board made pursuant to section 5703.021 of the Revised Code. Any such decision and order shall be conclusive upon all parties and may not be appealed.

The proceeding to obtain a reversal, vacation, or modification of a decision of the board of tax appeals shall be by appeal to the supreme court or the court of appeals for the county in which the property taxed is situate or in which the taxpayer resides. If the taxpayer is a corporation, then the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the supreme court or to the court of appeals for the county in which the property taxed is situate, or the county of residence of the agent for service of process, tax notices, or demands, or the county in which the corporation has its principal place of business. In all other instances, the proceeding to obtain such reversal, vacation, or modification shall be by appeal to the court of appeals for Franklin county.

Appeals from decisions of the board determining appeals from decisions of county boards of revision may be instituted by any of the persons who were parties to the appeal before the board of tax appeals, by the person in whose name the property involved in the appeal is listed or sought to be listed, if such person was not a party to the appeal before the board of tax appeals, or by the county auditor of the county in which the property involved in the appeal is located.

Appeals from decisions of the board of tax appeals determining appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be instituted by any of the persons who were parties to the appeal or application before the board, by the person in whose name the property is listed or sought to be listed, if the decision appealed from determines the valuation or liability of property for taxation and if any such person was not a party to the appeal or application before the board, by the taxpayer or any other person to whom the decision of the board appealed from was by law required to be sent, by the director of budget and management if the revenue affected by the decision of the board appealed from would accrue primarily to the state treasury, by the county auditor of the county to the undivided general tax funds of which the revenues affected by the decision of the board appealed from would primarily accrue, or by the tax commissioner.

Appeals from decisions of the board upon all other appeals or applications filed with and determined by the board may be instituted by any of the persons who were parties to such appeal or application before the board, by any persons to whom the decision of the board appealed from was by law required to be sent, or by any other person to whom the board sent the decision appealed from, as authorized by section 5717.03 of the Revised Code.

Such appeals shall be taken within thirty days after the date of the entry of the decision of the board on the journal of its proceedings, as provided by such section, by the filing by appellant of a notice of appeal with the court to which the appeal is taken and the board. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed or within the time otherwise prescribed in this section, whichever is later. A notice of appeal shall set forth the decision of the board appealed from and the errors therein complained of. Proof

5717.04 Appeal from decision of board of tax appeals to supreme court, OH ST § 5717.04

of the filing of such notice with the board shall be filed with the court to which the appeal is being taken. The court in which notice of appeal is first filed shall have exclusive jurisdiction of the appeal.

In all such appeals the commissioner or all persons to whom the decision of the board appealed from is required by such section to be sent, other than the appellant, shall be made appellees. Unless waived, notice of the appeal shall be served upon all appellees by certified mail. The prosecuting attorney shall represent the county auditor in any such appeal in which the auditor is a party.

The board, upon written demand filed by an appellant, shall within thirty days after the filing of such demand file with the court to which the appeal is being taken a certified transcript of the record of the proceedings of the board pertaining to the decision complained of and the evidence considered by the board in making such decision.

If upon hearing and consideration of such record and evidence the court decides that the decision of the board appealed from is reasonable and lawful it shall affirm the same, but if the court decides that such decision of the board is unreasonable or unlawful, the court shall reverse and vacate the decision or modify it and enter final judgment in accordance with such modification.

The clerk of the court shall certify the judgment of the court to the board, which shall certify such judgment to such public officials or take such other action in connection therewith as is required to give effect to the decision. The "taxpayer" includes any person required to return any property for taxation.

Any party to the appeal shall have the right to appeal from the judgment of the court of appeals on questions of law, as in other cases.

CREDIT(S)

(2013 H 138, eff. 10-11-13; 2009 H 1, eff. 10-16-09; 1987 H 231, eff. 10-5-87; 1983 H 260; 1977 H 634; 1973 S 174; 125 v 250; 1953 H 1; GC 5611-2)

Notes of Decisions (227)

R.C. § 5717.04, OH ST § 5717.04

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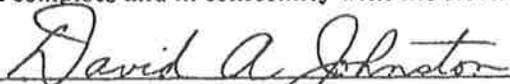
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Am. H. B. No. 286

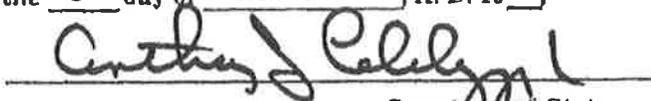
2374

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.



Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 3 day of November, A. D. 1981,



Secretary of State.

File No. 98

Effective Date February 2, 1982

(Substitute House Bill No. 293)

AN ACT

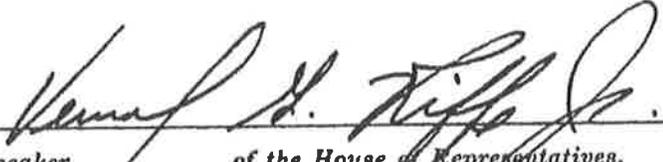
To amend section 5709.10 of the Revised Code to provide a real property tax exemption for county fairgrounds and to limit the real property tax exemption afforded park districts to those portions used exclusively for a public or charitable purpose.

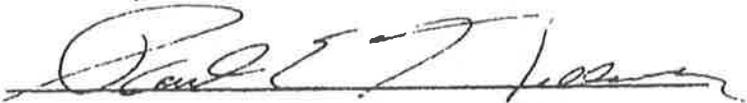
Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 5709.10 of the Revised Code be amended to read as follows:

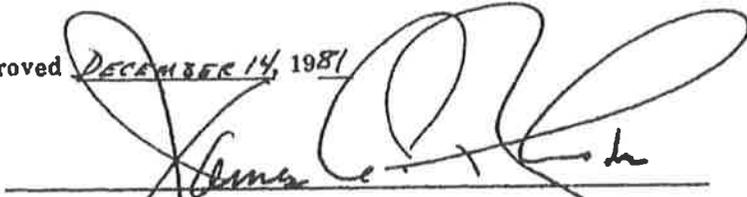
Sec. 5709.10. Market houses AND OTHER HOUSES OR HALLS, public squares, or other public grounds of a municipal corporation or township, ~~houses or halls~~ used exclusively for public purposes or erected by taxation for such purposes, land and multi-level parking structures used exclusively for a public purpose and owned and operated by a municipal corporation under section 717.06 of the Revised Code that charges no fee for the privilege of parking thereon, PROPERTY USED AS A COUNTY FAIRGROUNDS THAT IS OWNED BY THE BOARD OF COUNTY COMMISSIONERS OR BY A COUNTY AGRICULTURAL SOCIETY, AND property of housing authorities created and organized under and for the purposes of sections 3735.27 to 3735.50 of the Revised Code, which property is hereby declared to be public property used exclusively for a public purpose, notwithstanding that parts thereof may be lawfully leased, ~~and property belonging to park districts, created pursuant to section 1545.01 of the Revised Code,~~ shall be exempt from taxation.

SECTION 2. That existing section 5709.10 of the Revised Code is hereby repealed.


Speaker _____ of the House of Representatives.


President _____ of the Senate.

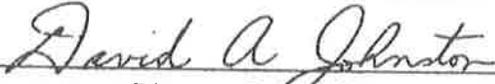
Passed November 17, 1981

Approved DECEMBER 14, 1981

Governor.

Sub. H. B. No. 293

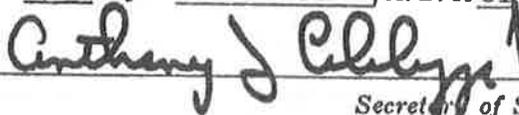
2377

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.



Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 14th day of December, A. D. 1981



Secretary of State.

File No. 127

Effective Date March 15, 1982



(Amended Substitute House Bill No. 293)

A M A C T

To amend section 1329.29 of the Revised Code to revise the law on kosher food.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 1329.29 of the Revised Code be amended to read as follows:

Sec. 1329.29. (A) No person shall ~~with intent to defraud~~ ~~sell~~ DO ANY OF THE FOLLOWING:

(1) SELL or expose for sale at retail, or manufacture, any meat or meat preparations or any fowl or preparations from fowl and falsely represent the same to be "kosher" or as having been prepared under, and of a product or products sanctioned by, the Orthodox Hebrew religious requirements ~~or falsely~~.

(2) FALSELY represent any food products or the contents of any package or container to be so constituted and prepared AS DESCRIBED IN DIVISION (A)(1) OF THIS SECTION by having or permitting to be inscribed thereon "kosher," "KOSHER STYLE," "KOSHER TYPE," "KOSHER FOR PASSOVER," "JEWISH," OR "HEBREW" in any language, or have "kosher," "KOSHER STYLE," "KOSHER TYPE," "KOSHER FOR PASSOVER," "JEWISH," OR "HEBREW" inscribed on the front of any retail business establishment in any language ~~or~~ ~~sell~~ EXCEPT THE TERMS "JEWISH," "HEBREW," "KOSHER STYLE," OR "KOSHER TYPE" MAY BE USED ON PACKAGES OR CONTAINERS ONLY IF THE PACKAGES OR CONTAINERS ARE ALSO MARKED "HONKOSHER" IN EASILY READABLE PRINT.

(3) SELL or expose for sale at retail in the same place of business both kosher and nonkosher meat or meat preparations either raw or prepared for human consumption ~~or~~ UNLESS HE INDICATES ON HIS WINDOW SIGNS AND ALL DISPLAY ADVERTISING IN BLOCK LETTERS AT LEAST FOUR INCHES IN HEIGHT, "KOSHER AND NONKOSHER FOOD SERVED HERE." HOWEVER, IF THE PERSON SELLS ONLY KOSHER MEAT OR KOSHER MEAT PREPARATIONS THAT ARE PREPACKAGED FOR SALE, HE IS EXEMPT FROM THIS DIVISION.

(4) MAKE ANY DIRECT STATEMENT, EITHER ORALLY OR IN WRITING, DISPLAY THE WORDS "KOSHER," "KOSHER STYLE," "KOSHER TYPE," "KOSHER FOR PASSOVER," "JEWISH," OR "HEBREW" IN ANY LANGUAGE, OR DISPLAY ANY INSIGNIA, SIX-POINTED STAR, OR OTHER MARK THAT MIGHT REASONABLY BE CALCULATED TO DECEIVE OR LEAD A REASONABLE PERSON TO BELIEVE A PRODUCT IS "KOSHER" OR SANCTIONED BY ORTHODOX HEBREW RELIGIOUS REQUIREMENTS, IF IT IS NOT.

(B) ALL PREPACKAGED MEATS AND POULTRY BOLD OR EXPOSED FOR SALE AT RETAIL AS "KOSHER" SHALL BE SOAKED AND SALTED. ALL OTHER FRESH MEATS AND POULTRY SOLD OR EXPOSED FOR SALE AT RETAIL AS "KOSHER" SHALL BE MARKED, ON THE LABEL WHEN PACKAGED OR BY A SIGN WHEN NOT PACKAGED, WITH THE WORDS "SOAKED AND SALTED" OR "NOT SOAKED AND SALTED," WHICHEVER IS APPLICABLE. ALL ADVERTISEMENTS FOR FOOD OR FOOD PRODUCTS SOLD OR EXPOSED FOR SALE AS "KOSHER" UNDER RABBINICAL SUPERVISION MUST IDENTIFY THE NAME OF THE RABBI OR ORGANIZATION, IF ANY, THAT CERTIFIED THE FOOD OR FOOD PRODUCTS AS BEING "KOSHER."

(C) ANY RETAILER WHO, AT THE END OF THE BUSINESS DAY ON THE EFFECTIVE DATE OF THIS AMENDMENT, HAS IN HIS INVENTORY PRODUCTS THAT ARE NOT "KOSHER" BUT ARE MARKED "KOSHER STYLE," "KOSHER TYPE," "KOSHER FOR PASSOVER," "JEWISH," OR "HEBREW" MAY CONTINUE TO SELL THOSE PRODUCTS IF HE MARKS THEM "HONKOSHER" EITHER ON

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or public highway in this state, the consent of the owner of the fee in the land at such crossing first having been obtained; Provided, such railway shall be so constructed as in no wise to impede or interfere with the running of cars or the travel upon, or in any manner to injure or impair such railroad or highway, or any switch, building or appurtenance connected therewith or belonging thereto; and, provided, that when such freight-way shall be constructed over any such railroad, it shall be at the height of at least eighteen and one-half feet in the clear, above the rails of the same.

SEC. 2. That before any person or persons shall construct any railway across any railroad as aforesaid, he or they shall submit the plan of construction to the commissioner of railroads and telegraphs, and obtain his approval thereof, whose duty it shall be, at the cost of such person or persons, for traveling expenses or otherwise, to see that said construction shall, in all respects, conform to the requirements of this act.

Plan to be submitted to commissioner of railroads, &c.

SEC. 3. That this act shall take effect on its passage.
 CHARLES H. BABCOCK,
Speaker pro tem. of the House of Representatives.
 JACOB MUELLER,
President of the Senate.

Passed May 1st, 1873.

AN ACT

For the reorganization and maintenance of Common Schools.

CHAPTER I.

CLASSIFICATION OF SCHOOL DISTRICTS.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the state is hereby divided into school districts, to be styled respectively city districts of the first class, city districts of the second class, village districts, special districts, and township districts.

Distinction kinds of school districts.

SEC. 2. Each city having a population of ten thousand or more by the census of 1870, including the territory attached to it for school purposes, and excluding any territory within its corporate limits detached for school purposes, is hereby constituted a school district to be styled a city district of the first class.

What constitutes a city district of the first class.

SEC. 3. Each city of the second class, having a population of less than ten thousand inhabitants by the census of 1870, including the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, is hereby constituted a school district to be styled a city district of the second class.

What constitutes a city district of the second class.

SEC. 4. Each incorporated village, including the territory attached to it for school purposes, and excluding the territory

Village districts.

SEC. 68. The process in all suits against any board of education, shall be by summons, and shall be served by leaving a copy thereof with the clerk or president of such board; and such board shall be required to appear and answer, as in other civil actions.

Process against school officers.

SEC. 69. It is hereby made the duty of the prosecuting attorney of the proper county, or in case of a city district, the city solicitor, to prosecute all actions which by this act may be brought against any member or officer of any school board, in his individual capacity; and to act in his official capacity as such prosecutor, as the legal counsel of such boards or officers in all civil actions brought by them or against them in their corporate or official capacity; provided, no prosecuting attorney or city solicitor shall be a member of the board of education.

Duty of prosecuting attorney.

SEC. 70. The school year shall begin on the first day of September of each year, and close on the thirty-first day of August of the succeeding year. A school week shall consist of five days, a school month of four school weeks.

School year, week, and month.

SEC. 71. The schools established by this act, shall be free to all youth between six and twenty-one years of age who are children, wards or apprentices of actual residents of the school district, and no pupil shall be suspended therefrom except for such time as may be necessary to convene the board of education of the district or local directors of the sub-district, nor be expelled unless by a vote of two-thirds of said board or local directors, after the parent or guardian of the offending pupil shall have been notified of the proposed expulsion, and permitted to be heard against the same; and no scholar shall be suspended or expelled from the privilege of schools beyond the current term: Provided, that each board of education shall have power to admit other persons, not under six years of age, upon such terms or upon the payment of such tuition as they may prescribe; and boards of education of city, village or special districts shall also have power to admit, without charge for tuition, persons within the school age who are members of the family of any freeholder whose residence is not within such district, if any part of such freeholder's homestead is within such district; and, provided further, that the several boards of education shall make such assignment of the youth of their respective districts, to the schools established by them as will, in their opinion, best promote the interests of education in their districts; and provided further that nothing contained in this section shall supersede or modify the provisions of section thirty-one of an act entitled an act for the reorganization, supervision and maintenance of common schools, passed March 14, 1853, as amended March 18, 1864.

What pupils admitted.

Suspension and expulsion.

Assignment of scholars.

Sec. 31 of act of March 14, 1853, retained.

SEC. 72. All property, real or personal, vested in any board of education, shall be exempted from tax and from sale on any execution or other writ or order in the nature of an execution.

School property exempt from taxation or execution.

SEC. 73. That if any person shall willfully and maliciously injure or deface any school house, its fixtures, books or appurtenances, or shall commit any nuisance therein, or

Penalty for injuring school property.

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Citation: 1 The General Code of the State of Ohio Being an Act
an Act to Revise and Consolidate the General Statutes
Ohio Passed by the General Assembly of Ohio February
1910 995 1910



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TITLE XIII. PUBLIC SCHOOL DISTRICTS

- CHAPTER 1. CLASSIFICATION OF DISTRICTS.
- CHAPTER 2. CITY SCHOOL DISTRICTS.
- CHAPTER 3. VILLAGE SCHOOL DISTRICTS.
- CHAPTER 4. TOWNSHIP SCHOOL DISTRICTS.
- CHAPTER 5. SPECIAL SCHOOL DISTRICTS.
- CHAPTER 6. BOARDS OF EDUCATION.
- CHAPTER 7. TREASURER AND CLERK.

CHAPTER 1.

CLASSIFICATION OF DISTRICTS.

SECTION
 4679. School districts classified.
 4680. City school districts.
 4691. Village school districts.
 4682. Village with less than one hundred thousand tax valuation.
 4693. Township school districts.
 4684. Special school district.
 4685. Territory must be contiguous.

ADVANCEMENT AND REDUCTION.

4686. Change of classification upon advancement or reduction.
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SECTION 4679. The school districts of the state shall be styled, respectively, city school districts, village school districts, township school districts and special school districts. (R. S. Sec. 3885.) School districts classified.

SECTION 4680. Each city, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, shall constitute a city school district. (R. S. Sec. 3886.) City school districts.

SECTION 4681. Each village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, and having in the district thus formed a total tax valuation of not less than one hundred thousand dollars, shall constitute a village school district. (R. S. Sec. 3888.) Village school district.

SECTION 4682. A village, together with the territory attached to it for school purposes, and excluding the territory within its corporate limits detached for school purposes, with a tax valuation of less than one hundred thousand dollars, shall not constitute a village school district, but the proposition to dis-

the proceedings. After such approval, the president shall sign the record and the clerk attest it. (R. S. Sec. 3984.)

Boards may accept bequests.

SECTION 4755. By the adoption of a resolution, a board of education may accept any bequest made to it by will or may accept any gift or endowment from any person or corporation upon the conditions and stipulations contained in the will or connected with the gift or endowment. For the purpose of enabling the board to carry out the conditions and limitations upon which a bequest, gift or endowment is made, it may make all rules and regulations required to fully carry them into effect. No such bequest, gift or endowment shall be accepted by the board if the conditions thereof shall remove any portion of the public schools from the control of such board. (R. S. Sec. 3975.)

How real property may be sold.

SECTION 4756. When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value three hundred dollars, it shall sell such property at public auction after giving at least thirty days' notice thereof by publication in a newspaper of general circulation or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at private sale, either as an entire tract or in parcels, as the board deems best. The president and secretary of the board shall execute and deliver deeds necessary to complete such sale. (R. S. Sec. 3971.)

Conveyance and contracts.

SECTION 4757. Conveyances made by a board of education shall be executed by the president and clerk thereof. No member of the board shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer. No contract shall be binding upon any board unless it is made or authorized at a regular or special meeting of such board. (R. S. Sec. 3974.)

Exchange of real estate.

SECTION 4758. Upon a vote of a majority of the members of a board of education and a concurring vote of the council of a municipal corporation, declaring that an exchange of real estate held by such board for school purposes for real estate held by such municipal corporation for municipal purposes will be mutually beneficial to such school district and municipal corporation, such exchange may be made by conveyances, executed by the mayor and clerk of the corporation and by the president and clerk of the board of education, respectively. (R. S. Sec. 3971.)

School property exempt from taxation.

SECTION 4759. Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution. (R. S. Sec. 3973.)

Processes against boards, how served.

SECTION 4760. Process in all suits against a board of education shall be by summons which shall be served by leaving

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(House Bill No. 217)

AN ACT

To provide for the recodification and revision of the laws of Ohio pertaining to the public schools and for that purpose to amend sections 21, 154-6, 151-40, 151-16 through 151-52, 154-55, 154-56, 486-8, 2148-12, 2250, 2605, 4300 and 4785-30, to enact sections 154-14, 154-46a through 154-46h, 154-47a through 154-47i, 154-49a through 154-49j, 154-56a through 154-56e, 1088 through 1088-7, 3698-1, 4003-1 through 4003-20, 4830 through 4830-7, 12993-2 and 12993-3, and to repeal sections 151-13, 352 through 367-12, 871-48 through 871-53, 1851-3, 1872 through 1888, 2293-80 through 2293-85, 4079 through 4784, 5542-18b, 7577, through 7631, 7644 through 7889 and 7897 through 7986-1 of the General Code.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 24, 154-6, 154-40, 154-46, 154-47, 154-48, 154-49, 154-50, 154-51, 154-52, 154-55, 154-56, 486-8, 2148-12, 2250, 2605, 4300 and 4785-30 be amended, and that sections 154-14, 154-46a, 154-46b, 154-46c, 154-46d, 154-46e, 154-46f, 154-46g, 154-46h, 154-47a, 154-47b, 154-47c, 154-47d, 154-47e, 154-47f, 154-47g, 154-47h, 154-47i, 154-49a, 154-49b, 154-49c, 154-49d, 154-49e, 154-49f, 154-49g, 154-49h, 154-49i, 154-49j, 154-56a, 154-56b, 154-56c, 154-56d, 154-56e, 1088, 1088-1, 1088-2, 1088-3, 1088-4, 1088-5, 1088-6, 1088-7, 3698-1, 4003-1, 4003-2, 4003-3, 4003-4, 4003-5, 4003-6, 4003-7, 4003-8, 4003-9, 4003-10, 4003-11, 4003-12, 4003-13, 4003-14, 4003-15, 4003-16, 4003-17, 4003-18, 4003-19, 4003-20, 4830, 4830-1, 4830-2, 4830-3, 4830-4, 4830-5, 4830-6, 4830-7, 4830-8, 4830-9, 4830-10, 4830-11, 4830-12, 4830-13, 4830-14, 4830-15, 4830-16, 4830-17, 4830-18, 4830-19, 4830-20, 4831, 4831-1, 4831-2, 4831-3, 4831-4, 4831-5, 4831-6, 4831-7, 4831-8, 4831-9, 4831-10, 4831-11, 4831-12, 4831-13, 4831-14, 4832, 4832-1, 4832-2, 4832-3, 4832-4, 4832-5, 4832-6, 4832-7, 4832-8, 4832-9, 4832-10, 4832-11, 4832-12, 4833, 4833-1, 4833-2, 4834, 4834-1, 4834-2, 4834-3, 4834-4, 4834-5, 4834-6, 4834-7, 4834-8, 4834-9, 4834-10, 4834-11, 4834-12, 4834-13, 4834-14, 4834-15, 4834-16, 4834-17, 4834-18, 4835, 4835-1, 4835-2, 4835-3, 4836, 4836-1, 4836-2, 4836-3, 4836-4, 4836-5, 4836-6, 4836-7, 4836-8, 4836-9, 4836-10, 4836-11, 4837, 4837-1, 4838, 4838-1, 4838-2, 4838-3, 4838-4, 4838-5, 4838-6, 4838-7, 4838-8, 4838-9, 4838-10, 4838-11, 4839, 4839-1, 4839-2, 4839-3, 4839-4, 4839-5, 4839-6, 4839-7, 4839-8, 4840, 4841, 4841-1, 4841-2, 4841-3, 4841-4, 4841-5, 4841-6, 4841-7, 4841-8, 4841-9, 4842, 4842-1, 4842-2, 4842-3, 4842-4, 4842-5, 4842-6, 4842-7, 4842-8, 4842-9, 4842-10, 4842-11, 4842-12, 4842-13, 4842-14, 4843, 4843-1, 4843-2, 4843-3, 4843-4, 4843-5, 4844, 4844-1, 4845, 4845-1, 4845-2, 4845-3, 4845-4, 4845-5, 4845-6, 4845-7, 4845-8, 4846, 4847, 4847-1, 4847-2, 4847-3, 4847-4, 4847-5, 4847-6, 4847-7, 4847-8, 4847-9, 4847-10, 4847-11, 4847-12, 4847-13, 4847-14, 4847-15, 4847-16, 4847-17, 4847-18, 4848, 4848-1, 4848-2, 4848-3, 4848-4, 4848-5, 4848-6, 4848-7, 4848-8.

Note:—The comma after the number "7577" in the tenth line of the title of House Bill No. 217 is as same appears in the enrolled bill. [Editor.]

4848-9, 4848-10, 4849, 4849-1, 4849-2, 4849-3, 4849-4, 4849-5, 4849-6, 4849-7, 4849-8, 4849-9, 4849-10, 4849-11, 4849-12, 4850, 4850-1, 4850-2, 4850-3, 4850-4, 4850-5, 4850-6, 4850-7, 4850-8, 4850-9, 4850-10, 4851, 4851-1, 4851-2, 4851-3, 4851-4, 4851-5, 4851-6, 4851-7, 4851-8, 4851-9, 4851-10, 4851-11, 4851-12, 4851-13, 4851-14, 4852, 4852-1, 4852-2, 4852-3, 4852-4, 4852-5, 4852-6, 4852-7, 4852-8, 4852-9, 4853, 4853-1, 4853-2, 4853-3, 4853-4, 4853-5, 4853-6, 4853-7, 4853-8, 4853-9, 4853-10, 4853-11, 4853-12, 4854, 4854-1, 4854-2, 4854-3, 4854-4, 4854-5, 4854-6, 4854-7, 4854-8, 4854-9, 4855, 4855-1, 4855-2, 4855-3, 4855-4, 4855-5, 4855-6, 4855-7, 4856, 4857, 4857-1, 4857-2, 4857-3, 4857-4, 4857-5, 4857-6, 4857-7, 4857-8, 4857-9, 4857-10, 4858, 4858-1, 4859, 4859-1, 4859-2, 4859-3, 4859-4, 4859-5, 4859-6, 4860, 4860-1, 4860-2, 4860-3, 4860-4, 4860-5, 4860-6, 4860-7, 4860-8, 4860-9, 4861, 4861-1, 4861-2, 4861-3, 4861-4, 4861-5, 4861-6, 4861-7, 4861-8, 4861-9, 4861-10, 4861-11, 4861-12, 4861-13, 4861-14, 4861-15, 4861-16, 4861-17, 4861-18, 4861-19, 4861-20, 4861-21, 4861-22, 4861-23, 4861-24, 4861-25, 4861-26, 4861-27, 4861-27a, 4861-28, 4861-29, 4861-30, 4861-31, 4861-32, 4861-33, 4862, 4862-1, 4862-2, 4862-3, 4862-4, 4862-5, 4862-6, 4862-7, 4862-8, 4862-9, 4862-10, 4863, 4863-1, 4863-2, 4863-3, 4863-4, 4863-5, 4863-6, 4863-7, 12993-2 and 12993-3 of the General Code be enacted to read as follows:

Fees and moneys to be paid weekly into state treasury.

Sec. 24. On or before Monday of each week every state officer, state institution, department, board, commission, college *** or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college *** or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. Where tuitions and fees are paid to the officer or officers of any college *** or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conduction of said tuition fund and fees. At the end of each term of any college *** or university receiving state aid the officer or officers having in charge said tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and disposition of the same.

All sections and parts of sections of the General Code which provide for the custody, management and control of moneys arising from the payment to any state officer, state institution, department, board, commission, college *** or university receiving state aid of any fees, taxes, assessments, licenses, premiums, penalties, fines, costs, sales, rentals or other charges or indebtedness and which are inconsistent with the provisions of section 24 of the General Code as herein amended, are, to the extent of such inconsistency, hereby repealed.

Immediately upon the taking effect of this act all moneys, checks and drafts in the possession of any state officer, state institution, department, board, commission or institution received for the state or for any

edge thereon a certificate of dedication of such lands as are embraced therein as streets and highways, for the use of the general public as such; and the council of any municipal corporation, within which such lands are situated may, by ordinance duly passed, accept such lands so dedicated as public streets, and the same shall thereafter be under the control and supervision of council of such municipal corporation as streets and highways.

School property exempt from taxation.

Sec. 4834-16. Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.

Board may execute leases to mineral lands.

Sec. 4834-17. When, in their opinion, the school district would be benefited thereby, the board of education may make, execute and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt and other mineral upon lands owned by such school district, to any person, association or corporation, who may comply with the terms prescribed by the board of education as to consideration, rights of way, occupancy of ground for necessary purposes and all other matters of contract shall be such as the board of education deems most advantageous to the school district. Such contracts or leases shall be forfeited to the school district for non-compliance with any of the terms therein set forth, and shall not operate as a conveyance of the fee to any part of the realty, or be valid for a longer term than fifteen years from the date thereof. The consideration of such contracts and leases shall be such rental or royalty as shall be prescribed by the board of education and payable as prescribed in such contract or lease but at least once in every year and shall be payable to the clerk of the school district, who shall give a receipt therefor and deposit same in the general fund of such school district.

Procedure for bidding and letting of contracts.

Sec. 4834-18. When the board of education determines to build, repair, enlarge or furnish a schoolhouse or schoolhouses, or make any improvements or repairs, the cost of which will exceed in city districts, three thousand dollars, and in other districts one thousand dollars, except in cases of urgent necessity, or for the security, and protection of school property, it must proceed as follows:

1. For the period of four weeks, the board shall advertise for bids in some newspaper of general circulation in the district and two such papers, if there are so many. If no newspaper has a general circulation therein, then by posting such advertisement in three public places therein. Such advertisement shall be entered in full by the clerk, on the record of proceedings of the board.
2. The bids, duly sealed, must be filed with the clerk by twelve o'clock noon, of the last day stated in the advertisement.
3. The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board;

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TITLE XXXIII

[33]

EDUCATION—LIBRARIES

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| 3301. Department of Education. | 3327. Transportation; Tuition. |
| 3303. State Board of Vocational Education. | 3329. Schoolbooks. |
| 3305. Censorship. | 3331. Age and Schooling Certificates. |
| 3307. State Teachers Retirement System. | 3335. Ohio State University. |
| 3309. Public School Employees Retirement System. | 3337. Ohio University. |
| 3311. School Districts; County Planning. | 3339. Miami University. |
| 3313. Boards of Education. | 3341. Bowling Green State University; Kent State University. |
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CHAPTER 3301

DEPARTMENT OF EDUCATION

<i>Revised Code</i>	<i>General Code</i>	
3301.01	154-46	} Superintendent of Public Instruction; Duties.
	154-48c	
3301.02	154-48a	Superintendent Shall Not Be Interested in Book Company.
3301.03	154-46e	Forms and Regulations for Reports; Chartering of High Schools.
3301.04	154-46f	Reports from Private Schools.
3301.05	154-46h	Inspection of Institutions.
3301.06	154-55	Superintendent a Member of Board of Trustees of Ohio Archaeological and Historical Society.
3301.07	154-50	Superintendent Shall Be Ex Officio Trustee of State Universities and Colleges.
3301.08	154-50	Department of Education to Control the State School for the Deaf and the State School for the Blind.

3301.01 (154-46) (154-46c). Superintendent of public instruction; duties.

There shall be a superintendent of public instruction, appointed by the governor, who shall act as the director of education.¹

The superintendent, while holding such office, shall not perform the duties of teacher or superintendent of a public or private school, or be employed as teacher in a college, or hold any other office or position of employment. He may, in the conduct of his official duties, travel within or without the state, and his necessary and actual expenses therefor when properly verified shall be paid by the state.²

Source: ¹GC § 154-46, ²§ 154-40c.

Appointment of board of examiners, 3319.20.

Compensation of state officials, 141.01 et seq.

County superintendent and board, 3319.19.

Governor may remove appointee, 3.04.

Official annual reports of state officials, 149.01.

Replacement fund, 3315.11 et seq.

See 121.12 and note citing 1931 OAG 3402.

Constitutional. O Const, Art VI, § 4 governs the appointment of the superintendent of public instruction, and, under the provisions of said section, the term of a person appointed by the governor to fill a vacancy in said office begins at the date of the appointment and qualification of said person and continues for the full term of four years. 1916 OAG p 292.

3301.02 (154-46a). Superintendent shall not be interested in book company.

No one who is interested financially or otherwise in any book publishing or book selling company, firm, or corporation, shall be eligible to appointment as superintendent of public instruction. If a superintendent becomes interested, financially or otherwise, in any book publishing or book selling company, firm, or corporation, said superintendent shall forthwith be removed from office by the governor.

3301.03 (154-46e). Forms and regulations for reports; chartering of high schools:

The superintendent of public instruction shall prescribe suitable forms and regulations for the reports and other proceedings required by the school laws, with such instructions for the organization and government of schools, including the classification and chartering of high schools, as he deems necessary, and transmit them to the local school officers, who shall be governed thereby in the performance of their duties. In classifying and chartering high schools, the superintendent shall be guided by the recommendations of an advisory board of five members, hereby created in the department of education, to be known as the high school board. The membership of such board shall include the assistant director of education and four members of the staff of the department of education appointed to such board by the superintendent and the members shall serve during his pleasure. The superintendent shall, upon recommendation of the high school board, revoke the charter of any high school which fails to meet the standards of high schools as prescribed by the department. In case a high school charter is revoked, the board of education maintaining such high school shall assign the pupils to an approved high school.

3301.04 (154-46f). Reports from private schools.

Each year the superintendent of public instruction shall require a report of the president, manager, or principal of each seminary, academy, or private school. The report shall be made upon forms furnished by the superintendent and shall contain a statement of such facts as he requests. The president, manager, or prin-

ration for municipal purposes will be mutually beneficial to such school district and municipal corporation, such exchange may be made by conveyances, executed by the mayor and clerk of the municipal corporation and by the president and clerk of the board, respectively.

3313.41 (4834-13). Sale of real or personal property.

When a board of education decides to dispose of real or personal property, held by it in its corporate capacity, exceeding in value six hundred dollars, it shall sell such property at public auction, after giving at least thirty days' notice thereof by publication in a newspaper of general circulation, or by posting notices thereof in five of the most public places in the district in which such property is situated. When the board has twice so offered a tract of real estate for sale at public auction and it is not sold, the board may sell it at a private sale, either as an entire tract or in parcels, as the board deems best.

If the board of education decides to dispose of such real property, it may sell and convey the same to any municipal corporation or board of trustees of the school district library in which such real estate is situated, upon such terms as are agreed upon.

When a board of education decides to trade as a part, or entire consideration, a motor vehicle on the purchase price of another motor vehicle, it may trade the same upon such terms as are agreed upon by the parties thereto.

The president and the clerk of the board of education shall execute and deliver deeds or other necessary instruments of conveyance to complete the sale or transfer provided for by this section.

A board of education may sell its real estate at private sale to township trustees only after it has been offered twice at public auction and is not sold, or where it does not exceed in value six hundred dollars. 1951 OAG 596.

This section grants the power of private sale to a board of education when the board wishes to sell its real property to any municipality or board of trustees of the school district library but not to any other political subdivision of the state. 1951 OAG 596.

A board of education in making sales of property, is not authorized to sell such property upon terms other than for cash, unless the sale is made to a municipality or a board of trustees of a school district library. 1933 OAG 1027.

A conveyance of lands to school directors given without valuable consideration, and, as stated in the instrument of conveyance, "for divers good and charitable purposes and in pursuance of a legislative act for the encouragement of schools passed AD 1827" and which recites in its granting clause that it gives and grants as a donation for school purposes certain property therein described, is equivalent to a dedication for a specific use and does not confer power of alienation so as to extinguish that use; upon abandonment of the property for school purposes it reverts to the heirs of the original grantors. 1932 OAG 4047.

3313.42 (4834-14). School district of this state and another state may maintain a school jointly.

When in the judgment of a board of education of any school district in this state, lying adjacent to a school district of another state, the best interests of the public schools can be promoted by purchasing school grounds, repairing or erecting a schoolhouse, and maintaining them jointly between the two adjacent school districts, the board of education of the school district of this state so situated may enter into an agreement with the school authorities of said adjacent school district for the purpose of purchasing school grounds, repairing or constructing a school building, purchasing school furniture, equipment, appliances, fuel, employing teachers, and maintaining a school. The board of education of this state may levy taxes and perform such other duties in maintaining such joint school as are otherwise provided by law for maintaining the public schools in this state.

In carrying out this section the school district shall pay such proportion of the cost of purchasing school grounds, repairing or erecting a building, and in main-

taining the joint school as is equitable and just in the judgment of the board of education and trustees of the two adjacent school districts.

3313.43 (4834-15). Dedication of school lands for street purposes; certificate of dedication.

When the board of education of any school district owns or holds lands for school purposes and said lands are not accessible by reason of the want of any street or public highway leading thereto and it becomes necessary that streets and highways be dedicated and opened for the purpose of making such lands accessible and available for the public use, and in so doing it becomes necessary to use and occupy part of said school lands for street or highway purposes, such board may, by resolution, authorize that a true map or plat of said lands be made by a competent engineer, delineating thereon the proposed streets or highways, and shall authorize the president and clerk of said board to execute and acknowledge thereon a certificate of dedication of such lands as are embraced therein as streets and highways, for the use of the general public as such. The legislative authority of any municipal corporation, within which such lands are situated may, by ordinance, accept such lands so dedicated as public streets, and the same shall thereafter be under the control and supervision of such legislative authority as streets and highways.

When lands owned by a board of education within a municipal corporation are dedicated by said board for street purposes, in order to have established a street for the purpose of making other lands owned by the board accessible, such lands so dedicated as a public street may be accepted as such, by the council of such municipal corporation and the said lands so dedicated shall thereafter be under the control and supervision of the council of such municipal corporation, as a public street. 1930 OAG 2368.

A board of education may lawfully purchase land needed for school purposes and accept a deed for said lands containing a condition subsequent with a clause of forfeiture and reversion upon the occurrence of said condition, and pay therefor from the public funds of the district. 1930 OAG 1989.

3313.44 (4834-16). School property exempt from taxation.

Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution.

Auditor of county to make list of exempt property, 6713.07.

Non-taxation of school property, 6709.07 et seq.

Taxation of school, ministerial, and other lands, 6709.06.

This section is constitutional. Univ of Cincinnati et al v BTA, 163 OS 142, 91 NE(2d) 502.

Real property, title to which is vested in and held by board of education for school purposes and upon which funds have been expended and improvements made preparatory to construction of school buildings thereon, may be exempted from taxation pursuant to O Const, Art XII, § 2, and this section, even though no schoolhouse has been constructed on such property. Bd of Educ v BTA, 149 OS 504, 80 NE(2d) 156.

In the event of failure of board of education to pay an assessment levied, an action may be brought by the municipal corporation against board of education to recover the amount of such assessment. Jackson v Bd of Edu, 115 OS 368, 154 NE 247.

§ 3812 confers upon a municipality general authority to levy assessments for street improvements against property within such corporation belonging to a board of education and being used for school purposes, and no provision exists in Ohio exempting such property from that general authority. Jackson v Bd of Edu, 115 OS 368, 154 NE 247. [GC 3812 now RC 727.01].

Property vested in a board of education and devoted solely to educational purposes, or the income of which is devoted solely to the endowment or support of schools for the free education of youth, shall be exempt from taxation. Bd of Edu v Hess, 30 App 446, 165 NE 372.

Where a board of education, having a conditional or limited estate in lands, erects buildings and improvements thereon to adapt them to such special uses, and thereafter abandons the time after such abandonment may remove the said buildings and improvements. May v Bd of Edu, 12 App 456.

Lands vested in a board of education may be assessed by municipal authorities, for public improvements, the same as property otherwise owned, and if assessment is not paid at proper time as fixed by municipal authorities making assessment, amount assessed, together with interest and penalty as provided by statute, may be collected by suit in an action against board of education as provided by law for the collection of such assessments, interest and penalty. 1939 OAG 937.

A board of education in making sales of property by authority of this section is not authorized to sell such property upon terms other than for cash, unless the sale is made to a municipality or a board of trustees of a school district library. 1933 OAG p 1044.

Money in the hands of a board of education, due and payable to a teacher employed by it, is subject to garnishment. 1932 OAG 4545.

Property owned by a board of education, acquired in anticipation of future needs of the schools and not used exclusively for any public purpose, is not exempt from taxation within the provisions of O Const, Art 12, § 2. 1927 OAG 1365.

Under existing statutes lands owned by a board of education are not subject to assessment for road improvements. 1919 OAG p 730.

See Baldwin's Pre-1910 Case Notes.

3313.45 (4834-17). Board may execute and deliver contracts or leases to mineral lands.

When, in its opinion, the school district would be benefited thereby, the board of education may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other mineral upon lands owned by such school district, to any person, association, or corporation, who complies with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes, and all other matters of contract shall be such as the board deems most advantageous to the school district. Such contracts or leases shall be forfeited to the school district for noncompliance with any of the terms therein set forth, and shall not operate as a conveyance of the fee to any part of the realty, or be valid for more than fifteen years from the date thereof. The consideration of such contracts and leases shall be such rental or royalty as is prescribed by the board and payable as prescribed in such contract or lease, but at least once in every year, and shall be payable to the clerk of the school district, who shall give a receipt therefor and deposit same in the general fund of such school district.

3313.46 (4834-18). Procedure for bidding and letting of contracts.

When the board of education determines to build, repair, enlarge, or furnish a schoolhouse, or make any improvements or repairs, the cost of which will exceed in city districts, six thousand dollars, and in other districts four thousand dollars, except in cases of urgent necessity, or for the security and protection of school property, it must proceed as follows:

(A) For the period of four weeks, the board shall advertise for bids in some newspaper of general circulation in the district and two such papers, if there are two. If no newspaper has a general circulation in the district, then the board shall post such advertisement in three public places in the district. Such advertisement shall be entered in full by the clerk of the board of education, on the record of proceedings of the board.

(B) The sealed bids must be filed with the clerk by twelve noon of the last day stated in the advertisement.

(C) The bids shall be opened at the next meeting of the board, be publicly read by the clerk, and entered in full on the records of the board; provided that the board may by resolution provide for the public opening and reading of such bids by the clerk immediately after the time for filing such bids has expired, at the usual place of meeting of the board, and for the tabulation of such bids and a report thereof to the board at its next meeting.

(D) Each bid must contain the name of every person interested therein, and shall be accompanied by a bid

bond or by a certified check upon a solvent bank, as the board requires, payable to the order of the treasurer of the board of education, in an amount to be fixed by the board or by an officer designated for such purpose by the board, said bond or check to be in no case less than five per cent of the amount of the bid and conditioned that if the bid is accepted, a contract will be entered into, and the performance of it properly secured.

(E) When both labor and materials are embraced in the work bid for, the board may require that each be separately stated in the bid, with the price thereof, or may require that bids be submitted without such separation.

(F) None but the lowest responsible bid shall be accepted. The board may reject all the bids, or accept any bid for both labor and material for such improvement or repair, which is the lowest in the aggregate.

(G) The contract must be between the board and the bidders. The board shall pay the contract price for the work, when it is completed, in cash, and may pay monthly estimates as the work progresses.

(H) When two or more bids are equal, in the whole, or in any part thereof, and are lower than any others, either may be accepted, but in no case shall the work be divided between such bidders.

(I) When there is reason to believe there is collusion or combination among the bidders, or any number of them, the bids of those concerned therein shall be rejected.

Rates for legal advertising, 7.10.

1. Existence of urgent necessity
2. Duty to advertise
3. Acceptance of bids
4. Illegal and void contracts
5. Miscellaneous

1. Existence of urgent necessity

Where board of education determined that a new school building was immediately necessary because of great increase of residents in the area, there existed an "urgent necessity" as used in this section which dispenses in such cases with advertising requirement of 4 weeks for bids for construction, and the fact that under such conditions the advertisement was made for only 3 weeks, is not grounds to enjoin acceptance of a bid made in response to the advertisement. *Saunders v Van Buren Twp Bd of Education*, 42 Abs 172, 59 NE(2d) 936.

Board of education cannot reject bid of lowest bidder without proper cause, and by shortening time within which work is to be done, create an emergency or "urgent necessity" and use their own acts as reasons to avoid compliance with this section. *Bolce v Bd of Education*, 22 Abs 363.

Where there were no facts alleged to show any necessity to have painting, repairing or improving done immediately, and fact that work was in progress at time of hearing on it, and was not completed by board until long after schools were in operation, there is evidence that there existed no emergency or "urgent necessity" under this section. *Bolce v Bd of Education*, 22 Abs 363.

The necessity for the completion of a high school building, which was already in use by some of the pupils who found ingress to the building without passing through the main corridor where the work in question remained to be done, did not present such a case of "urgent necessity" as to release the parties from the necessity of advertising for bids for the customary period in the statutory manner. *Mueller v Bd of Edu*, 11 NP(NS) 113, 25 D 195.

Failure of a board of education to advertise for bids for "extras" which have become necessary for the completion of a high school building under a contract theretofore awarded, renders void a contract for the supplying of such extras, unless an urgent necessity existed for completion of the work without the delay incident to advertising for the submission of bids. *Mueller v Bd of Edu*, 11 NP(NS) 113, 25 D 195.

Whether failure to comply with a statutory requirement with reference to public work may be excused by "urgent necessity" for an early completion of the work must be determined from the circumstances of the particular case. *Mueller v Bd of Edu*, 11 NP(NS) 113, 25 D 195.

Where a board of education of a village school district determines to purchase from the Ohio State Reformatory furnishings for a school house in excess of \$1000, provisions of this section are not applicable, and it is not necessary for the board of education to advertise for bids. 1938 OAG 3528.

Where the original contractor, on a contract for the construction of a school building, defaults on his contract, and where the condition of the building is such that the early com-



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(128th General Assembly)
(Amended Substitute Senate Bill Number 181)

AN ACT

To amend sections 122.12, 135.143, 148.06, 926.31, 1501.04, 1517.23, 3302.03, 3313.44, 4928.01, 5709.62, 5709.63, 5709.632, 5739.02, 5751.08, 5751.09, 6109.22, and 6111.036, to enact sections 1513.372, 1517.03, 1517.04, and 5709.084 of the Revised Code, to amend Sections 265.30.40 and 265.40.60 of Am. Sub. H.B. 1 of the 128th General Assembly, to amend Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly, as subsequently amended, and to repeal Sections 6 and 7 of Sub. H.B. 318 of the 128th General Assembly to provide immunity from liability for eligible landowners who provide access to abandoned mine land located on their land for purposes of acid mine drainage abatement and to provide immunity from liability for nonprofit organizations that provide funding or services for such acid mine drainage abatement, to designate that methane gas emitted from an abandoned coal mine constitutes a renewable energy resource rather than an advanced energy resource for purposes of the law governing the promotion of renewable energy usage, electricity supplied from renewable energy sources, and renewable energy credits, to reestablish the Ohio Natural Areas Council, and to expand the purposes for which the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund and the Water Pollution Control Loan Fund may be used; to revise the performance ratings for school districts and buildings; to require the Director of Budget and Management, upon the request of the Director of Natural Resources and beginning July 1, 2010, and ending January 1, 2012, to transfer an amount not to exceed \$1.2 million from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of supporting permanent employees of the Division of Natural Areas and Preserves through January 1, 2012; to require the Administrator of the Bureau of Workers' Compensation, beginning July 1, 2010, and ending December 31, 2010, to transfer a portion of the investment earnings of the Coal-Workers' Pneumoconiosis Fund to the Strip Mining Administration Fund; to include NASCAR races, certain Olympic-style boxing competitions, and the Air New Zealand Golden Oldies World Rugby Festival as sporting events for which state grants may be awarded to a county or municipal corporation; to alter the authority of the Treasurer of State to invest in single-issuer debt; to require regional water and sewer districts and regional transit authorities to offer additional deferred compensation plans; to modify the law governing which entities are subject to testing of agricultural commodities; to exempt from taxation property leased by a school district for a term of at least fifty years; to exempt convention centers in large-population counties from property taxation and to exempt, for one year, construction materials incorporated into such convention centers from sales and use tax; to extend enterprise zone authority for one year; to permanently authorize the Tax Commissioner to refund erroneously made commercial activity tax payments made by persons not required to pay the tax; to expressly permit consensual extensions of the four-year time limit on assessments and refund requests for the commercial activity tax; to reauthorize and make appropriations for the Department of Development's Job Ready Sites Program for fiscal years 2011 and 2012; to reauthorize and make appropriations for the Department of Development's Clean Ohio Revitalization Program for fiscal years 2011 and 2012; to require the Chancellor of the Board of Regents to develop a work force development pilot program for areas of the state with high unemployment; and to provide for adjustments to payments to schools, to provide for adjustments to payments to nonpublic schools, and to make an appropriation.

Be It enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 122.12, 135.143, 148.06, 926.31, 1501.04, 1517.23, 3302.03, 3313.44, 4928.01, 5709.62, 5709.63, 5709.632, 5739.02, 5751.08, 5751.09, 6109.22, and 6111.036 be amended and sections 1513.372, 1517.03, 1517.04, and 5709.084 of the Revised Code be enacted to read as follows:

Sec. 122.12. As used in this section and in section 122.121 of the Revised Code:

- (A) "Endorsing county" means a county that contains a site selected by a site selection organization for one or more games.
- (B) "Endorsing municipality" means a municipal corporation that contains a site selected by a site selection organization for one or more games.
- (C) "Game support contract" means a joinder undertaking, joinder agreement, or similar contract executed by an endorsing municipality or endorsing county and a site selection organization.
- (D) "Game" means a national football league "super bowl," a national collegiate athletic association championship game or match, the national basketball association all-star game, the national hockey league all-star game, the major league baseball all-star game, a national collegiate athletic association bowl championship series game, a world cup soccer game, a national association for stock car auto racing race, the air New Zealand golden oldies world rugby festival, the golden gloves of America, Inc., national golden gloves tournament, the USA boxing association national championships, the international boxing association world cup or world championships, or the olympic games.
- (E) "Joinder agreement" means an agreement entered into by an endorsing municipality or endorsing county, or more than one endorsing municipality or county acting collectively and a site selection organization setting out representations and assurances by each endorsing municipality or endorsing county in connection with the selection of a site in this state for the location of a game.
- (F) "Joinder undertaking" means an agreement entered into by an endorsing municipality or endorsing county, or more than one endorsing municipality or county acting collectively and a site selection organization that each endorsing municipality or endorsing county will execute a joinder agreement in the event that the site selection organization selects a site in this state for a game.
- (G) "Local organizing committee" means a nonprofit corporation or its successor in interest that:
- (1) Has been authorized by an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively to pursue an application and bid on the applicant's behalf to a site selection organization for selection as the site of one or more games; or
 - (2) With the authorization of an endorsing municipality, endorsing county, or more than one endorsing municipality or county acting collectively, has executed an agreement with a site selection organization regarding a bid to host one or more games.
- (H) "Site selection organization" means the national football league, the national hockey league, the national collegiate athletic association, the national basketball association, the national olympic committee, the international federations de football association, the international world games association, the United States olympic committee, the national association for stock car auto racing, the national senior games association, the air New Zealand golden oldies world rugby secretariat, golden gloves of America, Inc., the USA boxing association, the international boxing association, or the national governing body of a sport that is recognized as such by the United States olympic committee.

Sec. 135.143. (A) The treasurer of state may invest or execute transactions for any part or all of the intenn funds of the state in the following classifications of obligations:

- (1) United States treasury bills, notes, bonds, or any other obligations or securities issued by the United States treasury or any other obligation guaranteed as to principal and interest by the United States;
- (2) Bonds, notes, debentures, or any other obligations or securities issued by any federal government agency or instrumentality;

(3) Bonds and other direct obligations of the state of Ohio issued by the treasurer of state and of the Ohio public facilities commission, the Ohio building authority, and the Ohio housing finance agency;

(4)(a) Written repurchase agreements with any eligible Ohio financial institution that is a member of the federal reserve system or federal home loan bank or any recognized United States government securities dealer, under the terms of which agreement the treasurer of state purchases and the eligible financial institution or dealer agrees unconditionally to repurchase any of the securities that are listed in division (A)(1), (2), or (6) of this section and that will mature or are redeemable within ten years from the date of purchase. The market value of securities subject to these transactions must exceed the principal value of the repurchase agreement by an amount specified by the treasurer of state, and the securities must be delivered into the custody of the treasurer of state or the qualified trustee or agent designated by the treasurer of state. The agreement shall contain the requirement that for each transaction pursuant to the agreement, the participating institution or dealer shall provide all of the following information:

(i) The par value of the securities;

(ii) The type, rate, and maturity date of the securities;

(iii) A numerical identifier generally accepted in the securities industry that designates the securities.

(b) The treasurer of state also may sell any securities, listed in division (A)(1), (2), or (6) of this section, regardless of maturity or time of redemption of the securities, under the same terms and conditions for repurchase, provided that the securities have been fully paid for and are owned by the treasurer of state at the time of the sale.

(5) Securities lending agreements with any eligible financial institution that is a member of the federal reserve system or federal home loan bank or any recognized United States government securities dealer, under the terms of which agreements the treasurer of state lends securities and the eligible financial institution or dealer agrees to simultaneously exchange similar securities or cash, equal value for equal value.

Securities and cash received as collateral for a securities lending agreement are not interim funds of the state. The investment of cash collateral received pursuant to a securities lending agreement may be invested only in such instruments specified by the treasurer of state in accordance with a written investment policy.

(6) Various forms of commercial paper issued by any corporation that is incorporated under the laws of the United States or a state, which notes are rated at the time of purchase in the two highest categories by two nationally recognized rating agencies, provided that the total amount invested under this section in any commercial paper at any time shall not exceed twenty-five per cent of the state's total average portfolio, as determined and calculated by the treasurer of state;

(7) Bankers acceptances, maturing in two hundred seventy days or less, which are eligible for purchase by the federal reserve system, provided that the total amount invested in bankers acceptances at any time shall not exceed ten per cent of the state's total average portfolio, as determined and calculated by the treasurer of state;

(8) Certificates of deposit in eligible institutions applying for interim moneys as provided in section 135.08 of the Revised Code, including linked deposits as provided in sections 135.61 to 135.67 of the Revised Code, agricultural linked deposits as provided in sections 135.71 to 135.76 of the Revised Code, and housing linked deposits as provided in sections 135.81 to 135.87 of the Revised Code;

(9) The state treasurer's investment pool authorized under section 135.45 of the Revised Code;

(10) Debt interests, other than commercial paper described in division (A)(6) of this section, rated at the time of purchase in the three highest categories by two nationally recognized rating agencies and issued by corporations that are incorporated under the laws of the United States or a state, or issued by foreign nations diplomatically recognized by the United States government, or any instrument based on, derived from, or related to such interests—~~All interest and principal shall be denominated and payable in United States funds. The, provided that:~~

~~(a) The investments made under division (A)(10) of this section in debt interests shall not exceed in the aggregate twenty-five per cent of the state's total average portfolio, as determined and calculated by the treasurer of state. The;~~

~~(b) The investments made under division (A)(10) of this section in debt interests issued by foreign nations shall not exceed in the aggregate one per cent of the state's total average portfolio, as determined and calculated by the treasurer of state. The;~~

~~(c) The investments made under division (A)(10) of this section in the debt interests of a single issuer shall not exceed in the aggregate one-half of one per cent of the state's total average portfolio, as determined and calculated by the treasurer of state except that debt interests of a single issuer that is a foreign nation shall not exceed in the aggregate one per cent of the state's portfolio.~~

The treasurer of state shall invest under division (A)(10) of this section in a debt interest issued by a foreign nation only if the debt interest is backed by the full faith and credit of that foreign nation, and provided that all interest and principal shall be denominated and payable in United States funds. For

purposes of division (A)(10) of this section, a debt interest is rated in the three highest categories by two nationally recognized rating agencies if either the debt interest itself or the issuer of the debt interest is rated, or is implicitly rated, at the time of purchase in the three highest categories by two nationally recognized rating agencies.

For purposes of division (A)(10) of this section, the "state's portfolio" means the state's total average portfolio, as determined and calculated by the treasurer of state.

(11) No-load money market mutual funds consisting exclusively of obligations described in division (A)(1), (2), or (6) of this section and repurchase agreements secured by such obligations.

(12) Obligations of a board of education issued under authority of section 133.10 or 133.301 of the Revised Code.

(8) Whenever, during a period of designation, the treasurer of state classifies public moneys as interim moneys, the treasurer of state shall notify the state board of deposit of such action. The notification shall be given within thirty days after such classification and, in the event the state board of deposit does not concur in such classification or in the investments or deposits made under this section, the board may order the treasurer of state to sell or liquidate any of the investments or deposits, and any such order shall specifically describe the investments or deposits and fix the date upon which they are to be sold or liquidated. Investments or deposits so ordered to be sold or liquidated shall be sold or liquidated for cash by the treasurer of state on the date fixed in such order at the then current market price. Neither the treasurer of state nor the members of the state board of deposit shall be held accountable for any loss occasioned by sales or liquidations of investments or deposits at prices lower than their cost. Any loss or expense incurred in making these sales or liquidations is payable as other expenses of the treasurer's office.

(C) If any securities or obligations invested in by the treasurer of state pursuant to this section are registrable either as to principal or interest, or both, such securities or obligations shall be registered in the name of the treasurer of state.

(D) The treasurer of state is responsible for the safekeeping of all securities or obligations under this section. Any such securities or obligations may be deposited for safekeeping as provided in section 113.05 of the Revised Code.

(E) Interest earned on any investments or deposits authorized by this section shall be collected by the treasurer of state and credited by the treasurer of state to the proper fund of the state.

(F) Whenever investments or deposits acquired under this section mature and become due and payable, the treasurer of state shall present them for payment according to their tenor, and shall collect the moneys payable thereon. The moneys so collected shall be treated as public moneys subject to sections 135.01 to 135.21 of the Revised Code.

(G) The treasurer of state and any board of education issuing obligations referred to in division (A)(12) of this section may enter into an agreement providing for:

(1) The purchase of those obligations by the treasurer of state on terms and subject to conditions set forth in the agreement;

(2) The payment by the board of education to the treasurer of state of a reasonable fee as consideration for the agreement of the treasurer of state to purchase those obligations; provided, however, that the treasurer of state shall not be authorized to enter into any such agreement with the board of education of a school district that has an outstanding obligation with respect to a loan received under authority of section 3313.483 of the Revised Code.

(H) For purposes of division (G) of this section, a fee shall not be considered reasonable unless it is set to recover only the direct costs and a reasonable estimate of the indirect costs associated with the purchasing of obligations of a school board under division (G) of this section and any reselling of the obligations or any interest in the obligations, including interests in a fund comprised of the obligations. No money from the general revenue fund shall be used to subsidize the purchase or resale of these obligations.

(J) All money collected by the treasurer of state from the fee imposed by division (G) of this section shall be deposited to the credit of the state school board obligations fund, which is hereby created in the state treasury. Money credited to the fund shall be used solely to pay the treasurer of state's direct and indirect costs associated with purchasing and reselling obligations of a board of education under division (G) of this section.

Sec. 148.06. As used in this section:

(A) "Government unit" means a county, park district of any kind, conservancy district, sanitary district, regional water and sewer district, regional transit authority, health district, public library district, or county law library.

(B) "Governing board" means, in the case of the county, the board of county commissioners; in the case of a park district, the board of park commissioners; in the case of a conservancy district, the district's board of directors; in the case of a sanitary district, the district's board of directors; in the case of a regional water and sewer district, the district's board of trustees; in the case of a regional transit authority, the authority's board of trustees; in the case of a health district, the board of health; in the case of a public library district, the board of library trustees; and in the case of a county law library, the board of trustees of the law library association.

In addition to the program of deferred compensation that may be offered under this chapter, a governing board may offer to all of the officers and employees of the government unit not to exceed two additional programs for deferral of compensation designed for favorable tax treatment of the compensation so deferred. Any such program shall include a reasonable number of options to the officer or employee for the investment of the deferred funds, including annuities, variable annuities, regulated investment trusts, or other forms of investment approved by the governing board, that will assure the desired tax treatment of the funds.

Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the officer's or employee's retirement system but shall not be included in the computation of any federal and state income taxes withheld on behalf of any such employee.

Sec. 926.31. (A) Upon receipt of any shipment of an agricultural commodity from a producer depositor or his a depositor's agent, either for sale or for storage under a bailment agreement, the licensed handler shall cause a representative sample to be drawn for testing by an agricultural commodity tester to determine the quality of the commodity. At the request of the producer depositor or his the depositor's agent, the tester shall immediately test the sample and shall notify the producer depositor or his the depositor's agent of the results of the test and of any price discount, premium, or conditioning charge that is applicable to the value of the commodity. Upon notification of the test and the value adjustment to be applied, the producer depositor or his the depositor's agent shall do one of the following:

- (1) Refuse to sell or store the commodity unless he the depositor or agent has unloaded the commodity prior to testing;
- (2) Agree to sell or store the commodity and accept the agricultural commodity tester's results of the testing of the shipment and the applicable value adjustment;
- (3) Agree to sell or store the commodity but reject the agricultural commodity tester's results of the testing of the shipment and order the handler to forward the sample to a federally licensed grain inspector immediately for a final testing of the shipment. The producer depositor, his the depositor's agent, or the handler may specify in writing which testing factor or factors he the depositor, depositor's agent, or handler wishes the federal inspector to test.
- (B) If, either prior to or during the unloading of the shipment, the licensed handler believes that the original sample drawn is not representative of the shipment, or if the producer depositor or his the depositor's agent requests a second sample to be drawn, the handler shall cause a second sample to be drawn and used for the testing of the shipment.

(C) Any determination of a federally licensed grain inspector under this section shall be binding on both the licensed handler and the producer depositor or his the depositor's agent as the basis for determining the premium or discount and settlement price, if the shipment was delivered for sale, or the conditioning charge, if the shipment was received for storage under a bailment agreement. The cost of the federal inspection and the actual cost of forwarding the sample for such inspection shall be borne by the handler, if the test increases the value of the agricultural commodity as originally determined by the agricultural commodity tester, or by the producer depositor, if the test does not change or lowers the value of the commodity.

(D) Any licensed handler and any producer depositor or his the agent of a depositor may enter into an agreement whereby representative samples of each of several shipments of the same agricultural commodity that arrive at the handler's warehouse or facility during any one business day shall be combined to obtain a single result of the testing of the combined shipments of the commodity.

(E) No person shall offer for sale or storage any agricultural commodity that is:

- (1) Treated with any poisonous material or that contains rodent excreta or any other material in such amounts as to render the commodity unfit for animal or human consumption;
- (2) Knowingly or purposely loaded unevenly so as to conceal amounts of the commodity that are inferior.

(F) Nothing in this section shall be construed to relieve any contractual obligations in effect between the licensed handler or the producer depositor.

Sec. 1501.04. There is hereby created in the department of natural resources a recreation and resources commission composed of the chairperson of the wildlife council created under section 1531.03 of the Revised Code, the chairperson of the parks and recreation council created under section 1541.40 of the Revised Code, the chairperson of the waterways safety council created under section 1547.73 of the Revised Code, the chairperson of the technical advisory council on oil and gas created under section 1509.38 of the Revised Code, the chairperson of the forestry advisory council created under section 1503.40 of the Revised Code, the chairperson of the Ohio soil and water conservation commission created under section 1515.02 of the Revised Code, the chairperson of the Ohio natural areas council created under section 1517.03 of the Revised Code, the chairperson of the Ohio water advisory council created under section 1521.031 of the Revised Code, the chairperson of the recycling and litter prevention advisory council created under section 1502.04 of the Revised Code, the chairperson of the Ohio geology advisory council created under section 1505.11 of the Revised Code, and five members appointed by the governor with the advice and consent of the senate, not more than three of whom shall belong to the same political party. The director of natural resources shall be an ex officio member of the commission, with a voice in its deliberations, but without the power to vote.

Terms of office of members of the commission appointed by the governor shall be for five years, commencing on the second day of February and ending on the first day of February. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed.

In the event of the death, removal, resignation, or incapacity of a member of the commission, the governor, with the advice and consent of the senate, shall appoint a successor who shall hold office for the remainder of the term for which the member's predecessor was appointed. Any member shall continue in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The governor may remove any appointed member of the commission for misfeasance, nonfeasance, or malfeasance in office.

The commission shall exercise no administrative function, but may do any of the following:

- (A) Advise with and recommend to the director as to plans and programs for the management, development, utilization, and conservation of the natural resources of the state;
- (B) Advise with and recommend to the director as to methods of coordinating the work of the divisions of the department;
- (C) Consider and make recommendations upon any matter that the director may submit to it;
- (D) Submit to the governor biennially recommendations for amendments to the conservation laws of the state.

Each member of the commission, before entering upon the discharge of the member's duties, shall take and subscribe to an oath of office, which oath, in writing, shall be filed in the office of the secretary of state.

The members of the commission shall serve without compensation, but shall be entitled to receive their actual and necessary expenses incurred in the performance of their official duties.

The commission, by a majority vote of all its members, shall adopt and amend bylaws.

To be eligible for appointment, a person shall be a citizen of the United States and an elector of the state and shall possess a knowledge of and have an interest in the natural resources of this state.

The commission shall hold at least four regular quarterly meetings each year. Special meetings shall be held at such times as the bylaws of the commission provide. Notices of all meetings shall be given in such manner as the bylaws provide. The commission shall choose annually from among its

members a chairperson to preside over its meetings and a secretary to keep a record of its proceedings. A majority of the members of the commission constitutes a quorum. No advice shall be given or recommendation made without a majority of the members of the commission concurring in it.

Sec. 1513.372. (A) As used in this section:

(1) "Abandoned mine land" means land or water resources adversely affected by coal mining practices to which one of the following applies:

- (a) The coal mining practices occurred prior to August 3, 1977, and there is no continuing reclamation responsibility under state or federal law.
- (b) The coal mining practices occurred prior to April 10, 1972.
- (c) The coal mining practices were conducted pursuant to a license that was issued prior to April 10, 1972.

(2) "Eligible landowner" means a landowner who provides access without charge or other consideration to abandoned mine land that is located on the landowner's property for the purpose of allowing the implementation of a reclamation project on the abandoned mine land. "Eligible landowner" does not include a person that is responsible under state or federal law to reclaim the land or address acid mine drainage existing or emanating from the abandoned mine land.

(3) "Landowner" means a person who holds a fee interest in real property.

(4) "Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501(c)(3), as amended, that provides funding or services at no cost or at cost for a reclamation project.

(5) "Reclamation project" means an acid mine drainage abatement project that is conducted in compliance with this chapter and rules adopted under it on abandoned mine land that is located on property owned by an eligible landowner.

(6) "Reclamation project work area" means the portion of a parcel of real property on which a reclamation project is conducted and the roads providing ingress to and egress from the reclamation project.

(B) Except as provided in divisions (C) and (D) of this section, an eligible landowner or nonprofit organization is immune from liability as follows:

(1) For any injury to or damage suffered by a person working under the direct supervision of the division of mineral resources management while the person is within the reclamation project work area;

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the division during the construction, operation, and maintenance of the reclamation project;

(3) For any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the division;

(4) For the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement facility or denies access to the division of mineral resources management that is responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

(C) The eligible landowner shall notify the division of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity established in division (B) of this section does not apply to any injury, damage, or pollution resulting from the eligible landowner's failure to notify the division of such a known, latent, dangerous condition.

(D) The immunity established in division (B) of this section does not apply in both of the following circumstances:

(1) An injury to a person within the reclamation project work area that results from an eligible landowner's or nonprofit organization's acts or omissions that are reckless or constitute gross negligence or willful or wanton misconduct;

(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.

(E) The chief of the division of mineral resources management shall adopt rules in accordance with Chapter 119. of the Revised Code that are necessary to implement this section.

Sec. 1517.03. There is hereby created the Ohio natural areas council to advise the chief of the division of natural areas and preserves on the administration of nature preserves and the preservation of natural areas.

The council shall have no fewer than five members as determined by the director of natural resources. The members shall be appointed by the director.

Not later than thirty days after the effective date of this section, the director shall make initial appointments to the council. The director shall establish the terms of office of the members of the council.

The council annually shall select from among its members a chairperson and a secretary. Members of the council shall receive no compensation and shall not be reimbursed for expenses incurred as members of the council.

The council shall hold at least one regular meeting in each calendar year. Special meetings may be called by the chairperson and shall be called by the chairperson upon written request by two or more members of the council. A written notice of the time and place of each meeting shall be sent to each member and to the director. A majority of the members of the council constitutes a quorum. The council shall keep a record of its proceedings at each meeting and shall send a copy of the record to the director. The record shall be open to the public for inspection.

Sec. 1517.04. The Ohio natural areas council shall do all of the following:

(A) Review and make recommendations regarding criteria used by the department of natural resources for acquisition and dedication of nature preserves;

(B) Review and make recommendations regarding inventories and registries of natural areas and preserves;

(C) Review and make recommendations regarding departmental plans for the selection of particular natural areas for state acquisition;

(D) Advise the chief of the division of natural areas and preserves on policies and rules governing the management, protection, and use of nature preserves;

(E) Recommend the extent and type of visitation and use to be permitted within each nature preserve;

(F) Advise and consult with the chief and with employees of the division of natural areas and preserves on preservation matters;

(G) Advise the chief on the program to identify and protect the state's cave resources that is established under this chapter.

Sec. 1517.23. The With the advice of the Ohio natural areas council created in section 1517.03 of the Revised Code, the chief of the division of natural areas and preserves shall do both of the following:

(A) Formulate policies and plans and establish a program incorporating them for the identification and protection of the state's cave resources and adopt, amend, or rescind rules in accordance with Chapter 119. of the Revised Code to implement that program;

(B) Provide technical assistance and management advice to owners upon request concerning the protection of caves on their land.

Sec. 3302.03. (A) Annually the department of education shall report for each school district and each school building in a district all of the following:

(1) The extent to which the school district or building meets each of the applicable performance indicators created by the state board of education under section 3302.02 of the Revised Code and the number of applicable performance indicators that have been achieved;

(2) The performance index score of the school district or building;

(3) Whether the school district or building has made adequate yearly progress;

(4) Whether the school district or building is excellent, effective, needs continuous improvement, is under an academic watch, or is in a state of academic emergency.

(B) Except as otherwise provided in divisions division (B)(6) and (7) of this section:

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- (1) A school district or building shall be declared excellent if it fulfills one of the following requirements:
- ~~(a) It makes adequate yearly progress and either meets at least ninety-four per cent of the applicable state performance indicators or has a performance index score established by the department.~~
- ~~(b) It has failed to make adequate yearly progress for not more than two consecutive years and either meets at least ninety-four per cent of the applicable state performance indicators or has a performance index score established by the department, except that if it does not make adequate yearly progress for two or more of the same subgroups for three or more consecutive years, it shall be declared effective.~~
- (2) A school district or building shall be declared effective if it fulfills one of the following requirements:
- ~~(a) It makes adequate yearly progress and either meets at least seventy-five per cent but less than ninety-four per cent of the applicable state performance indicators or has a performance index score established by the department.~~
- ~~(b) It does not make adequate yearly progress and either meets at least seventy-five per cent of the applicable state performance indicators or has a performance index score established by the department, except that if it does not make adequate yearly progress for two or more of the same subgroups for three or more consecutive years, it shall be declared in need of continuous improvement.~~
- (3) A school district or building shall be declared to be in need of continuous improvement if it fulfills one of the following requirements:
- (a) It makes adequate yearly progress, meets less than seventy-five per cent of the applicable state performance indicators, and has a performance index score established by the department.
- (b) It does not make adequate yearly progress and either meets at least fifty per cent but less than seventy-five per cent of the applicable state performance indicators or has a performance index score established by the department.
- (4) A school district or building shall be declared to be under an academic watch if it does not make adequate yearly progress and either meets at least thirty-one per cent but less than fifty per cent of the applicable state performance indicators or has a performance index score established by the department.
- (5) A school district or building shall be declared to be in a state of academic emergency if it does not make adequate yearly progress, does not meet at least thirty-one per cent of the applicable state performance indicators, and has a performance index score established by the department.
- ~~(6) When designating performance ratings for school districts and buildings under divisions (B)(1) to (5) of this section, the department shall not assign a school district or building a lower designation from its previous year's designation based solely on one subgroup not making adequate yearly progress.~~
- ~~(7) Division (B)(7)(d) of this section does not apply to any community school established under Chapter 3314, of the Revised Code in which a majority of the students are enrolled in a dropout prevention and recovery program.~~
- A school district or building shall not be assigned a higher performance rating than in need of continuous improvement if at least ten per cent but not more than fifteen per cent of the enrolled students do not take all achievement assessments prescribed for their grade level under division (A)(1) or (b) (1) of section 3301.0710 of the Revised Code from which they are not excused pursuant to division (C)(1) or (3) of section 3301.0711 of the Revised Code. A school district or building shall not be assigned a higher performance rating than under an academic watch if more than fifteen per cent but not more than twenty per cent of the enrolled students do not take all achievement assessments prescribed for their grade level under division (A)(1) or (b) (1) of section 3301.0710 of the Revised Code from which they are not excused pursuant to division (C)(1) or (3) of section 3301.0711 of the Revised Code. A school district or building shall not be assigned a higher performance rating than in a state of academic emergency if more than twenty per cent of the enrolled students do not take all achievement assessments prescribed for their grade level under division (A)(1) or (b)(1) of section 3301.0710 of the Revised Code from which they are not excused pursuant to division (C)(1) or (3) of section 3301.0711 of the Revised Code.
- (C)(1) The department shall issue annual report cards for each school district, each building within each district, and for the state as a whole reflecting performance on the indicators created by the state board under section 3302.02 of the Revised Code, the performance index score, and adequate yearly progress.
- (2) The department shall include on the report card for each district information pertaining to any change from the previous year made by the school district or school buildings within the district on any performance indicator.
- (3) When reporting data on student performance, the department shall disaggregate that data according to the following categories:
- Performance of students by age group;
 - Performance of students by race and ethnic group;
 - Performance of students by gender;
 - Performance of students grouped by those who have been enrolled in a district or school for three or more years;
 - Performance of students grouped by those who have been enrolled in a district or school for more than one year and less than three years;
 - Performance of students grouped by those who have been enrolled in a district or school for one year or less;
 - Performance of students grouped by those who are economically disadvantaged;
 - Performance of students grouped by those who are enrolled in a conversion community school established under Chapter 3314, of the Revised Code;
 - Performance of students grouped by those who are classified as limited English proficient;
 - Performance of students grouped by those who have disabilities;
 - Performance of students grouped by those who are classified as migrants;
 - Performance of students grouped by those who are identified as gifted pursuant to Chapter 3324, of the Revised Code.
- The department may disaggregate data on student performance according to other categories that the department determines are appropriate. To the extent possible, the department shall disaggregate data on student performance according to any combinations of two or more of the categories listed in divisions (C)(3)(a) to (l) of this section that it deems relevant.
- In reporting data pursuant to division (C)(3) of this section, the department shall not include in the report cards any data statistical in nature that is statistically unreliable or that could result in the identification of individual students. For this purpose, the department shall not report student performance data for any group identified in division (C)(3) of this section that contains less than ten students.
- (4) The department may include with the report cards any additional education and fiscal performance data it deems valuable.
- (5) The department shall include on each report card a list of additional information collected by the department that is available regarding the district or building for which the report card is issued. When available, such additional information shall include student mobility data disaggregated by race and socioeconomic status, college enrollment data, and the reports prepared under section 3302.031 of the Revised Code.
- The department shall maintain a site on the world wide web. The report card shall include the address of the site and shall specify that such additional information is available to the public at that site. The department shall also provide a copy of each item on the list to the superintendent of each school district. The district superintendent shall provide a copy of any item on the list to anyone who requests it.
- (6)(a) This division does not apply to conversion community schools that primarily enroll students between sixteen and twenty-two years of age who dropped out of high school or are at risk of dropping out of high school due to poor attendance, disciplinary problems, or suspensions.
- For any district that sponsors a conversion community school under Chapter 3314, of the Revised Code, the department shall combine data regarding the academic performance of students enrolled in the community school with comparable data from the schools of the district for the purpose of calculating the performance of the district as a whole on the report card issued for the district.
- (b) Any district that leases a building to a community school located in the district or that enters into an agreement with a community school located in the district whereby the district and the school endorse each other's programs may elect to have data regarding the academic performance of students enrolled in the community school combined with comparable data from the schools of the district for the purpose of calculating the performance of the district as a whole on the district report card. Any district that so elects shall annually file a copy of the lease or agreement with the department.

(7) The department shall include on each report card the percentage of teachers in the district or building who are highly qualified, as defined by the "No Child Left Behind Act of 2001," and a comparison of that percentage with the percentages of such teachers in similar districts and buildings.

(8) The department shall include on the report card the number of lead teachers employed by each district and each building once the data is available from the education management information system established under section 3301.0714 of the Revised Code.

(D)(1) In calculating English language arts, mathematics, social studies, or science assessment passage rates used to determine school district or building performance under this section, the department shall include all students taking an assessment with accommodation or to whom an alternate assessment is administered pursuant to division (C)(1) or (3) of section 3301.0711 of the Revised Code.

(2) In calculating performance index scores, rates of achievement on the performance indicators established by the state board under section 3302.02 of the Revised Code, and adequate yearly progress for school districts and buildings under this section, the department shall do all of the following:

(a) Include for each district or building only those students who are included in the ADM certified for the first full school week of October and are continuously enrolled in the district or building through the time of the spring administration of any assessment prescribed by division (A)(1) or (B)(1) of section 3301.0710 of the Revised Code that is administered to the student's grade level;

(b) Include cumulative totals from both the fall and spring administrations of the third grade English language arts achievement assessment;

(c) Except as required by the "No Child Left Behind Act of 2001" for the calculation of adequate yearly progress, exclude for each district or building any limited English proficient student who has been enrolled in United States schools for less than one full school year.

Sec. 3313.44. Real or personal property vested in ~~owned by or leased to~~ any board of education ~~for a lease term of at least fifty years~~ shall be exempt from taxation ~~and from sale on execution or other writ or order in the nature of an execution.~~

Sec. 4928.01. (A) As used in this chapter:

(1) "Ancillary service" means any function necessary to the provision of electric transmission or distribution service to a retail customer and includes, but is not limited to, scheduling, system control, and dispatch services; reactive supply from generation resources and voltage control service; reactive supply from transmission resources service; regulation service; frequency response service; energy imbalance service; operating reserve-spinning reserve service; operating reserve-supplemental reserve service; load following; back-up supply service; real-power loss replacement service; dynamic scheduling; system black start capability; and network stability service.

(2) "Billing and collection agent" means a fully independent agent, not affiliated with or otherwise controlled by an electric utility, electric services company, electric cooperative, or governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent that the agent is under contract with such utility, company, cooperative, or aggregator solely to provide billing and collection for retail electric service on behalf of the utility company, cooperative, or aggregator.

(3) "Certified territory" means the certified territory established for an electric supplier under sections 4933.81 to 4933.90 of the Revised Code.

(4) "Competitive retail electric service" means a component of retail electric service that is competitive as provided under division (B) of this section.

(5) "Electric cooperative" means a not-for-profit electric light company that both is or has been financed in whole or in part under the "Rural Electrification Act of 1936," 49 Stat. 1363, 7 U.S.C. 901, and owns or operates facilities in this state to generate, transmit, or distribute electricity, or a not-for-profit successor of such company.

(6) "Electric distribution utility" means an electric utility that supplies at least retail electric distribution service.

(7) "Electric light company" has the same meaning as in section 4905.03 of the Revised Code and includes an electric services company, but excludes any self-generator to the extent that it consumes electricity it so produces, sells that electricity for resale, or obtains electricity from a generating facility it hosts on its premises.

(8) "Electric load center" has the same meaning as in section 4933.81 of the Revised Code.

(9) "Electric services company" means an electric light company that is engaged on a for-profit or not-for-profit basis in the business of supplying or arranging for the supply of only a competitive retail electric service in this state. "Electric services company" includes a power marketer, power broker, aggregator, or independent power producer but excludes an electric cooperative, municipal electric utility, governmental aggregator, or billing and collection agent.

(10) "Electric supplier" has the same meaning as in section 4933.81 of the Revised Code.

(11) "Electric utility" means an electric light company that has a certified territory and is engaged on a for-profit basis either in the business of supplying a noncompetitive retail electric service in this state or in the businesses of supplying both a noncompetitive and a competitive retail electric service in this state. "Electric utility" excludes a municipal electric utility or a billing and collection agent.

(12) "Firm electric service" means electric service other than nonfirm electric service.

(13) "Governmental aggregator" means a legislative authority of a municipal corporation, a board of township trustees, or a board of county commissioners acting as an aggregator for the provision of a competitive retail electric service under authority conferred under section 4928.20 of the Revised Code.

(14) A person acts "knowingly," regardless of the person's purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.

(15) "Level of funding for low-income customer energy efficiency programs provided through electric utility rates" means the level of funds specifically included in an electric utility's rates on October 5, 1999, pursuant to an order of the public utilities commission issued under Chapter 4905, or 4909, of the Revised Code and in effect on October 4, 1999, for the purpose of improving the energy efficiency of housing for the utility's low-income customers. The term excludes the level of any such funds committed to a specific nonprofit organization or organizations pursuant to a stipulation or contract.

(16) "Low-income customer assistance programs" means the percentage of income payment plan program, the home energy assistance program, the home weatherization assistance program, and the targeted energy efficiency and weatherization program.

(17) "Market development period" for an electric utility means the period of time beginning on the starting date of competitive retail electric service and ending on the applicable date for that utility as specified in section 4928.40 of the Revised Code, irrespective of whether the utility applies to receive transition revenues under this chapter.

(18) "Market power" means the ability to impose on customers a sustained price for a product or service above the price that would prevail in a competitive market.

(19) "Mercantile customer" means a commercial or industrial customer if the electricity consumed is for nonresidential use and the customer consumes more than seven hundred thousand kilowatt hours per year or is part of a national account involving multiple facilities in one or more states.

(20) "Municipal electric utility" means a municipal corporation that owns or operates facilities to generate, transmit, or distribute electricity.

(21) "Noncompetitive retail electric service" means a component of retail electric service that is noncompetitive as provided under division (B) of this section.

(22) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 of the Revised Code or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by an electric utility.

(23) "Percentage of income payment plan arrears" means funds eligible for collection through the percentage of income payment plan rider, but uncollected as of July 1, 2000.

(24) "Person" has the same meaning as in section 1.59 of the Revised Code.

(25) "Advanced energy project" means any technologies, products, activities, or management practices or strategies that facilitate the generation or use of electricity or energy and that reduce or support the reduction of energy consumption or support the production of clean, renewable energy for industrial, distribution, commercial, institutional, governmental, research, not-for-profit, or residential energy users, including, but not limited to, advanced energy resources and renewable energy resources. "Advanced energy project" also includes any project described in division (A), (B), or (C) of section 4928.621

of the Revised Code.

(26) "Regulatory assets" means the unamortized net regulatory assets that are capitalized or deferred on the regulatory books of the electric utility, pursuant to an order or practice of the public utilities commission or pursuant to generally accepted accounting principles as a result of a prior commission rate-making decision, and that would otherwise have been charged to expense as incurred or would not have been capitalized or otherwise deferred for future regulatory consideration absent commission action. "Regulatory assets" includes, but is not limited to, all deferred demand-side management costs; all deferred percentage of income payment plan arrears, post-in-service capitalized charges and assets recognized in connection with statement of financial accounting standards no. 109 (receivables from customers for income taxes); future nuclear decommissioning costs and fuel disposal costs as those costs have been determined by the commission in the electric utility's most recent rate or accounting application proceeding addressing such costs; the undepreciated costs of safety and radiation control equipment on nuclear generating plants owned or leased by an electric utility; and fuel costs currently deferred pursuant to the terms of one or more settlement agreements approved by the commission.

(27) "Retail electric service" means any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption. For the purposes of this chapter, retail electric service includes one or more of the following "service components": generation service, aggregation service, power marketing service, power brokerage service, transmission service, distribution service, ancillary service, metering service, and billing and collection service.

(28) "Starting date of competitive retail electric service" means January 1, 2001.

(29) "Customer-generator" means a user of a net metering system.

(30) "Net metering" means measuring the difference in an applicable billing period between the electricity supplied by an electric service provider and the electricity generated by a customer-generator that is fed back to the electric service provider.

(31) "Net metering system" means a facility for the production of electrical energy that does all of the following:

(a) Uses as its fuel either solar, wind, biomass, landfill gas, or hydropower, or uses a microturbine or a fuel cell,

(b) Is located on a customer-generator's premises;

(c) Operates in parallel with the electric utility's transmission and distribution facilities;

(d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(32) "Self-generator" means an entity in this state that owns or hosts on its premises an electric generation facility that produces electricity primarily for the owner's consumption and that may provide any such excess electricity to another entity, whether the facility is installed or operated by the owner or by an agent under a contract.

(33) "Rate plan" means the standard service offer in effect on the effective date of the amendment of this section by S.B. 221 of the 127th general assembly, July 31, 2008.

(34) "Advanced energy resource" means any of the following:

(a) Any method or any modification or replacement of any property, process, device, structure, or equipment that increases the generation output of an electric generating facility to the extent such efficiency is achieved without additional carbon dioxide emissions by that facility;

(b) Any distributed generation system consisting of customer cogeneration of electricity and thermal output simultaneously, primarily to meet the energy needs of the customer's facilities;

(c) Clean coal technology that includes a carbon-based product that is chemically altered before combustion to demonstrate a reduction, as expressed as ash, in emissions of nitrous oxide, mercury, arsenic, chlorine, sulfur dioxide, or sulfur trioxide in accordance with the American society of testing and materials standard D1757A or a reduction of metal oxide emissions in accordance with standard D5142 of that society, or clean coal technology that includes the design capability to control or prevent the emission of carbon dioxide, which design capability the commission shall adopt by rule and shall be based on economically feasible best available technology or, in the absence of a determined best available technology, shall be of the highest level of economically feasible design capability for which there exists generally accepted scientific opinion;

(d) Advanced nuclear energy technology consisting of generation III technology as defined by the nuclear regulatory commission; other, later technology; or significant improvements to existing facilities;

(e) Any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell;

(f) Advanced solid waste or construction and demolition debris conversion technology, including, but not limited to, advanced stoker technology, and advanced fluidized bed gasification technology, that results in measurable greenhouse gas emissions reductions as calculated pursuant to the United States environmental protection agency's waste reduction model (WARM);

(g) Demand-side management and any energy efficiency improvement;

(h) Methane gas emitted from an operating or abandoned coal mine.

(35) "Renewable energy resource" means solar photovoltaic or solar thermal energy, wind energy, power produced by a hydroelectric facility, geothermal energy, fuel derived from solid wastes, as defined in section 3734.01 of the Revised Code, through fractionation, biological decomposition, or other process that does not principally involve combustion, biomass energy, biologically derived methane gas, or energy derived from nontreated by-products of the pulping process or wood manufacturing process, including bark, wood chips, sawdust, and lignin in spent pulping liquors. "Renewable energy resource" includes, but is not limited to, any fuel cell used in the generation of electricity, including, but not limited to, a proton exchange membrane fuel cell, phosphoric acid fuel cell, molten carbonate fuel cell, or solid oxide fuel cell; wind turbine located in the state's territorial waters of Lake Erie; methane gas emitted from an abandoned coal mine; storage facility that will promote the better utilization of a renewable energy resource that primarily generates off peak; or distributed generation system used by a customer to generate electricity from any such energy. As used in division (A)(35) of this section, "hydroelectric facility" means a hydroelectric generating facility that is located at a dam on a river, or on any water discharged to a river, that is within or bordering this state or within or bordering an adjoining state and meets all of the following standards:

(a) The facility provides for river flows that are not detrimental for fish, wildlife, and water quality, including seasonal flow fluctuations as defined by the applicable licensing agency for the facility.

(b) The facility demonstrates that it complies with the water quality standards of this state, which compliance may consist of certification under Section 401 of the "Clean Water Act of 1977," 91 Stat. 1598, 1599, 33 U.S.C. 1341, and demonstrates that it has not contributed to a finding by this state that the river has impaired water quality under Section 303(d) of the "Clean Water Act of 1977," 114 Stat. 870, 33 U.S.C. 1313.

(c) The facility complies with mandatory prescriptions regarding fish passage as required by the federal energy regulatory commission license issued for the project, regarding fish protection for riverine, anadromous, and catadromous fish.

(d) The facility complies with the recommendations of the Ohio environmental protection agency and with the terms of its federal energy regulatory commission license regarding watershed protection, mitigation, or enhancement, to the extent of each agency's respective jurisdiction over the facility.

(e) The facility complies with provisions of the "Endangered Species Act of 1973," 87 Stat. 884, 16 U.S.C. 1531 to 1544, as amended.

(f) The facility does not harm cultural resources of the area. This can be shown through compliance with the terms of its federal energy regulatory commission license or, if the facility is not regulated by that commission, through development of a plan approved by the Ohio historic preservation office, to the extent it has jurisdiction over the facility.

(g) The facility complies with the terms of its federal energy regulatory commission license or exemption that are related to recreational access, accommodation, and facilities or, if the facility is not regulated by that commission, the facility complies with similar requirements as are recommended by resource agencies, to the extent they have jurisdiction over the facility; and the facility provides access to water to the public without fee or charge.

(h) The facility is not recommended for removal by any federal agency or agency of any state, to the extent the particular agency has jurisdiction over the facility.

(B) For the purposes of this chapter, a retail electric service component shall be deemed a competitive retail electric service if the service component is competitive pursuant to a declaration by a provision of the Revised Code or pursuant to an order of the public utilities commission authorized under division (A) of section 4928.04 of the Revised Code. Otherwise, the service component shall be deemed a noncompetitive retail electric service.

Sec. 5709.084. Real and personal property comprising a convention center that is constructed or, in the case of personal property, acquired after January 1, 2010, are exempt from taxation if the convention center is located in a county having a population, when construction of the convention center commences, of more than one million two hundred thousand according to the most recent federal decennial census, and if the convention center, or the land upon which the convention center is situated, is owned or leased by the county. For the purposes of this section, construction of the convention center commences upon the earlier of issuance of debt to finance all or a portion of the convention center, demolition of existing structures on the site, or grading of the site in preparation for construction.

As used in this section, "convention center" has the same meaning as in section 307.605 of the Revised Code.

Sec. 5709.62. (A) In any municipal corporation that is defined by the United States office of management and budget as a principal city of a metropolitan statistical area, the legislative authority of the municipal corporation may designate one or more areas within its municipal corporation as proposed enterprise zones. Upon designating an area, the legislative authority shall petition the director of development for certification of the area as having the characteristics set forth in division (A)(1) of section 5709.61 of the Revised Code as amended by Substitute Senate Bill No. 19 of the 120th general assembly. Except as otherwise provided in division (E) of this section, on and after July 1, 1994, legislative authorities shall not enter into agreements under this section unless the legislative authority has petitioned the director and the director has certified the zone under this section as amended by that act; however, all agreements entered into under this section as it existed prior to July 1, 1994, and the incentives granted under these agreements shall remain in effect for the period agreed to under those agreements. Within sixty days after receiving such a petition, the director shall determine whether the area has the characteristics set forth in division (A)(1) of section 5709.61 of the Revised Code, and shall forward the findings to the legislative authority of the municipal corporation. If the director certifies the area as having those characteristics, and thereby certifies it as a zone, the legislative authority may enter into an agreement with an enterprise under division (C) of this section.

(B) Any enterprise that wishes to enter into an agreement with a municipal corporation under division (C) of this section shall submit a proposal to the legislative authority of the municipal corporation on a form prescribed by the director of development, together with the application fee established under section 5709.68 of the Revised Code. The form shall require the following information:

- (1) An estimate of the number of new employees whom the enterprise intends to hire, or of the number of employees whom the enterprise intends to retain, within the zone at a facility that is a project site, and an estimate of the amount of payroll of the enterprise attributable to these employees;
- (2) An estimate of the amount to be invested by the enterprise to establish, expand, renovate, or occupy a facility, including investment in new buildings, additions or improvements to existing buildings, machinery, equipment, furniture, fixtures, and inventory;
- (3) A listing of the enterprise's current investment, if any, in a facility as of the date of the proposal's submission.

The enterprise shall review and update the listings required under this division to reflect material changes, and any agreement entered into under division (C) of this section shall set forth final estimates and listings as of the time the agreement is entered into. The legislative authority may, on a separate form and at any time, require any additional information necessary to determine whether an enterprise is in compliance with an agreement and to collect the information required to be reported under section 5709.68 of the Revised Code.

(C) Upon receipt and investigation of a proposal under division (B) of this section, if the legislative authority finds that the enterprise submitting the proposal is qualified by financial responsibility and business experience to create and preserve employment opportunities in the zone and improve the economic climate of the municipal corporation, the legislative authority, on or before October 15, 2010, may do one of the following:

- (1) Enter into an agreement with the enterprise under which the enterprise agrees to establish, expand, renovate, or occupy a facility and hire new employees, or preserve employment opportunities for existing employees, in return for one or more of the following incentives:
 - (a) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to seventy-five per cent, of the assessed value of tangible personal property first used in business at the project site as a result of the agreement. If an exemption for inventory is specifically granted in the agreement pursuant to this division, the exemption applies to inventory required to be listed pursuant to sections 5711.15 and 5711.16 of the Revised Code, except that, in the instance of an expansion or other situations in which an enterprise was in business at the facility prior to the establishment of the zone, the inventory that is exempt is that amount or value of inventory in excess of the amount or value of inventory required to be listed in the personal property tax return of the enterprise in the return for the tax year in which the agreement is entered into.
 - (b) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to seventy-five per cent, of the increase in the assessed valuation of real property constituting the project site subsequent to formal approval of the agreement by the legislative authority;
 - (c) Provision for a specified number of years, not to exceed fifteen, of any optional services or assistance that the municipal corporation is authorized to provide with regard to the project site.
 - (2) Enter into an agreement under which the enterprise agrees to remediate an environmentally contaminated facility, to spend an amount equal to at least two hundred fifty per cent of the true value in money of the real property of the facility prior to remediation as determined for the purposes of property taxation to establish, expand, renovate, or occupy the remediated facility, and to hire new employees or preserve employment opportunities for existing employees at the remediated facility, in return for one or more of the following incentives:
 - (a) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, not to exceed fifty per cent, of the assessed valuation of the real property of the facility prior to remediation;
 - (b) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, not to exceed one hundred per cent, of the increase in the assessed valuation of the real property of the facility during or after remediation;
 - (c) The incentive under division (C)(1)(a) of this section, except that the percentage of the assessed value of such property exempted from taxation shall not exceed one hundred per cent;
 - (d) The incentive under division (C)(1)(c) of this section.
 - (3) Enter into an agreement with an enterprise that plans to purchase and operate a large manufacturing facility that has ceased operation or announced its intention to cease operation, in return for exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to one hundred per cent, of the assessed value of tangible personal property used in business at the project site as a result of the agreement, or of the assessed valuation of real property constituting the project site, or both.
- (D)(1) Notwithstanding divisions (C)(1)(a) and (b) of this section, the portion of the assessed value of tangible personal property or of the increase in the assessed valuation of real property exempted from taxation under those divisions may exceed seventy-five per cent in any year for which that portion is exempted if the average percentage exempted for all years in which the agreement is in effect does not exceed sixty per cent, or if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves a percentage in excess of seventy-five per cent.

(2) Notwithstanding any provision of the Revised Code to the contrary, the exemptions described in divisions (C)(1)(a), (b), and (c), (C)(2)(a), (b), and (c), and (C)(3) of this section may be for up to fifteen years if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves a number of years in excess of ten.

(3) For the purpose of obtaining the approval of a city, local, or exempted village school district under division (D)(1) or (2) of this section, the legislative authority shall deliver to the board of education a notice not later than forty-five days prior to approving the agreement, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code. The notice shall state the percentage to be exempted, an estimate of the true value of the property to be exempted, and the number of years the property is to be exempted. The board of education, by resolution adopted by a majority of the board, shall approve or disapprove the agreement and certify a copy of the resolution to the legislative authority not later than fourteen days prior to the date stipulated by the legislative authority as the date upon which approval of the agreement is to be formally considered by the legislative authority. The board of education may include in the resolution conditions under which the board would approve the agreement, including the execution of an agreement to compensate the school district under division (B) of section 5709.82 of the Revised Code. The legislative authority may approve the agreement at any time after the board of education certifies its resolution approving the agreement to the legislative authority, or, if the board approves the agreement conditionally, at any time after the conditions are agreed to by the board and the legislative authority.

If a board of education has adopted a resolution waiving its right to approve agreements and the resolution remains in effect, approval of an agreement by the board is not required under this division. If a board of education has adopted a resolution allowing a legislative authority to deliver the notice required under this division fewer than forty-five business days prior to the legislative authority's approval of the agreement, the legislative authority shall deliver the notice to the board not later than the number of days prior to such approval as prescribed by the board in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board shall certify a copy of the resolution to the legislative authority. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the legislative authority.

(4) The legislative authority shall comply with section 5709.83 of the Revised Code unless the board of education has adopted a resolution under that section waiving its right to receive such notice.

(E) This division applies to zones certified by the director of development under this section prior to July 22, 1994.

On or before October 15, 2010, the legislative authority that designated a zone to which this division applies may enter into an agreement with an enterprise if the legislative authority finds that the enterprise satisfies one of the criteria described in divisions (E)(1) to (5) of this section:

- (1) The enterprise currently has no operations in this state and, subject to approval of the agreement, intends to establish operations in the zone;
- (2) The enterprise currently has operations in this state and, subject to approval of the agreement, intends to establish operations at a new location in the zone that would not result in a reduction in the number of employee positions at any of the enterprise's other locations in this state;
- (3) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in another state, to the zone;
- (4) The enterprise, subject to approval of the agreement, intends to expand operations at an existing site in the zone that the enterprise currently operates;
- (5) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in this state, to the zone, and the director of development has issued a waiver for the enterprise under division (B) of section 5709.633 of the Revised Code.

The agreement shall require the enterprise to agree to establish, expand, renovate, or occupy a facility in the zone and hire new employees, or preserve employment opportunities for existing employees, in return for one or more of the incentives described in division (C) of this section.

(F) All agreements entered into under this section shall be in the form prescribed under section 5709.631 of the Revised Code. After an agreement is entered into under this section, if the legislative authority revokes its designation of a zone, or if the director of development revokes a zone's certification, any entitlements granted under the agreement shall continue for the number of years specified in the agreement.

(G) Except as otherwise provided in this division, an agreement entered into under this section shall require that the enterprise pay an annual fee equal to the greater of one per cent of the dollar value of incentives offered under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the legislative authority once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the legislative authority and shall be used by the legislative authority exclusively for the purpose of complying with section 5709.68 of the Revised Code and by the tax incentive review council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The legislative authority may waive or reduce the amount of the fee charged against an enterprise, but such a waiver or reduction does not affect the obligations of the legislative authority or the tax incentive review council to comply with section 5709.68 or 5709.85 of the Revised Code.

(H) When an agreement is entered into pursuant to this section, the legislative authority authorizing the agreement shall forward a copy of the agreement to the director of development and to the tax commissioner within fifteen days after the agreement is entered into. If any agreement includes terms not provided for in section 5709.631 of the Revised Code affecting the revenue of a city, local, or exempted village school district or causing revenue to be foregone (forgone) by the district, including any compensation to be paid to the school district pursuant to section 5709.82 of the Revised Code, those terms also shall be forwarded in writing to the director of development along with the copy of the agreement forwarded under this division.

(I) After an agreement is entered into, the enterprise shall file with each personal property tax return required to be filed, or annual report required to be filed under section 5727.08 of the Revised Code, while the agreement is in effect, an informational return, on a form prescribed by the tax commissioner for that purpose, setting forth separately the property, and related costs and values, exempted from taxation under the agreement.

(J) Enterprises may agree to give preference to residents of the zone within which the agreement applies relative to residents of this state who do not reside in the zone when hiring new employees under the agreement.

(K) An agreement entered into under this section may include a provision requiring the enterprise to create one or more temporary internship positions for students enrolled in a school or other educational institution in the vicinity, and to create a scholarship or provide another form of educational financial assistance for students holding such a position in exchange for the student's commitment to work for the enterprise at the completion of the internship.

(L) The tax commissioner's authority in determining the accuracy of any exemption granted by an agreement entered into under this section is limited to divisions (C)(1)(a) and (b), (C)(2)(a), (b), and (c), (C)(3), (D), and (I) of this section and divisions (B)(1) to (10) of section 5709.631 of the Revised Code and, as authorized by law, to enforcing any modification to, or revocation of, that agreement by the legislative authority of a municipal corporation or the director of development.

Sec. 5709.63. (A) With the consent of the legislative authority of each affected municipal corporation or of a board of township trustees, a board of county commissioners may, in the manner set forth in section 5709.62 of the Revised Code, designate one or more areas in one or more municipal corporations or in unincorporated areas of the county as proposed enterprise zones. A board of county commissioners may designate no more than one area within a township, or within adjacent townships, as a proposed enterprise zone. The board shall petition the director of development for certification of the area as having the characteristics set forth in division (A)(1) or (2) of section 5709.61 of the Revised Code as amended by Substitute Senate Bill No. 19 of the 120th general assembly. Except as otherwise provided in division (D) of this section, on and after July 1, 1994, boards of county commissioners shall not enter into agreements under this section unless the board has petitioned the director and the director has certified the zone under this section as amended by that act; however, all agreements entered into under this section as it existed prior to July 1, 1994, and the incentives granted under those agreements shall remain in effect for the period agreed to under those agreements. The director shall make the determination in the manner provided under section 5709.62 of the Revised Code.

Any enterprise wishing to enter into an agreement with the board under division (B) or (D) of this section shall submit a proposal to the board on the form and accompanied by the application fee prescribed under division (B) of section 5709.62 of the Revised Code. The enterprise shall review and update the estimates and listings required by the form in the manner required under that division. The board may, on a separate form and at any time, require any additional information necessary to determine whether an enterprise is in compliance with an agreement and to collect the information required to be reported under section 5709.68 of the Revised Code.

(B) If the board of county commissioners finds that an enterprise submitting a proposal is qualified by financial responsibility and business experience to create and preserve employment opportunities in the zone and to improve the economic climate of the municipal corporation or municipal corporations or the unincorporated areas in which the zone is located and to which the proposal applies, the board, on or before October 15, 2010, and with the consent of the legislative authority of each affected municipal corporation or of the board of township trustees may do either of the following:

(1) Enter into an agreement with the enterprise under which the enterprise agrees to establish, expand, renovate, or occupy a facility in the zone and hire new employees, or preserve employment opportunities for existing employees, in return for the following incentives:

(a) When the facility is located in a municipal corporation, the board may enter into an agreement for one or more of the incentives provided in division (C) of section 5709.62 of the Revised Code, subject to division (D) of that section;

(b) When the facility is located in an unincorporated area, the board may enter into an agreement for one or more of the following incentives:

(i) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to sixty per cent, of the assessed value of tangible personal property first used in business at a project site as a result of the agreement. If an exemption for inventory is specifically granted in the agreement pursuant to this division, the exemption applies to inventory required to be listed pursuant to sections 5711.15 and 5711.16 of the Revised Code, except, in the instance of an expansion or other situations in which an enterprise was in business at the facility prior to the establishment of the zone, the inventory that is exempt is that amount or value of inventory in excess of the amount or value of inventory required to be listed in the personal property tax return of the enterprise in the return for the tax year in which the agreement is entered into.

(ii) Exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to sixty per cent, of the increase in the assessed valuation of real property constituting the project site subsequent to formal approval of the agreement by the board;

(iii) Provision for a specified number of years, not to exceed fifteen, of any optional services or assistance the board is authorized to provide with regard to the project site;

(iv) The incentive described in division (C)(2) of section 5709.62 of the Revised Code.

(2) Enter into an agreement with an enterprise that plans to purchase and operate a large manufacturing facility that has ceased operation or has announced its intention to cease operation, in return for exemption for a specified number of years, not to exceed fifteen, of a specified portion, up to one hundred per cent, of tangible personal property used in business at the project site as a result of the agreement, or of real property constituting the project site, or both.

(C)(1)(a) Notwithstanding divisions (B)(1)(b)(i) and (ii) of this section, the portion of the assessed value of tangible personal property or of the increase

in the assessed valuation of real property exempted from taxation under those divisions may exceed sixty per cent in any year for which that portion is exempted if the average percentage exempted for all years in which the agreement is in effect does not exceed fifty per cent, or if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves a percentage in excess of sixty per cent.

(b) Notwithstanding any provision of the Revised Code to the contrary, the exemptions described in divisions (B)(1)(b)(i), (ii), (iii), and (iv) and (B)(2) of this section may be for up to fifteen years if the board of education of the city, local, or exempted village school district within the territory of which the property is or will be located approves a number of years in excess of ten.

(c) For the purpose of obtaining the approval of a city, local, or exempted village school district under division (C)(1)(a) or (b) of this section, the board of county commissioners shall deliver to the board of education a notice not later than forty-five days prior to approving the agreement, excluding Saturdays, Sundays, and legal holidays as defined in section 1.14 of the Revised Code. The notice shall state the percentage to be exempted, an estimate of the true value of the property to be exempted, and the number of years the property is to be exempted. The board of education, by resolution adopted by a majority of the board, shall approve or disapprove the agreement and certify a copy of the resolution to the board of county commissioners not later than fourteen days prior to the date stipulated by the board of county commissioners as the date upon which approval of the agreement is to be formally considered by the board of county commissioners. The board of education may include in the resolution conditions under which the board would approve the agreement, including the execution of an agreement to compensate the school district under division (B) of section 5709.82 of the Revised Code. The board of county commissioners may approve the agreement at any time after the board of education certifies its resolution approving the agreement to the board of county commissioners, or, if the board of education approves the agreement conditionally, at any time after the conditions are agreed to by the board of education and the board of county commissioners.

If a board of education has adopted a resolution waiving its right to approve agreements and the resolution remains in effect, approval of an agreement by the board of education is not required under division (C) of this section. If a board of education has adopted a resolution allowing a board of county commissioners to deliver the notice required under this division fewer than forty-five business days prior to approval of the agreement by the board of county commissioners, the board of county commissioners shall deliver the notice to the board of education not later than the number of days prior to such approval as prescribed by the board of education in its resolution. If a board of education adopts a resolution waiving its right to approve agreements or shortening the notification period, the board of education shall certify a copy of the resolution to the board of county commissioners. If the board of education rescinds such a resolution, it shall certify notice of the rescission to the board of county commissioners.

(2) The board of county commissioners shall comply with section 5709.83 of the Revised Code unless the board of education has adopted a resolution under that section waiving its right to receive such notice.

(D) This division applies to zones certified by the director of development under this section prior to July 22, 1994.

On or before October 15, ~~2010~~ 2011, and with the consent of the legislative authority of each affected municipal corporation or board of township trustees of each affected township, the board of county commissioners that designated a zone to which this division applies may enter into an agreement with an enterprise if the board finds that the enterprise satisfies one of the criteria described in divisions (D)(1) to (5) of this section:

(1) The enterprise currently has no operations in this state and, subject to approval of the agreement, intends to establish operations in the zone;

(2) The enterprise currently has operations in this state and, subject to approval of the agreement, intends to establish operations at a new location in the zone that would not result in a reduction in the number of employee positions at any of the enterprise's other locations in this state;

(3) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in another state, to the zone;

(4) The enterprise, subject to approval of the agreement, intends to expand operations at an existing site in the zone that the enterprise currently operates;

(5) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in this state, to the zone, and the director of development has issued a waiver for the enterprise under division (B) of section 5709.633 of the Revised Code.

The agreement shall require the enterprise to agree to establish, expand, renovate, or occupy a facility in the zone and hire new employees, or preserve employment opportunities for existing employees, in return for one or more of the incentives described in division (B) of this section.

(E) All agreements entered into under this section shall be in the form prescribed under section 5709.631 of the Revised Code. After an agreement under this section is entered into, if the board of county commissioners revokes its designation of a zone, or if the director of development revokes a zone's certification, any entitlements granted under the agreement shall continue for the number of years specified in the agreement.

(F) Except as otherwise provided in this division, an agreement entered into under this section shall require that the enterprise pay an annual fee equal to the greater of one per cent of the dollar value of incentives offered under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the board of county commissioners once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the board and shall be used by the board exclusively for the purpose of complying with section 5709.68 of the Revised Code and by the tax incentive review council created under section 5709.65 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The board may waive or reduce the amount of the fee charged against an enterprise, but such waiver or reduction does not affect the obligations of the board or the tax incentive review council to comply with section 5709.68 or 5709.65 of the Revised Code, respectively.

(G) With the approval of the legislative authority of a municipal corporation or the board of township trustees of a township in which a zone is designated under division (A) of this section, the board of county commissioners may delegate to that legislative authority or board any powers and duties of the board of county commissioners to negotiate and administer agreements with regard to that zone under this section.

(H) When an agreement is entered into pursuant to this section, the board of county commissioners authorizing the agreement or the legislative authority or board of township trustees that negotiates and administers the agreement shall forward a copy of the agreement to the director of development and to the tax commissioner within fifteen days after the agreement is entered into. If any agreement includes terms not provided for in section 5709.631 of the Revised Code affecting the revenue of a city, local, or exempted village school district or causing revenue to be foregone by the district, including any compensation to be paid to the school district pursuant to section 5709.82 of the Revised Code, those terms also shall be forwarded in writing to the director of development along with the copy of the agreement forwarded under this division.

(I) After an agreement is entered into, the enterprise shall file with each personal property tax return required to be filed, or annual report that is required to be filed under section 5727.08 of the Revised Code, while the agreement is in effect, an informational return, on a form prescribed by the tax commissioner for that purpose, setting forth separately the property, and related costs and values, exempted from taxation under the agreement.

(J) Enterprises may agree to give preference to residents of the zone within which the agreement applies relative to residents of this state who do not reside in the zone when hiring new employees under the agreement.

(K) An agreement entered into under this section may include a provision requiring the enterprise to create one or more temporary internship positions for students enrolled in a course of study at a school or other educational institution in the vicinity, and to create a scholarship or provide another form of educational financial assistance for students holding such a position in exchange for the student's commitment to work for the enterprise at the completion of the internship.

(L) The tax commissioner's authority in determining the accuracy of any exemption granted by an agreement entered into under this section is limited to divisions (B)(1)(b)(i) and (ii), (B)(2), (C), and (I) of this section, division (B)(1)(b)(iv) of this section as it pertains to divisions (C)(2)(b), (b), and (c) of section 5709.62 of the Revised Code, and divisions (B)(1) to (10) of section 5709.631 of the Revised Code and, as authorized by law, to enforcing any modification to, or revocation of, that agreement by the board of county commissioners or the director of development or, if the board's powers and duties are delegated under division (G) of this section, by the legislative authority of a municipal corporation or board of township trustees.

Sec. 5709.632. (A)(1) The legislative authority of a municipal corporation defined by the United States office of management and budget as a principal city of a metropolitan statistical area may, in the manner set forth in section 5709.62 of the Revised Code, designate one or more areas in the municipal corporation as a proposed enterprise zone.

(2) With the consent of the legislative authority of each affected municipal corporation or of a board of township trustees, a board of county commissioners may, in the manner set forth in section 5709.62 of the Revised Code, designate one or more areas in one or more municipal corporations or in unincorporated areas of the county as proposed urban jobs and enterprise zones, except that a board of county commissioners may designate no more than one area within a township, or within adjacent townships, as a proposed urban jobs and enterprise zone.

(3) The legislative authority or board of county commissioners may petition the director of development for certification of the area as having the characteristics set forth in division (A)(3) of section 5709.61 of the Revised Code. Within sixty days after receiving such a petition, the director shall determine whether the area has the characteristics set forth in that division and forward the findings to the legislative authority or board of county

commissioners. If the director certifies the area as having those characteristics and thereby certifies it as a zone, the legislative authority or board may enter into agreements with enterprises under division (B) of this section. Any enterprise wishing to enter into an agreement with a legislative authority or board of county commissioners under this section and satisfying one of the criteria described in divisions (B)(1) to (5) of this section shall submit a proposal to the legislative authority or board on the form prescribed under division (B) of section 5709.62 of the Revised Code and shall review and update the estimates and listings required by the form in the manner required under that division. The legislative authority or board may, on a separate form and at any time, require any additional information necessary to determine whether an enterprise is in compliance with an agreement and to collect the information required to be reported under section 5709.68 of the Revised Code.

(B) Prior to entering into an agreement with an enterprise, the legislative authority or board of county commissioners shall determine whether the enterprise submitting the proposal is qualified by financial responsibility and business experience to create and preserve employment opportunities in the zone and to improve the economic climate of the municipal corporation or municipal corporations or the unincorporated areas in which the zone is located and to which the proposal applies, and whether the enterprise satisfies one of the following criteria:

- (1) The enterprise currently has no operations in this state and, subject to approval of the agreement, intends to establish operations in the zone;
- (2) The enterprise currently has operations in this state and, subject to approval of the agreement, intends to establish operations at a new location in the zone that would not result in a reduction in the number of employee positions at any of the enterprise's other locations in this state;
- (3) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in another state, to the zone;
- (4) The enterprise, subject to approval of the agreement, intends to expand operations at an existing site in the zone that the enterprise currently operates;
- (5) The enterprise, subject to approval of the agreement, intends to relocate operations, currently located in this state, to the zone, and the director of development has issued a waiver for the enterprise under division (B) of section 5709.633 of the Revised Code.

(C) If the legislative authority or board determines that the enterprise is so qualified and satisfies one of the criteria described in divisions (B)(1) to (5) of this section, the legislative authority or board may, after complying with section 5709.63 of the Revised Code and on or before October 15, 2010, and, in the case of a board of commissioners, with the consent of the legislative authority of each affected municipal corporation or of the board of township trustees, enter into an agreement with the enterprise under which the enterprise agrees to establish, expand, renovate, or occupy a facility in the zone and hire new employees, or preserve employment opportunities for existing employees, in return for the following incentives:

- (1) When the facility is located in a municipal corporation, a legislative authority or board of commissioners may enter into an agreement for one or more of the incentives provided in division (C) of section 5709.62 of the Revised Code, subject to division (D) of that section;
- (2) When the facility is located in an unincorporated area, a board of commissioners may enter into an agreement for one or more of the incentives provided in divisions (B)(1)(b), (B)(2), and (B)(3) of section 5709.63 of the Revised Code, subject to division (C) of that section.

(D) All agreements entered into under this section shall be in the form prescribed under section 5709.631 of the Revised Code. After an agreement under this section is entered into, if the legislative authority or board of county commissioners revokes its designation of the zone, or if the director of development revokes the zone's certification, any entitlements granted under the agreement shall continue for the number of years specified in the agreement.

(E) Except as otherwise provided in this division, an agreement entered into under this section shall require that the enterprise pay an annual fee equal to the greater of one per cent of the dollar value of incentives offered under the agreement or five hundred dollars; provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars, the fee shall not exceed two thousand five hundred dollars. The fee shall be payable to the legislative authority or board of commissioners once per year for each year the agreement is effective on the days and in the form specified in the agreement. Fees paid shall be deposited in a special fund created for such purpose by the legislative authority or board and shall be used by the legislative authority or board exclusively for the purpose of complying with section 5709.68 of the Revised Code and by the tax incentive review council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section. The legislative authority or board may waive or reduce the amount of the fee charged against an enterprise, but such waiver or reduction does not affect the obligations of the legislative authority or board or the tax incentive review council to comply with section 5709.68 or 5709.85 of the Revised Code, respectively.

(F) With the approval of the legislative authority of a municipal corporation or the board of township trustees of a township in which a zone is designated under division (A)(2) of this section, the board of county commissioners may delegate to that legislative authority or board any powers and duties of the board to negotiate and administer agreements with regard to that zone under this section.

(G) When an agreement is entered into pursuant to this section, the legislative authority or board of commissioners authorizing the agreement shall forward a copy of the agreement to the director of development and to the tax commissioner within fifteen days after the agreement is entered into. If any agreement includes terms not provided for in section 5709.631 of the Revised Code affecting the revenue of a city, local, or exempted village school district or causing revenue to be foregone forgo by the district, including any compensation to be paid to the school district pursuant to section 5709.82 of the Revised Code, those terms also shall be forwarded in writing to the director of development along with the copy of the agreement forwarded under this division.

(H) After an agreement is entered into, the enterprise shall file with each personal property tax return required to be filed while the agreement is in effect, an informational return, on a form prescribed by the tax commissioner for that purpose, setting forth separately the property, and related costs and values, exempted from taxation under the agreement.

(I) An agreement entered into under this section may include a provision requiring the enterprise to create one or more temporary internship positions for students enrolled in a course of study at a school or other educational institution in the vicinity, and to create a scholarship or provide another form of educational financial assistance for students holding such a position in exchange for the student's commitment to work for the enterprise at the completion of the internship.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A)(1) The tax shall be collected as provided in section 5739.025 of the Revised Code. The rate of the tax shall be five and one-half per cent. The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

(2) In the case of the lease or rental, with a fixed term of more than thirty days or an indefinite term with a minimum period of more than thirty days, of any motor vehicles designed by the manufacturer to carry a load of not more than one ton, watercraft, outboard motor, or aircraft, or of any tangible personal property, other than motor vehicles designed by the manufacturer to carry a load of more than one ton, to be used by the lessee or renter primarily for business purposes, the tax shall be collected by the vendor at the time the lease or rental is consummated and shall be calculated by the vendor on the basis of the total amount to be paid by the lessee or renter under the lease agreement. If the total amount of the consideration for the lease or rental includes amounts that are not calculated at the time the lease or rental is executed, the tax shall be calculated and collected by the vendor at the time such amounts are billed to the lessee or renter. In the case of an open-end lease or rental, the tax shall be calculated by the vendor on the basis of the total amount to be paid during the initial fixed term of the lease or rental, and for each subsequent renewal period as it comes due. As used in this division, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code, and "watercraft" includes an outdrive unit attached to the watercraft.

A lease with a renewal clause and a termination penalty or similar provision that applies if the renewal clause is not exercised is presumed to be a sham transaction. In such a case, the tax shall be calculated and paid on the basis of the entire length of the lease period, including any renewal periods, until the termination penalty or similar provision no longer applies. The taxpayer shall bear the burden, by a preponderance of the evidence, that the transaction or series of transactions is not a sham transaction.

(3) Except as provided in division (A)(2) of this section, in the case of a sale, the price of which consists in whole or in part of the lease or rental of tangible personal property, the tax shall be measured by the installments of that lease or rental.

(4) In the case of a sale of a physical fitness facility service or recreation and sports club service, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

- (1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

- (2) Sales of food for human consumption off the premises where sold;
- (3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;
- (4) Sales of newspapers and of magazine subscriptions and sales or transfers of magazines distributed as controlled circulation publications;
- (5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;
- (6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under division (A) of section 5735.14 of the Revised Code; and the tax commissioner may deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to division (A) of section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;
- (7) Sales of natural gas by a natural gas company, of water by a water-works company, or of steam by a heating company, or of telegraph company, all terms as defined in section 5727.01 of the Revised Code, and sales of electricity delivered through wires;
- (8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, and all-purpose vehicles as defined in section 4519.01 of the Revised Code;
- (9)(a) Sales of services or tangible personal property, other than motor vehicles, mobile homes, and manufactured homes, by churches, organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, or nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year, except as otherwise provided in division (B)(9)(b) of this section; if the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization.
- (b) The limitation on the number of days on which tax-exempt sales may be made by a church or organization under division (B)(9)(a) of this section does not apply to sales made by student clubs and other groups of students of a primary or secondary school, or a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school.
- (c) Divisions (B)(9)(a) and (b) of this section do not apply to sales by a noncommercial educational radio or television broadcasting station.
- (10) Sales not within the taxing power of this state under the Constitution of the United States;
- (11) Except for transactions that are sales under division (B)(3)(r) of section 5739.01 of the Revised Code, the transportation of persons or property, unless the transportation is by a private investigation and security service;
- (12) Sales of tangible personal property or services to churches, to organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.
- "Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society, the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent-teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.
- Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.
- (13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision of this state, or with the United States government or any of its agencies; building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of the structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building materials and services sold to a construction contractor for incorporation into a building under a construction contract with an organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 when the building is to be used exclusively for the organization's exempt purposes; building and construction materials and services sold to a construction contractor for incorporation into a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state; and, until one calendar year after the construction of a convention center that qualifies for property tax exemption under section 5709.084 of the Revised Code is completed, building and construction materials and services sold to a construction contractor for incorporation into the real property comprising that convention center.
- (14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;
- (15) Sales to persons primarily engaged in any of the activities mentioned in division (B)(12)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, but does not include motor vehicles or bulk tanks, trailers, or similar devices attached to motor vehicles. "Packaging" means placing in a package. Division (B)(15) of this section does not apply to persons engaged in highway transportation for hire.
- (16) Sales of food to persons using supplemental nutrition assistance program benefits to purchase the food. As used in this division, "food" has the same meaning as in 7 U.S.C. 2012 and federal regulations adopted pursuant to the Food and Nutrition Act of 2008.
- (17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;
- (18) Sales of drugs for a human being that may be dispensed only pursuant to a prescription; insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; apointin alfa when purchased for use in the treatment of persons with medical disease; hospital beds when purchased by hospitals, nursing homes, or other medical facilities; and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities;
- (19) Sales of prosthetic devices, durable medical equipment for home use, or mobility enhancing equipment, when made pursuant to a prescription and

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- when such devices or equipment are for use by a human being.
- (20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services, including trauma care and emergency medical services, for political subdivisions of the state;
- (21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;
- (22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;
- (23) Sales of motor vehicles to nonresidents of this state under the circumstances described in division (B) of section 5739.029 of the Revised Code;
- (24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size, packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.
- (25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;
- (b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.
- (26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;
- (27) Sales to persons licensed to conduct a food service operation pursuant to section 3717.43 of the Revised Code, of tangible personal property primarily used directly for the following:
- (a) To prepare food for human consumption for sale;
- (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
- (c) To clean tangible personal property used to prepare or serve food for human consumption for sale.
- (28) Sales of animals by nonprofit animal adoption services or county humane societies;
- (29) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;
- (30) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;
- (31) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;
- (32) The sale, lease, repair, and maintenance of, parts for, or items attached to or incorporated in, motor vehicles that are primarily used for transporting tangible personal property belonging to others by a person engaged in highway transportation for hire, except for packages and packaging used for the transportation of tangible personal property;
- (33) Sales to the state headquarters of any veterans' organization in this state that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;
- (34) Sales to a telecommunications service vendor, mobile telecommunications service vendor, or satellite broadcasting service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, one- or two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in this division shall be in lieu of all other exemptions under division (B)(42)(a) of this section to which the vendor may otherwise be entitled, based upon the use of the thing purchased in providing the telecommunications, mobile telecommunications, or satellite broadcasting service.
- (35)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.
- (b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; or printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(35)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.
- (c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.
- For purposes of division (B)(35) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.
- (36) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;
- (37) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;
- (38) Sales to a professional racing team of any of the following:
- (a) Motor racing vehicles;
- (b) Repair services for motor racing vehicles;
- (c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.
- (39) Sales of used manufactured homes and used mobile homes, as defined in section 5739.0210 of the Revised Code, made on or after January 1, 2000;
- (40) Sales of tangible personal property and services to a provider of electricity used or consumed directly and primarily in generating, transmitting, or distributing electricity for use by others, including property that is or is to be incorporated into and will become a part of the consumer's production, transmission, or distribution system and that retains its classification as tangible personal property after incorporation; fuel or power used in the production, transmission, or distribution of electricity; and tangible personal property and services used in the repair and maintenance of the production, transmission, or distribution system, including only those motor vehicles as are specially designed and equipped for such use. The exemption provided in this division shall be in lieu of all other exemptions in division (B)(42)(a) of this section to which a provider of electricity may otherwise be entitled based on the use of the tangible personal property or service purchased in generating, transmitting, or distributing electricity.
- (41) Sales to a person providing services under division (B)(3)(r) of section 5739.01 of the Revised Code of tangible personal property and services used directly and primarily in providing taxable services under that section.
- (42) Sales where the purpose of the purchaser is to do any of the following:
- (a) To incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling,

processing, or refining; or to use or consume the thing transferred directly in producing tangible personal property for sale by mining, including, without limitation, the extraction from the earth of all substances that are classed geologically as minerals, production of crude oil and natural gas, farming, agriculture, horticulture, or floriculture, or directly in the rendition of a public utility service, except that the sales tax levied by this section shall be collected upon all meals, drinks, and food for human consumption sold when transporting persons. Persons engaged in rendering farming, agricultural, horticultural, or floricultural services, and services in the exploration for, and production of, crude oil and natural gas, for others are deemed engaged directly in farming, ~~agriculture, horticulture,~~ and floriculture, or exploration for, and production of, crude oil and natural gas. This paragraph does not exempt from "retail sale" or "sales at retail" the sale of tangible personal property that is to be incorporated into a structure or improvement to real property.

- (b) To hold the thing transferred as security for the performance of an obligation of the vendor;
- (c) To resell, hold, use, or consume the thing transferred as evidence of a contract of insurance;
- (d) To use or consume the thing directly in commercial fishing;
- (e) To incorporate the thing transferred as a material or a part into, or to use or consume the thing transferred directly in the production of, magazines distributed as controlled circulation publications;
- (f) To use or consume the thing transferred in the production and preparation in suitable condition for market and sale of printed, imprinted, overprinted, lithographic, multilithic, blueprinted, photostatic, or other productions or reproductions of written or graphic matter;
- (g) To use the thing transferred, as described in section 5739.011 of the Revised Code, primarily in a manufacturing operation to produce tangible personal property for sale;
- (h) To use the benefit of a warranty, maintenance or service contract, or similar agreement, as described in division (B)(7) of section 5739.01 of the Revised Code, to repair or maintain tangible personal property, if all of the property that is the subject of the warranty, contract, or agreement would not be subject to the tax imposed by this section;
- (i) To use the thing transferred as qualified research and development equipment;
- (j) To use or consume the thing transferred primarily in storing, transporting, mailing, or otherwise handling purchased sales inventory in a warehouse, distribution center, or similar facility when the inventory is primarily distributed outside this state to retail stores of the person who owns or controls the warehouse, distribution center, or similar facility, to retail stores of an affiliated group of which that person is a member, or by means of direct marketing. This division does not apply to motor vehicles registered for operation on the public highways. As used in this division, "affiliated group" has the same meaning as in division (B)(3)(e) of section 5739.01 of the Revised Code and "direct marketing" has the same meaning as in division (B)(35) of this section.**
- (k) To use or consume the thing transferred to fulfill a contractual obligation incurred by a warrantor pursuant to a warranty provided as a part of the price of the tangible personal property sold or by a vendor of a warranty, maintenance or service contract, or similar agreement the provision of which is defined as a sale under division (B)(7) of section 5739.01 of the Revised Code;
- (l) To use or consume the thing transferred in the production of a newspaper for distribution to the public;
- (m) To use tangible personal property to perform a service listed in division (B)(3) of section 5739.01 of the Revised Code, if the property is or is to be permanently transferred to the consumer of the service as an integral part of the performance of the service;
- (n) To use or consume the thing transferred in acquiring, formatting, editing, storing, and disseminating data or information by electronic publishing.

As used in division (B)(42) of this section, "thing" includes all transactions included in divisions (B)(3)(a), (b), and (e) of section 5739.01 of the Revised Code.

- (43) Sales conducted through a coin operated device that activates vacuum equipment or equipment that dispenses water, whether or not in combination with soap or other cleaning agents or wax, to the consumer for the consumer's use on the premises in washing, cleaning, or waxing a motor vehicle, provided no other personal property or personal service is provided as part of the transaction.
- (44) Sales of replacement and modification parts for engines, airframes, instruments, and interiors in, and paint for, aircraft used primarily in a fractional aircraft ownership program, and sales of services for the repair, modification, and maintenance of such aircraft, and machinery, equipment, and supplies primarily used to provide those services.
- (45) Sales of telecommunications service that is used directly and primarily to perform the functions of a call center. As used in this division, "call center" means any physical location where telephone calls are placed or received in high volume for the purpose of making sales, marketing, customer service, technical support, or other specialized business activity, and that employs at least fifty individuals that engage in call center activities on a full-time basis, or sufficient individuals to fill fifty full-time equivalent positions.**
- (46) Sales by a telecommunications service vendor of 900 service to a subscriber. This division does not apply to information services, as defined in division (FF) of section 5739.01 of the Revised Code.
- (47) Sales of value-added non-voice data service. This division does not apply to any similar service that is not otherwise a telecommunications service.
- (48)(a) Sales of machinery, equipment, and software to a qualified direct selling entity for use in a warehouse or distribution center primarily for storing, transporting, or otherwise handling inventory that is held for sale to independent salespersons who operate as direct sellers and that is held primarily for distribution outside this state;
- (b) As used in division (B)(48)(a) of this section:
 - (i) "Direct seller" means a person selling consumer products to individuals for personal or household use and not from a fixed retail location, including selling such product at in-home product demonstrations, parties, and other one-on-one selling.
 - (ii) "Qualified direct selling entity" means an entity selling to direct sellers at the time the entity enters into a tax credit agreement with the tax credit authority pursuant to section 122.17 of the Revised Code, provided that the agreement was entered into on or after January 1, 2007. Neither contingencies relevant to the granting of, nor later developments with respect to, the tax credit shall impair the status of the qualified direct selling entity under division (B)(48) of this section after execution of the tax credit agreement by the tax credit authority.
- (c) Division (B)(48) of this section is limited to machinery, equipment, and software first stored, used, or consumed in this state within the period commencing June 24, 2008, and ending on the date that is five years after that date.
- (49) Sales of materials, parts, equipment, or engines used in the repair or maintenance of aircraft or avionics systems of such aircraft, and sales of repair, remodeling, replacement, or maintenance services in this state performed on aircraft or on an aircraft's avionics, engine, or component materials or parts. As used in division (B)(49) of this section, "aircraft" means aircraft of more than six thousand pounds maximum certified takeoff weight or used exclusively in general aviation.
- (50) Sales of full flight simulators that are used for pilot or flight-crew training, sales of repair or replacement parts or components, and sales of repair or maintenance services for such full flight simulators. "Full flight simulator" means a replica of a specific type, or make, model, and series of aircraft cockpit. It includes the assemblage of equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-cockpit view, and a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in appendices A and B of part 60 of chapter 1 of title 14 of the Code of Federal Regulations.**
- (C) For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.
- (D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.
- (E) The tax collected by the vendor from the consumer under this chapter is not part of the price, but is a tax collection for the benefit of the state, and of counties levying an additional sales tax pursuant to section 5739.021 or 5739.026 of the Revised Code and of transit authorities levying an additional sales tax pursuant to section 5739.023 of the Revised Code. Except for the discount authorized under section 5739.12 of the Revised Code and the effects of any rounding pursuant to section 5703.055 of the Revised Code, no person other than the state or such a county or transit authority shall derive any benefit from the collection or payment of the tax levied by this section or section 5739.021, 5739.023, or 5739.026 of the Revised Code.**

Sec. 5751.08. (A) An application for refund to the taxpayer of the amount of taxes imposed under this chapter that are overpaid, paid illegally or erroneously, or paid on any illegal or erroneous assessment shall be filed by the reporting person with the tax commissioner, on the form prescribed by the commissioner, within four years after the date of the illegal or erroneous payment of the tax, or within any additional period allowed under division (F) of section 5751.09 of the Revised Code. The applicant shall provide the amount of the requested refund along with the claimed reasons for, and documentation to support, the issuance of a refund.

(B) On the filing of the refund application, the tax commissioner shall determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the commissioner shall certify the amount to the director of budget and management and treasurer of state for payment from the tax refund fund created under section 5703.052 of the Revised Code. If the amount is less than that claimed, the commissioner shall proceed in accordance with section 5703.70 of the Revised Code.

(C) Interest on a refund applied for under this section, computed at the rate provided for in section 5703.47 of the Revised Code, shall be allowed from the later of the date the tax was paid or when the tax payment was due.

(D) A calendar quarter taxpayer with more than one million dollars in taxable gross receipts in a calendar year other than calendar year 2005 and that is not able to exclude one million dollars in taxable gross receipts because of the operation of the taxpayer's business in that calendar year may file for a refund under this section to obtain the full exclusion of one million dollars in taxable gross receipts for that calendar year.

(E) No person with an active registration as a taxpayer under this chapter may claim a refund under this section for the tax imposed under division (B) of section 5751.03 of the Revised Code unless the person cancelled the registration before the tenth day of May of the current calendar year pursuant to division (D) of section 5751.04 of the Revised Code.

(F) Except as provided in section 5751.091, 5751.081 of the Revised Code, the tax commissioner may, with the consent of the taxpayer, provide for the crediting against tax due for a tax year the amount of any refund due the taxpayer under this chapter for a preceding tax year.

Sec. 5751.09. (A) The tax commissioner may make an assessment, based on any information in the commissioner's possession, against any person that fails to file a return or pay any tax as required by this chapter. The commissioner shall give the person assessed written notice of the assessment as provided in section 5703.37 of the Revised Code. With the notice, the commissioner shall provide instructions on the manner in which to petition for reassessment and request a hearing with respect to the petition. The commissioner shall send any assessments against consolidated elected taxpayer and section 5751.01 of the Revised Code. The reporting person shall notify all members of the group of the assessment and all outstanding taxes, interest, and penalties for which the assessment is issued.

(B) Unless the person assessed, within sixty days after service of the notice of assessment, files with the tax commissioner, either personally or by certified mail, a written petition signed by the person or the person's authorized agent having knowledge of the facts, the assessment becomes final, and the amount of the assessment is due and payable from the person assessed to the treasurer of state. The petition shall indicate the objections of the person assessed, but additional objections may be raised in writing if received by the commissioner prior to the date shown on the final determination.

If a petition for reassessment has been properly filed, the commissioner shall proceed under section 5703.60 of the Revised Code.

(C)(1) After an assessment becomes final, if any portion of the assessment, including accrued interest, remains unpaid, a certified copy of the tax commissioner's entry making the assessment final may be filed in the office of the clerk of the court of common pleas in the county in which the person resides or has its principal place of business in this state, or in the office of the clerk of court of common pleas of Franklin county.

(2) Immediately upon the filing of the entry, the clerk shall enter judgment for the state against the person assessed in the amount shown on the entry. The judgment may be filed by the clerk in a loose-leaf book entitled, "special judgments for the commercial activity tax" and shall have the same effect as other judgments. Execution shall issue upon the judgment at the request of the tax commissioner, and all laws applicable to sales on execution shall apply to sales made under the judgment.

(3) The portion of the assessment not paid within sixty days after the day the assessment was issued shall bear interest at the rate per annum prescribed by section 5703.47 of the Revised Code from the day the tax commissioner issues the assessment until it is paid. Interest shall be paid in the same manner as the tax and may be collected by the issuance of an assessment under this section.

(D) If the tax commissioner believes that collection of the tax will be jeopardized unless proceedings to collect or secure collection of the tax are instituted without delay, the commissioner may issue a jeopardy assessment against the person liable for the tax. Immediately upon the issuance of the jeopardy assessment, the commissioner shall file an entry with the clerk of the court of common pleas in the manner prescribed by division (C) of this section. Notice of the jeopardy assessment shall be served on the person assessed or the person's authorized agent in the manner provided in section 5703.37 of the Revised Code within five days of the filing of the entry with the clerk. The total amount assessed is immediately due and payable, unless the person assessed files a petition for reassessment in accordance with division (B) of this section and provides security in a form satisfactory to the commissioner and in an amount sufficient to satisfy the unpaid balance of the assessment. Full or partial payment of the assessment does not prejudice the commissioner's consideration of the petition for reassessment.

(E) The tax commissioner shall immediately forward to the treasurer of state all amounts the commissioner receives under this section, and such amounts shall be considered as revenue arising from the tax imposed under this chapter.

(F) Except as otherwise provided in this division, no assessment shall be made or issued against a taxpayer for the tax imposed under this chapter more than four years after the due date for the filing of the return for the tax period for which the tax was reported, or more than four years after the return for the tax period was filed, whichever is later. The time limit may be extended if both the taxpayer and the commissioner consent in writing to the extension or enter into an agreement waiving or extending the time limit. Any such extension shall extend the four-year time limit in division (B) of section 5751.08 of the Revised Code for the same period of time. Nothing in this division bars an assessment against a taxpayer that fails to file a return required by this chapter or that files a fraudulent return.

(G) If the tax commissioner possesses information that indicates that the amount of tax a taxpayer is required to pay under this chapter exceeds the amount the taxpayer paid, the tax commissioner may audit a sample of the taxpayer's gross receipts over a representative period of time to ascertain the amount of tax due, and may issue an assessment based on the audit. The tax commissioner shall make a good faith effort to reach agreement with the taxpayer in selecting a representative sample. The tax commissioner may apply a sampling method only if the commissioner has prescribed the method by rule.

(H) If the whereabouts of a person subject to this chapter is not known to the tax commissioner, the commissioner shall follow the procedures under section 5703.37 of the Revised Code.

Sec. 6109.22. (A) There is hereby created the drinking water assistance fund to provide financial and technical assistance for the purposes of protecting public health and achieving and maintaining compliance with the Safe Drinking Water Act and this chapter. In addition to the accounts created under divisions (G) and (H) of this section, the drinking water assistance fund may include any other accounts established by the director of environmental protection. The fund shall be administered by the director consistent with the Safe Drinking Water Act, this section, and rules adopted under division (M) of this section.

(B) The drinking water assistance fund shall consist of the moneys credited to it from all capitalization grants received under the Safe Drinking Water Act except for moneys reserved by the governor pursuant to title Title III, section 302 of that act, all moneys credited to the fund from nonfederal sources, including, without limitation, the proceeds of state bonds or notes issued for the benefit of the fund, all payments of principal and interest on loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date that a capitalization grant payment made under the authority of the Safe Drinking Water Act is credited to the fund, required matching moneys shall be credited to the fund. Any moneys transferred to or reserved from the drinking water assistance fund pursuant to title Title III, section 302 of the Safe Drinking Water Act shall be accounted for separately.

(C) In a manner consistent with the Safe Drinking Water Act and the applicable drinking water assistance management plan prepared in accordance with this section, the director may reserve and award for assistance moneys allotted to the state under section 1452 of the Safe Drinking Water Act, provided that the director makes a determination that the use of the moneys will accomplish the state's objectives and the objectives established for capitalization grants under the Safe Drinking Water Act. The director may use a portion of the reserved moneys to enter into contracts with qualified organizations, including private nonprofit organizations, to provide statewide on-site technical assistance to small public water systems.

(D) Subject to the terms of the agreements provided for in division (E) of this section, moneys in the drinking water assistance fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section 6121.11 of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section 6121.12 of the Revised Code. Moneys in the drinking water assistance fund shall be separate and apart from and not a part of the state treasury or of the other funds of the authority. No withdrawals or disbursements shall be made from the drinking water assistance fund without the written authorization of the director.

(E) The director shall adopt written criteria to ensure that fiscal controls are established for prudent administration of the drinking water assistance fund. For that purpose, the director and the authority shall enter into any necessary and appropriate agreements under which the authority may perform or

provide any of the following:

- (1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;
- (2) Administration of loan accounts;
- (3) Maintenance, management, and investment of moneys in the fund.

Any agreement entered into under division (E) of this section shall provide for the payment of reasonable fees to the authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payment of any of the fees to the authority may be made from the drinking water assistance administrative account established under division (G) of this section.

(F) The authority may make moneys available to the director for the purpose of providing matching moneys required to be credited to the drinking water assistance fund under division (B) of this section, subject to any terms that the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to provide those matching moneys.

The director and the authority may enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the drinking water assistance fund, including, without limitation, the raising of matching moneys required to be credited to the fund in accordance with division (B) of this section. The agreements may authorize the pledge of moneys accruing to the fund from payments of principal or interest or both on loans made from the fund to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the drinking water assistance fund. The agreements may contain any terms that the director and the authority consider reasonable and proper for the payment and security of the bondholders or noteholders.

(G) There is hereby established within the drinking water assistance fund the drinking water assistance administrative account. No state matching moneys deposited into the fund under this section shall be used for the purpose of paying for or defraying the costs of administering this section. The director may establish and collect fees from applicants for assistance provided under this section. The total fees charged to an applicant under this division for assistance under this section shall not exceed the following:

- (1) For the environmental protection agency, one per cent of the principal amount of the assistance awarded to the applicant;
- (2) For the authority, thirty-five one-hundredths of one per cent of the principal amount of the assistance awarded to the applicant.

All moneys from the fees shall be credited to the drinking water assistance administrative account in the fund. The moneys shall be used solely to defray the costs of administering this section.

(H) There is hereby established within the drinking water assistance fund the water supply revolving loan account. The director may provide financial assistance from the water supply revolving loan account for improvements to community water systems and to nonprofit noncommunity public water systems.

(I) All moneys from the fund credited to the water supply revolving loan account, all interest earned on moneys credited to the account, and all payments of principal and interest on loans made from the account shall be dedicated in perpetuity and used and reused solely for the following purposes, except as otherwise provided in this section:

(1) To make loans to community water systems and nonprofit noncommunity public water systems, subject to all of the following conditions:

- (a) The loans are made at or below market rates of interest, including, without limitation, interest-free loans;
- (b) Each recipient of a loan shall establish a dedicated source of security or revenue for repayment of the loan;
- (c) All payments of principal and interest on the loans shall be credited to the water supply revolving loan account.

(2) To purchase or refinance at or below market rates interest debt obligations incurred after July 1, 1993, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state;

(3) To guarantee or purchase insurance for debt obligations when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest paid on those obligations;

(4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes are or will be deposited into the account;

(5) To provide subsidies in addition to any other financial assistance afforded disadvantaged communities under this section;

(6) To earn interest on moneys credited to the account;

(7) To provide any other assistance authorized by the Safe Drinking Water Act or any other federal law related to the use of federal funds administered under the Safe Drinking Water Act.

(J) The director may provide financial assistance from the water supply revolving loan account after determining all of the following:

(1) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its public water system and the proposed improvements to it;

(2) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance;

(3) The public water system of which the project for which assistance is proposed is a part is economically and nonmonetarily cost-effective, based on an evaluation of feasible alternatives that meet the drinking water treatment needs of the planning area in which the proposed project is located;

(4) Based on a comprehensive environmental review approved by the director, there are no significant adverse environmental effects resulting from all necessary improvements to the public water system of which the project proposed for assistance is a part;

(5) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the Safe Drinking Water Act;

(6) The application meets the requirements of this section and rules adopted under division (M) of this section and is consistent with section 1452 of the Safe Drinking Water Act and regulations adopted under it;

(7) If the applicant for assistance is a water district formed under Chapter 6119 of the Revised Code that operates a public water system and that water district seeks to extend the distribution facilities, increase the number of service connections to its system, or provide for any other expansion of its system, the water district has consulted with the board of county commissioners from each county in which is located the proposed extension of distribution facilities, increase in the number of service connections, or other expansion of the public water system;

(8) The application meets any other requirements that the director considers necessary or appropriate to protect public health and the environment and to ensure the financial integrity of the water supply revolving loan account.

Upon approval by the director of an application for financial assistance, the Ohio water development authority shall disburse the appropriate financial assistance from the water supply revolving loan account. If the proposed financial assistance is a loan, and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the authority, the director shall submit the application for the loan to the authority for review and approval with respect to any matters pertaining to security for and the marketability of authority bonds. Review and approval by the authority shall be required prior to the making of such a loan.

(K) In accordance with rules adopted under division (M) of this section, the director periodically shall prepare a drinking water assistance management plan establishing the short-term and long-term goals for the assistance provided under this section, the allocation of available resources for the purposes of this section, the environmental, financial, and administrative terms, conditions, and criteria for the award of financial and technical assistance under this section, and the intended uses of capitalization grants and available moneys from the drinking water assistance fund. Criteria for awarding financial or technical assistance under this section shall not favor or disfavor any otherwise qualified nonprofit noncommunity public water system because it is owned by, operated by, or services a religious organization or a facility used for religious purposes. Prior to its adoption, the director shall make the drinking water assistance management plan available for public review and comment at a minimum of two public meetings and shall take adequate steps to ensure that reasonable public notice of each public meeting is given at least thirty days prior to the meeting.

The plan shall include, without limitation, a system that prioritizes projects funded by the water supply revolving loan account based on the relative risk to human health being addressed, their necessity for ensuring compliance with requirements of the Safe Drinking Water Act, and their affordability to the applicants, as determined by the director. Financial assistance for projects from the water supply revolving loan account shall be limited to projects that are included in that prioritization and shall be awarded based upon their priority position and the applicants' readiness to proceed with their proposed activities as determined by the director. The drinking water assistance management plan shall include terms, conditions, amounts of moneys, and qualifying criteria, in addition to any other criteria established under this section, governing the financial assistance to be awarded to applicants from the water supply revolving loan account. The director shall determine the most effective use of the moneys in that account to achieve the state's drinking water assistance goals and objectives.

(L) The director, consistent with this section and applicable rules adopted under division (H) of this section, may enter into an agreement with an applicant for assistance from the drinking water assistance fund. Based on the director's review and approval of the project plans submitted under section 6109.07 of the Revised Code, any determinations made under division (J) of this section if an applicant seeks funding from the water supply revolving loan account, and any other requirements of this section and rules adopted under it, the director may establish in the agreement environmental and financial terms and conditions of the financial assistance to be offered to the applicant. If the recipient of financial assistance under this section defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section 6109.07 of the Revised Code, the director, in addition to any other available remedies, may terminate, suspend, or require immediate repayment of the financial assistance. The director also may take any enforcement action available under this chapter.

(M) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section. The rules shall be consistent with section 1452 of the Safe Drinking Water Act.

(N)(1) For the purposes of this section, appealable actions of the director pursuant to section 3745.04 of the Revised Code are limited to the following:

- (a) Adoption of the drinking water assistance management plan prepared under division (K) of this section;
- (b) Approval of priority systems, priority lists, and written program administration policies;
- (c) Approval or disapproval under this section of applicants' project plans submitted under section 6109.07 of the Revised Code;
- (d) Approval or disapproval of an application for assistance.

(2) Notwithstanding section 119.06 of the Revised Code, the director may take the final actions described in divisions (N)(1)(a) to (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.

(3) Each action described in divisions (N)(1)(a) to (d) of this section and each approval of a plan under section 6109.07 of the Revised Code is a separate and discrete action of the director. Appeals are limited to the issues concerning the specific action appealed. Any appeal shall not include issues determined under the scope of any prior action.

(O) The failure or inability of a public water system to obtain assistance under this section does not alter the obligation of the public water system to comply with all applicable requirements of this chapter and rules adopted under it.

Sec. 6111.036. (A) There is hereby created the water pollution control loan fund to provide financial, technical, and administrative assistance for the following purposes:

(1) Construction of publicly owned wastewater treatment works, as "construction" and "treatment works" are defined in section 212 of the "Federal Water Pollution Control Act," by municipal corporations, other political subdivisions, and interstate agencies having territory in this state;

(2) Implementation of nonpoint source pollution management programs under section 319 of that act;

(3) Development and implementation of estuary conservation and management programs under section 320 of that act.

To the extent they are otherwise allowable as determined by the director of environmental protection, the purposes identified under division (A) of this section are intended to include activities benefiting the waters of the state that are authorized under Chapter 3746. of the Revised Code.

The fund shall be administered by the director consistent with the "Federal Water Pollution Control Act"; regulations adopted under it, including, without limitation, regulations establishing public participation requirements applicable to the providing of financial assistance; this section; and rules adopted under division (Q) of this section.

Moneys in the water pollution control loan fund shall be separate and apart from and not a part of the state treasury or of the other funds of the Ohio water development authority. Subject to the terms of the agreements provided for in divisions (B), (C), (D), and (F) of this section, moneys in the fund shall be held in trust by the Ohio water development authority for the purposes of this section, shall be kept in the same manner that funds of the authority are kept under section 6121.11 of the Revised Code, and may be invested in the same manner that funds of the authority are invested under section 6121.12 of the Revised Code. No withdrawals or disbursements shall be made from the water pollution control loan fund without the written authorization of the director or his the director's designated representative. The manner of authorization for any withdrawals or disbursements from the fund to be made by the authority shall be established in the agreements authorized under division (C) of this section.

(B) The director may enter into agreements to receive and assign moneys credited or to be credited to the water pollution control loan fund. The director may reserve capitalization grant moneys allotted to the state under sections 601 and 604(c)(2) of the "Federal Water Pollution Control Act" for the other purposes authorized for the use of capitalization grant moneys under sections 603(d)(7) and 604(b) of that act.

(C) The director shall ensure that fiscal controls are established for prudent administration of the water pollution control loan fund. For that purpose, the director and the Ohio water development authority shall enter into any necessary and appropriate agreements under which the authority may perform or provide any of the following:

- (1) Fiscal controls and accounting procedures governing fund balances, receipts, and disbursements;
- (2) Administration of loan accounts;
- (3) Maintaining, managing, and investing moneys in the fund.

Any agreement entered into under this division shall provide for the payment of reasonable fees to the Ohio water development authority for any services it performs under the agreement and may provide for reasonable fees for the assistance of financial or accounting advisors. Payments of any such fees to the authority may be made from the water pollution control loan fund to the extent authorized by division (H)(7) of this section or from the water pollution control loan administrative fund created in division (F) of this section. The authority may enter into loan agreements with the director and recipients of financial assistance from the fund as provided in this section.

(D) The water pollution control loan fund shall consist of the moneys credited to it from all capitalization grants received under sections 601 and 604(c)(2) of the "Federal Water Pollution Control Act," all moneys received as capitalization grants under section 205(m) of that act, all matching moneys credited to the fund arising from nonfederal sources, all payments of principal and interest for loans made from the fund, and all investment earnings on moneys held in the fund. On or before the date on which a quarterly capitalization grant payment will be received under that act, matching moneys equal to at least twenty per cent of the quarterly capitalization grant payment shall be credited to the fund. The Ohio water development authority may make moneys available to the director for the purpose of providing the matching moneys required by this division, subject to such terms as the director and the authority consider appropriate, and may pledge moneys that are held by the authority to secure the payment of bonds or notes issued by the authority to the authority from any source, including, without limitation, the proceeds of bonds or notes heretofore or hereafter issued by the authority under Chapter 6121. of the Revised Code. Matching moneys made available to the director by the authority from the proceeds of any such bonds or notes shall be made available subject to the terms of the trust agreements relating to the bonds or notes. Any such matching moneys shall be made available to the director pursuant to a written agreement between the director and the authority that contains such terms as the director and the authority consider appropriate, including, without limitation, a provision providing for repayment to the authority of those matching moneys from moneys deposited in the water pollution control loan fund, including, without limitation, the proceeds of bonds or notes issued by the authority for the benefit of the fund and payments of principal and interest on loans made from the fund, or from any other sources now or hereafter available to the director for the repayment of those matching moneys.

(E) All moneys credited to the water pollution control loan fund, all interest earned on moneys in the fund, and all payments of principal and interest for loans made from the fund shall be dedicated in perpetuity and used and reused solely for the purposes set forth in division (A) of this section, except as otherwise provided in division (D) or (F) of this section. The director may establish and collect fees to be paid by recipients of financial assistance under this section, and all moneys arising from the fees shall be credited to the water pollution control loan administrative fund, which is hereby created in the state treasury, and shall be used to defray the costs of administering this section.

(F) The director and the Ohio water development authority shall enter into trust agreements to enable the authority to issue and refund bonds or notes for the sole benefit of the water pollution control loan fund, including, without limitation, the raising of the matching moneys required by division (D) of this section. These agreements may authorize the pledge of moneys accruing to the fund from payments of principal and interest on loans made from the fund adequate to secure bonds or notes, the proceeds of which bonds or notes shall be for the sole benefit of the water pollution control loan fund. The agreements may contain such terms as the director and the authority consider reasonable and proper for the security of the bondholders or noteholders.

(G) The director shall enter into binding commitments to provide financial assistance from the water pollution control loan fund in an amount equal to one hundred twenty per cent of the amount of each capitalization grant payment received, within one year after receiving each such grant payment. The director shall provide the financial assistance in compliance with this section and rules adopted under division (O) of this section. The director shall ensure that all moneys credited to the fund are disbursed in an expeditious and timely manner. During the second year of operation of the water pollution control loan program, the director also shall ensure that not less than twenty-five per cent of the financial assistance provided under this section during that year is provided for the purpose of division (H)(2) of this section for the purchase or refinancing of debt obligations incurred after March 7, 1985, but not later than July 1, 1988, except that if the amount of money reserved during the second year of operation of the program for the purchase or refinancing of those debt obligations exceeds the amount required for the projects that are eligible to receive financial assistance for that purpose, the director shall distribute the excess moneys in accordance with the current priority system and list prepared under division (I) of this section to provide financial assistance for projects that otherwise would not receive assistance in that year.

(H) Moneys credited to the water pollution control loan fund shall be used only for the following purposes:

(1) To make loans, subject to all of the following conditions:

(a) The loans are made at or below market rates of interest, including, without limitation, interest free loans;

(b) Periodic payments of principal and interest shall commence not later than one year after completion of the project, and all loans shall be fully amortized not later than twenty years after project completion;

(c) Each recipient of a loan shall establish a dedicated source of revenue for repayment of the loan;

(d) All payments of principal and interest on the loans shall be credited to the fund, except as otherwise provided in division (D) or (F) of this section.

(2) To purchase or refinance at or below market rates of interest debt obligations incurred after March 7, 1985, by municipal corporations, other political subdivisions, and interstate agencies having territory in the state;

(3) To guarantee or purchase insurance for debt obligations of municipal corporations, other political subdivisions, and interstate agencies having territory within the state when the guarantee or insurance would improve the borrower's access to credit markets or would reduce the interest rate paid on those obligations;

(4) As a source of revenue or security for the payment of principal and interest on general obligation or revenue bonds or notes issued by this state if the proceeds of the sale of the bonds or notes will be deposited in the fund;

(5) To provide loan guarantees for revolving loan funds established by municipal corporations and other political subdivisions that are similar to the water pollution control loan fund;

(6) To earn interest on moneys credited to the fund;

(7) To pay the reasonable costs of administering the fund and this section, except that cumulative expenditures from the fund for administrative costs shall not at any time exceed four per cent of the total amount of the capitalization grants received;

(8) To provide assistance in any manner or for any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of the Federal Water Pollution Control Act.

(1) The director periodically shall prepare in accordance with rules adopted under division (O) of this section a state priority system and list ranking assistance proposals principally on the basis of their relative water quality and public health benefits and the financial need of the applicants for assistance. Assistance for proposed activities from the water pollution control loan fund shall be limited to those activities appearing on that priority list and shall be awarded based upon their priority sequence on the list and the applicants' readiness to proceed with their proposed activities. The director annually shall prepare and circulate for public review and comment a plan that defines the goals and intended uses of the fund, as required by section 606(c) of the "Federal Water Pollution Control Act."

(2) Financial assistance from the water pollution control loan fund first shall be used to ensure maintenance of progress, as determined by the governor, toward compliance with enforceable deadlines, goals, and requirements under the "Federal Water Pollution Control Act" that are pertinent to the purposes of the fund set forth in divisions (A)(1) to (3) of this section, including, without limitation, the municipal compliance deadline under that act.

(K) The director may provide financial assistance from the water pollution control loan fund for a publicly owned treatment works project only after determining that:

(1) Sewerage systems tributary to the treatment works are not subject to excessive infiltration and inflow;

(2) The applicant for financial assistance has the legal, institutional, managerial, and financial capability to construct, operate, and maintain its publicly owned treatment works;

(3) The applicant will implement a financial management plan that includes, without limitation, provisions for satisfactory repayment of the financial assistance, a proportional user charge system to pay the operation, maintenance, and replacement expenses of the project, and, if appropriate in the director's judgment, an adequate capital improvements fund;

(4) The proposed disposal system of which the project is a part is economically and nonmonetarily cost-effective, based upon an evaluation of feasible alternatives that meet the waste water treatment needs of the planning area in which the proposed project is located;

(5) Based upon the environmental review conducted by the director under division (L) of this section, there are no significant adverse environmental effects resulting from the proposed disposal system and the system has been selected from among environmentally sound alternatives;

(6) Public participation has occurred during the process of planning the project in compliance with applicable requirements under the "Federal Water Pollution Control Act";

(7) The applicant has submitted a facilities plan for the project that meets the applicable program requirements and that has been approved by the director;

(8) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the "Federal Water Pollution Control Act" and regulations adopted under it;

(9) The application meets such other requirements as the director considers necessary or appropriate to protect the environment or ensure the financial integrity of the fund while implementing this section.

(L) The director shall perform and document for public review an independent, comprehensive environmental review of the assistance proposal for each activity receiving financial assistance under this section. The review shall serve as the basis for the determinations to be made under division (K)(5) or (Q)(4) of this section, as applicable, and may include, without limitation, an environmental assessment, any necessary supplemental studies, and an enforceable mitigation plan. The director may establish environmental impact mitigation terms or conditions for the implementation of an assistance proposal, including, without limitation, the installation or modification of a disposal system, in his the director's approval of the plans for the installation or modification as authorized by section 611.44 of the Revised Code or through other legally enforceable means. The review shall be conducted in accordance with applicable rules adopted under division (O) of this section.

(M) The director, consistent with this section and applicable rules adopted under division (O) of this section, may enter into any agreement with an applicant that is necessary or appropriate to provide assistance from the water pollution control loan fund. Based upon his the director's review of an assistance proposal, including, without limitation, approval for the project under section 611.44 of the Revised Code, the environmental review conducted under division (L) of this section, and the other requirements of this section and rules adopted under it, the director may establish in the agreement terms and conditions of the assistance to be offered to an applicant. In addition to any other available remedies, the director may terminate, suspend, or require immediate repayment of financial assistance provided under this section to, or take any other enforcement action available under this chapter against, a recipient of financial assistance under this section who defaults on any payment required in the agreement for financial assistance or otherwise violates a term or condition of the agreement or of the plan approval for the project under section 611.44 of the Revised Code.

(N) Based upon the director's judgment as to the financial need of the applicant and as to what constitutes the most effective allocation of funds to

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achieve statewide water pollution control objectives, the director may establish the terms, conditions, and amount of financial assistance to be offered to an applicant from the water pollution control loan fund. The director, to the extent consistent with the water quality improvement priorities reflected in the current priority systems and list prepared under division (I) of this section and with the long-term financial integrity of the fund, shall ensure each year that financial assistance in an amount equal to the cost of the assistance proposals of applicants having a high level of economic need that are on the current priority list and for which funding is available in that year is made available from the fund to those applicants at an interest rate that is lower than that offered to other applicants for financial assistance from the fund for assistance proposals that are on the current priority list and for which funding is available in that year.

The director shall determine the economic need of applicants for financial assistance in accordance with uniform criteria established in rules adopted under division (O) of this section.

(O) The director may adopt rules in accordance with Chapter 119. of the Revised Code for the implementation and administration of this section and section 6111.037 of the Revised Code. Any such rules governing the planning, design, and construction of water pollution control projects, establishing an environmental review process, establishing requirements for the preparation of environmental impact reports and mitigation plans, governing the establishment of priority systems for providing financial assistance under this section and section 6111.037 of the Revised Code, and governing the terms and conditions of assistance, shall be consistent with the intent of Titles II and VI and sections 319 and 320 of the "Federal Water Pollution Control Act." The rules governing the establishment of priority systems for financial assistance and governing terms and conditions of assistance shall provide for the most effective allocation of moneys from the water pollution control loan fund to achieve water quality and public health objectives throughout the state as determined by the director.

(P)(1) For the purpose of this section, appealable actions of the director pursuant to section 3745.04 of the Revised Code are limited to the following:

- (a) Approval of draft priority systems, draft priority lists, and draft written program administration policies;
- (b) Approval or disapproval of project facility plans under division (K)(7) of this section;
- (c) Approval or disapproval of plans and specifications for a project under section 6111.44 of the Revised Code and issuance of a permit to install in connection with a project pursuant to rules adopted under section 6111.03 of the Revised Code;
- (d) Approval or disapproval of an application for assistance.

(2) Notwithstanding section 119.06 of the Revised Code, the director may take final action described in division (P)(1)(a), (b), (c), or (d) of this section without holding an adjudication hearing in connection with the action and without first issuing a proposed action under section 3745.07 of the Revised Code.

(3) Each action described in divisions (P)(1)(a), (b), (c), and (d) of this section is a separate and discrete action of the director. Appeals of any such action are limited to the issues concerning the specific action appealed, and the appeal shall not include issues determined under the scope of any prior action.

(Q) The director may provide financial assistance for the implementation of a nonpoint source management program activity only after determining all of the following:

- (1) The activity is consistent with the state's nonpoint source management program;
- (2) The applicant has the legal, institutional, managerial, and financial capability to implement, operate, and maintain the activity;
- (3) The cost of the activity is reasonable considering monetary and nonmonetary factors;
- (4) Based on the environmental review conducted by the director under division (L) of this section, the activity will not result in significant adverse environmental impacts;
- (5) The application meets the requirements of this section and rules adopted under division (O) of this section and is consistent with the intent of Title VI of the "Federal Water Pollution Control Act" and regulations adopted under it;
- (6) The applicant will implement a financial management plan, including, without limitation, provisions for satisfactory repayment of the financial assistance;
- (7) The application meets such other requirements as the director considers necessary or appropriate to protect the environment and ensure the financial integrity of the fund while implementing this section.

(R) As used in this section, "Federal Water Pollution Control Act" means the "Federal Water Pollution Control Act Amendments of 1972," 86 Stat. 886, 33 U.S.C.A. 1251, as amended by the "Clean Water Act of 1977," 91 Stat. 1566, 33 U.S.C.A. 1251, the "Act of October 21, 1980," 94 Stat. 2360, 33 U.S.C.A. 1254, the "Municipal Wastewater Treatment Construction Grant Amendments of 1981," 95 Stat. 1623, 33 U.S.C.A. 1281, and the "Water Quality Act of 1987," 101 Stat. 7, 33 U.S.C.A. 1251.

SECTION 2. That existing sections 122.12, 135.143, 148.06, 926.31, 1501.04, 1517.23, 3302.03, 3313.44, 4928.01, 5709.62, 5709.63, 5709.632, 5739.02, 5751.08, 5751.09, 5109.22, and 6111.036 of the Revised Code are hereby repealed.

SECTION 3. Beginning July 1, 2010, and ending January 1, 2012, the Director of Budget and Management, upon the request of the Director of Natural Resources, shall transfer an amount not to exceed \$1.2 million from the Natural Areas and Preserves Fund created in section 1517.11 of the Revised Code (Fund 5220) to the Departmental Projects Fund (Fund 1550) for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012. If such an amount is so transferred, the Director of Natural Resources, not later than March 1, 2011, shall submit to the Speaker of the House of Representatives and the President of the Senate a detailed report of expenditures from the Departmental Projects Fund (Fund 1550) for payment of salaries of permanent employees of the Division of Natural Areas and Preserves.

SECTION 4. Beginning July 1, 2010, and ending December 31, 2010, the Administrator of the Bureau of Workers' Compensation shall transfer a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund created in section 4131.03 of the Revised Code in an amount not to exceed \$2.28 million to the Strip Mining Administration Fund (Fund 5260) for the purposes specified in section 1513.181 of the Revised Code. Transfers from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund (Fund 5260) are prohibited after December 31, 2010.

SECTION 5. That section 3313.44 of the Revised Code, as amended by this act, is remedial in nature and applies to tax years at issue in any application for exemption from taxation pending before the Tax Commissioner, Ohio Board of Tax Appeals, any Court of Appeals, or the Supreme Court on the effective date of this act and to the property that is the subject of the application.

SECTION 6. A person may request a refund of the annual minimum commercial activity tax paid for calendar year 2007, 2008, or 2009 under Chapter 5751. of the Revised Code if the person satisfies both of the following:

- (A) The person was not subject to the tax for 2007, 2008, or 2009 because the person was an excluded person under division (E)(1) of section 5751.01 of the Revised Code.
- (B) The person erroneously registered for the tax and failed to cancel the registration before the tenth day of February of the calendar year for which the tax was paid.

SECTION 7. The items set forth in this section are hereby appropriated for fiscal years 2011 and 2012 out of any moneys in the state treasury to the credit of the Job Ready Site Development Fund (Fund 7012) that are not otherwise appropriated:

DEV DEPARTMENT OF DEVELOPMENT

C19502	Job Ready Sites	\$	30,000,000
Total			
Department of		\$	30,000,000
Development			
TOTAL Job			
Ready Site		\$	30,000,000

Development Fund

SECTION 8. JOB READY SITE DEVELOPMENT

The Ohio Public Facilities Commission, upon request of the Department of Development, is hereby authorized to issue and sell, in accordance with Section 2p of Article VIII, Ohio Constitution, and pursuant to sections 151.01 and 151.11 of the Revised Code, original obligations of the State of Ohio in an aggregate amount not to exceed \$30,000,000 in addition to the original issuance of obligations heretofore authorized by prior acts of the General Assembly. These authorized obligations shall be issued and sold from time to time, subject to applicable constitutional and statutory limitations, as needed to ensure sufficient moneys to the credit of the Job Ready Site Development Fund (Fund 7012) to pay costs of sites and facilities.

SECTION 9. The items set forth in this section are hereby appropriated for fiscal years 2011 and 2012 out of any moneys in the state treasury to the credit of the Clean Ohio Revitalization Fund (Fund 7003) that are not otherwise appropriated:

DEV DEPARTMENT OF DEVELOPMENT

C19500	Clean Ohio Revitalization	\$	80,000,000
C19501	Clean Ohio Assistance	\$	20,000,000
Total			
Department of Development		\$	100,000,000
TOTAL Clean Ohio Assistance Fund		\$	100,000,000

SECTION 10. CLEAN OHIO REVITALIZATION

The Treasurer of State is hereby authorized to issue and sell, in accordance with Section 2o and 2q of Article VIII, Ohio Constitution, and pursuant to sections 151.01 and 151.40 of the Revised Code, original obligations in an aggregate principal amount not to exceed \$100,000,000 in addition to the original issuance of obligations heretofore authorized by prior acts of the General Assembly. These authorized obligations shall be issued and sold from time to time, subject to applicable constitutional and statutory limitations, as needed to ensure sufficient moneys to the credit of the Clean Ohio Revitalization Fund (Fund 7003) to pay costs of revitalization projects.

CLEAN OHIO PROJECT SAVINGS REALLOCATION

Notwithstanding division (A) of section 122.658 of the Revised Code, the Director of Development may reallocate moneys for the purposes of section 122.653 or 122.656 of the Revised Code if the Department of Development realizes Clean Ohio Fund project savings attributable to any of the following instances:

- (A) The completion of any project for less than the amount of grant funds awarded, subject to the local matching funds participation requirement;
- (B) The cancellation of grant awards in which Clean Ohio Fund moneys have been encumbered for a project but not disbursed, including those for which a grantee has decided not to proceed with a project or for which the project term has expired without substantial project progress; or
- (C) Any recapture of Clean Ohio Fund moneys due to a grantee's default or failure to perform the conditions of the grant agreement.

SECTION 11. (A) The ARRA Compliance Fund (Fund 51A0) is hereby created in the state treasury. The fund shall be used by the Department of Education to make adjustments to state support for local education agencies to meet State Fiscal Stabilization Fund requirements under the American Recovery and Reinvestment Act. These requirements are that the state maintain support for elementary and secondary education to at least the level supported for fiscal year 2006, and that state payments under the primary funding formula to local education agencies for fiscal year 2010 and fiscal year 2011 be not less than payments under the primary funding formula for fiscal year 2009. However, if payments under the primary funding formula for fiscal year 2010 or fiscal year 2011 are lower than payments under the primary funding formula for fiscal year 2009, the shortfall in payments must be proportional to the corresponding shortfall in state aid to public institutions of higher education. The adjustments under division (B) of this section shall be made only for the purpose of meeting State Fiscal Stabilization Fund requirements for fiscal year 2010 under the American Recovery and Reinvestment Act.

(B) If state payments for elementary and secondary education provided under the primary funding formula for fiscal year 2010 are less than required, as described in division (A) of this section, on or before June 1, 2010, or as soon as possible thereafter, the Superintendent of Public Instruction shall certify to the Director of Budget and Management the amount by which funding levels are lower than required as the "ARRA compliance difference." The Superintendent of Public Instruction, in consultation with the Director of Budget and Management, shall identify encumbrances that are no longer needed for fiscal year 2010 and prior years against General Revenue Fund appropriations in the Department of Education's budget equal to the ARRA compliance difference. The Director of Budget and Management shall transfer cash in the amount of the identified fiscal year 2010 encumbered balances no longer needed in appropriation item 200502, Pupil Transportation, and appropriation item 200550, Foundation Funding, and up to \$20,000,000 of identified encumbered balances no longer needed in other General Revenue Fund appropriation items in the Department of Education's budget, from the General Revenue Fund to the ARRA Compliance Fund (Fund 51A0). The amount of transferred encumbered balances from appropriation items other than 200502 and 200550 shall not total more than \$20,000,000. The Department of Education shall seek Controlling Board approval if the needed cash transfer into the ARRA Compliance Fund (Fund 51A0) exceeds \$25,000,000. The transferred cash shall be used by the Department of Education to provide additional subsidy, on a per pupil basis, to city, local, and exempted village school districts, community schools, and STEM schools.

SECTION 12. That Sections 265.30.40 and 265.40.60 of Am. Sub. H.B. 1 of the 128th General Assembly be amended to read as follows:

Sec. 265.30.40. FOUNDATION FUNDING

The foregoing appropriation item 200550, Foundation Funding, includes \$92,300,000 in fiscal year 2010 and \$92,700,000 in fiscal year 2011 for the state education aid offset due to the change in public utility valuation as a result of Am. Sub. S.B. 3 and Am. Sub. S.B. 287, both of the 123rd General Assembly. For each fiscal year, this amount represents the greater of the total state education aid offset calculated for that fiscal year or for fiscal year 2009 due to the valuation change for school districts and the total state education aid offset calculated for fiscal year 2009 for joint vocational school districts from all relevant appropriation line item sources. Upon certification by the Department of Education, in consultation with the Department of Taxation, to the Director of Budget and Management of the actual state aid offsets, the cash transfer from the School District Property Tax Replacement - Utility Fund (Fund 7053) to the General Revenue Fund shall be decreased or increased by the Director of Budget and Management to match the certification in accordance with section 5727.84 of the Revised Code.

The foregoing appropriation item 200550, Foundation Funding, includes \$127,700,000 in fiscal year 2010 and \$126,600,000 in fiscal year 2011 for the state education aid offset because of the changes in tangible personal property valuation as a result of Am. Sub. H.B. 66 of the 126th General Assembly. For each fiscal year, this amount represents the greater of the total state education aid offset calculated for that fiscal year or for fiscal year 2009 because of the valuation change for school districts and the total state education aid offset calculated for fiscal year 2009 for joint vocational school districts from all relevant appropriation item sources. Upon certification by the Department of Education of the actual state education aid offsets to the Director of Budget and Management, the cash transfer from the School District Property Tax Replacement - Business Fund (Fund 7047) to the General Revenue Fund shall be decreased or increased by the Director of Budget and Management to match the certification in accordance with section 5751.21 of the Revised Code.

Of the foregoing appropriation item 200550, Foundation Funding, up to \$425,000 shall be expended in each fiscal year for court payments under section 2151.362 of the Revised Code.

Of the foregoing appropriation item 200550, Foundation Funding, up to \$15,000,000 in each fiscal year shall be reserved for payments under sections 3317.026, 3317.027, and 3317.028 of the Revised Code except that the Controlling Board may increase the \$15,000,000 amount if presented with such a request from the Department of Education.

Of the foregoing appropriation item 200550, Foundation Funding, up to \$8,100,000 in each fiscal year shall be used to fund gifted education units at educational service centers under division (L) of section 3317.024 of the Revised Code, notwithstanding divisions (D)(3) and (6) of section 3317.018 of the Revised Code.

Of the foregoing appropriation item 200550, Foundation Funding, an amount shall be available in each fiscal year to be used by the Department of Education for transitional aid for school districts under section 3306.19 of the Revised Code.

Of the foregoing appropriation item 200550, Foundation Funding, up to \$10,000,000 in each fiscal year shall be used to provide additional state aid to school districts for special education students under division (C)(3) of section 3317.022 of the Revised Code, except that the Controlling Board may increase these amounts if presented with such a request from the Department of Education at the final meeting of the fiscal year; up to \$2,000,000 in each fiscal year shall be reserved for Youth Services tuition payments under section 3317.024 of the Revised Code; and up to \$45,400,000 in each fiscal year shall be reserved to fund the state reimbursement of educational service centers under section 3317.11 of the Revised Code and the section of this act ~~Am. Sub. H.B. 1 of the 128th General Assembly~~ entitled "EDUCATIONAL SERVICE CENTERS FUNDING."

Of the foregoing appropriation item 200550, Foundation Funding, up to \$1,000,000 in each fiscal year shall be used by the Department of Education for a program to pay for educational services for youth who have been assigned by a juvenile court or other authorized agency to any of the facilities described in division (A) of the section of this act ~~Am. Sub. H.B. 1 of the 128th General Assembly~~ entitled "PRIVATE TREATMENT FACILITY PROJECT."

Of the foregoing appropriation item 200550, Foundation Funding, up to \$8,686,000 in fiscal year 2010 and up to \$8,722,660 in fiscal year 2011 shall be used to operate school choice programs.

Of the portion of the funds distributed to the Cleveland Municipal School District under this section, up to \$11,801,887 in each fiscal year shall be used to operate the school choice program in the Cleveland Municipal School District under sections 3313.974 to 3313.979 of the Revised Code. Notwithstanding divisions (B) and (C) of section 3313.978 and division (C) of section 3313.979 of the Revised Code, up to \$1,000,000 in each fiscal year of this amount shall be used by the Cleveland Municipal School District to provide tutorial assistance as provided in division (H) of section 3313.974 of the Revised Code. The Cleveland Municipal School District shall report the use of these funds in the district's three-year continuous improvement plan as described in section 3302.04 of the Revised Code in a manner approved by the Department of Education.

Of the foregoing appropriation item 200550, Foundation Funding, an amount shall be available in each fiscal year to be paid to joint vocational school districts in accordance with the section of this act ~~Am. Sub. H.B. 1 of the 128th General Assembly~~ entitled "FUNDING FOR JOINT VOCATIONAL SCHOOL DISTRICTS."

~~Of the foregoing appropriation item 200550, Foundation Funding, \$10,500,000 in fiscal year 2010 shall be transferred to appropriation item 200511, Auxiliary Services, for the purpose of implementing section 3317.06 of the Revised Code.~~

~~Of the foregoing appropriation item 200550, Foundation Funding, \$4,500,000 in fiscal year 2010 shall be transferred to appropriation item 200532, Nonpublic Administrative Cost Reimbursement, for the purpose of implementing section 3317.063 of the Revised Code.~~

Appropriation items 200502, Pupil Transportation, 200540, Special Education Enhancements, 200550, Foundation Funding, and 200551, Foundation Funding - Federal Stimulus, other than specific set-asides, are collectively used in each fiscal year to pay state formula aid obligations for school districts, community schools, and joint vocational school districts under this act ~~Am. Sub. H.B. 1 of the 128th General Assembly~~. The first priority of these appropriation items, with the exception of specific set-asides, is to fund state formula aid obligations. It may be necessary to reallocate funds among these appropriation items or use excess funds from other general revenue fund appropriation items in the Department of Education's budget in each fiscal year, in order to meet state formula aid obligations. If it is determined that it is necessary to transfer funds among these appropriation items or to transfer funds from other General Revenue Fund appropriations in the Department of Education's budget to meet state formula aid obligations, the Department of Education shall seek approval from the Controlling Board to transfer funds as needed.

Sec. 265.40.60. LOTTERY PROFITS EDUCATION RESERVE FUND

(A) There is hereby created the Lottery Profits Education Reserve Fund (Fund 7018) in the State Treasury. Investment earnings of the Lottery Profits Education Reserve Fund shall be credited to the fund. The Superintendent of Public Instruction may certify cash balances exceeding \$75,000,000 in Fund 7018 to the Director of Budget and Management in June of any given fiscal year. Prior to making the certification, the Superintendent of Public Instruction shall determine whether the funds above the \$75,000,000 threshold are needed to help pay for foundation program obligations for that fiscal year.

For fiscal years 2010 and 2011, notwithstanding any provisions of law to the contrary, amounts necessary to make loans authorized by sections 3317.0210, 3317.0211, and 3317.62 of the Revised Code are hereby appropriated to Fund 7018. Loan repayments from loans made in previous years shall be deposited to the fund.

~~(B) Notwithstanding any other provision of law to the contrary, the Director of Budget and Management shall transfer \$40,000,000 cash from Fund 2018 to the Lottery Profits Education Fund (Fund 7017) in fiscal year 2010.~~

~~(B)(C) On July 15, 2009, or as soon as possible thereafter, the Director of the Ohio Lottery Commission shall certify to the Director of Budget and Management the amount by which lottery profit transfers received by the Lottery Profits Education Fund (Fund 7017) Fund 7017 exceeded \$667,900,000 in fiscal year 2009. The Director of Budget and Management may transfer the amount so certified, plus the cash balance in Fund 7017, to Fund 7018.~~

~~(C)(D) On July 15, 2010, or as soon as possible thereafter, the Director of the Ohio Lottery Commission shall certify to the Director of Budget and Management the amount by which lottery profit transfers received by Fund 7017 exceeded \$705,000,000 in fiscal year 2010. The Director of Budget and Management may transfer the amount so certified, plus the cash balance in Fund 7017, to Fund 7018.~~

~~(E) Any amounts transferred under division (B)(C) or (C)(D) of this section may be made available by the Controlling Board in fiscal years 2010 or 2011, at the request of the Superintendent of Public Instruction, to provide assistance and grants to school districts to enable them to remain solvent and to pay unforeseeable expenses of a temporary or emergency nature that they are unable to pay from existing resources under section 3316.20 of the Revised Code, and to provide state foundation payments to school districts.~~

SECTION 13. That existing Sections 265.30.40 and 265.40.60 of Am. Sub. H.B. 1 of the 128th General Assembly are hereby repealed.

SECTION 14. That Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly, as subsequently amended by Sub. H.B. 318 of the 128th General Assembly, be amended to read as follows:

Sec. 265.10. EDU DEPARTMENT OF EDUCATION

General Revenue Fund

GRF	200100	Personal Services	\$	10,490,789	\$	10,723,972
GRF	200320	Maintenance and Equipment	\$	3,110,071	\$	3,144,897
GRF	200408	Early Childhood Education	\$	23,268,341	\$	23,268,341
GRF	200416	Career-Technical Education Match	\$	2,233,195	\$	2,233,195
GRF	200420	Computer/Application/ Network Development	\$	4,880,871	\$	4,880,871
GRF	200421	Alternative Education Programs	\$	7,814,479	\$	7,918,749
GRF	200422	School Management Assistance	\$	1,950,521	\$	3,230,469
GRF	200424	Policy Analysis	\$	356,311	\$	361,065
GRF	200425	Tech Prep Consortia Support	\$	1,243,943	\$	1,260,542

Laws, Acts, and Legislation

GRF	200426	Ohio Educational Computer Network	\$	20,156,602	\$	20,425,556
GRF	200427	Academic Standards	\$	5,300,074	\$	5,300,074
GRF	200431	School Improvement Initiatives	\$	7,294,175	\$	7,391,503
GRF	200437	Student Assessment	\$	55,954,648	\$	56,703,265
GRF	200439	Accountability/Report Cards	\$	3,804,673	\$	3,804,673
GRF	200442	Child Care Licensing	\$	865,590	\$	877,140
GRF	200446	Education Management Information System	\$	13,199,152	\$	11,934,284
GRF	200447	GED Testing	\$	975,536	\$	988,553
GRF	200448	Educator Preparation	\$	1,310,750	\$	1,328,240
GRF	200455	Community Schools	\$	1,000,000	\$	1,000,000
GRF	200457	STEM Initiatives	\$	5,000,000	\$	5,000,000
GRF	200458	School Employees Health Care Board	\$	800,000	\$	800,000
GRF	200502	Pupil Transportation	\$	448,022,619	\$	462,822,619
GRF	200505	School Lunch Match	\$	9,100,000	\$	9,100,000
GRF	200511	Auxiliary Services	\$	111,979,388	\$	111,979,388
GRF	200532	Nonpublic Administrative Cost Reimbursement	\$	50,838,939	\$	50,838,939
GRF	200540	Special Education Enhancements	\$	134,150,233	\$	135,820,668
GRF	200545	Career-Technical Education Enhancements	\$	7,752,662	\$	7,802,699
GRF	200550	Foundation Funding	\$	5,415,906,323	\$	5,312,560,800
GRF	200551	Foundation Funding - Federal Stimulus	\$	387,583,913	\$	457,449,362
GRF	200578	Violence Prevention and School Safety	\$	200,000	\$	200,000
GRF	200901	Property Tax Allocation - Education	\$	1,053,262,363	\$	1,020,655,157
		TOTAL GRF General Revenue Fund	\$	7,789,806,161	\$	7,741,805,021

General Services Fund Group

1380	200606	Computer Services-Operational Support	\$	7,600,091	\$	7,600,091
4520	200638	Miscellaneous Educational Services	\$	275,000	\$	275,000
4L20	200681	Teacher Certification and Licensure	\$	8,013,206	\$	8,147,756
5960	200656	Ohio Career Information System	\$	529,761	\$	529,761
5H30	200687	School District Solvency Assistance	\$	18,000,000	\$	18,000,000
		TOTAL GSF General Services Fund Group	\$	34,418,058	\$	34,552,608

Federal Special Revenue Fund Group

3090	200601	Educationally Disadvantaged Programs	\$	8,405,512	\$	8,405,512
3670	200607	School Food Services	\$	6,324,707	\$	6,577,695
3680	200614	Veterans' Training	\$	778,349	\$	793,846
3690	200616	Career-Technical Education Federal Enhancement	\$	5,000,000	\$	5,000,000
3700	200624	Education of Exceptional Children	\$	2,664,000	\$	2,755,000
3740	200647	Troops to Teachers	\$	100,000	\$	100,000

3780	200660	Learn and Serve	\$	619,211	\$	619,211
3AF0	200603	Schools Medicaid Administrative Claims	\$	639,000	\$	639,000
3AN0	200671	School Improvement Grants	\$	17,909,676	\$	17,936,675
3AX0	200698	Improving Health and Educational Outcomes of Young People	\$	630,954	\$	630,954
3BK0	200628	Longitudinal Data Systems	\$	100,000	\$	0
3BV0	200636	Character Education	\$	700,000	\$	0
3C50	200661	Early Childhood Education	\$	14,189,711	\$	14,554,749
3CF0	200644	Foreign Language Assistance	\$	25,000	\$	0
3CG0	200646	Teacher Incentive Fund	\$	3,007,975	\$	1,157,834
3D10	200664	Drug Free Schools	\$	13,347,966	\$	13,347,966
3D20	200667	Honors Scholarship Program	\$	6,990,000	\$	6,985,000
3DJ0	200699	IDEA Part B - Federal Stimulus	\$	218,868,026	\$	218,868,026
3DK0	200642	Title 1A - Federal Stimulus	\$	186,336,737	\$	186,336,737
3DL0	200650	IDEA Preschool - Federal Stimulus	\$	6,679,679	\$	6,679,679
3DM0	200651	Title IID Technology - Federal Stimulus	\$	11,951,000	\$	11,951,000
3DP0	200652	Title I School Improvement - Federal Stimulus	\$	54,221,000	\$	54,221,000
3H90	200605	Head Start Collaboration Project	\$	225,000	\$	225,000
3L60	200617	Federal School Lunch	\$	295,421,000	\$	310,150,675
3L70	200618	Federal School Breakfast	\$	80,850,000	\$	84,892,500
3L80	200619	Child/Adult Food Programs	\$	89,250,000	\$	93,712,500
3L90	200621	Career-Technical Education Basic Grant	\$	48,029,701	\$	48,029,701
3M00	200623	ESEA Title 1A	\$	530,000,000	\$	530,010,000
3M10	200678	Innovative Education	\$	1,000,000	\$	0
3M20	200680	Individuals with Disabilities Education Act	\$	413,391,594	\$	421,241,163
3S20	200641	Education Technology	\$	9,487,397	\$	9,487,397
3T40	200613	Public Charter Schools	\$	14,275,618	\$	14,291,353
3Y20	200688	21st Century Community Learning Centers	\$	36,000,000	\$	36,000,000
3Y40	200632	Reading First	\$	27,366,373	\$	24,455,172
3Y60	200635	Improving Teacher Quality	\$	101,778,397	\$	101,778,400
3Y70	200689	English Language Acquisition	\$	8,142,299	\$	8,142,299
3Y80	200639	Rural and Low Income Technical Assistance	\$	1,500,000	\$	1,500,000
3Z20	200690	State Assessments	\$	12,923,799	\$	12,923,799
3Z30	200645	Consolidated Federal Grant Administration	\$	8,499,279	\$	8,499,280
3Z70	200697	General Supervisory Enhancement Grant	\$	887,319	\$	0
TOTAL FED Federal Special Revenue Fund Group			\$	2,238,516,279	\$	2,262,899,123

State Special Revenue Fund Group

Laws, Acts, and Legislation

4540	200610	Guidance and Testing	\$	450,000	\$	450,000
4550	200608	Commodity Foods	\$	24,000,000	\$	24,000,000
4R70	200695	Indirect Operational Support	\$	6,050,000	\$	6,250,000
4V70	200633	Interagency Operational Support	\$	1,111,838	\$	1,117,725
5980	200659	Auxiliary Services Reimbursement	\$	1,328,910	\$	1,328,910
5BB0	200696	State Action for Education Leadership	\$	1,250,000	\$	600,000
5BJ0	200626	Half-Mill Maintenance Equalization	\$	16,100,000	\$	16,600,000
<u>5JA0</u>	<u>200611</u>	<u>ARRA Compliance</u>	<u>\$</u>	<u>25,000,000</u>	<u>\$</u>	<u>0</u>
5U20	200685	National Education Statistics	\$	300,000	\$	300,000
5W20	200663	Early Learning Initiative	\$	2,200,000	\$	2,200,000
5X90	200911	NGA STEM	\$	100,000	\$	0
6200	200615	Educational Improvement Grants	\$	3,000,000	\$	3,000,000
TOTAL SSR State Special Revenue				<u>55,890,748</u>		
Fund Group			\$	<u>80,890,748</u>	\$	55,846,635

Lottery Profits Education Fund Group

7017	200612	Foundation Funding	\$	705,000,000 <u>745,000,000</u>	\$	711,000,000
TOTAL LPE Lottery Profits						
Education Fund Group			\$	<u>745,000,000</u>	\$	711,000,000

Revenue Distribution Fund Group

7047	200909	School District Property Tax Replacement-Business	\$	1,150,207,366	\$	1,150,207,366
7053	200900	School District Property Tax Replacement-Utility	\$	91,123,523	\$	91,123,523
TOTAL RDF Revenue Distribution						
Fund Group			\$	1,241,330,889	\$	1,241,330,889
TOTAL ALL BUDGET FUND GROUPS			\$	<u>12,064,962,135</u> <u>12,129,962,135</u>	\$	12,047,434,276

SECTION 15. That existing Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly, as subsequently amended by Sub. H.B. 318 of the 128th General Assembly, is hereby repealed.

SECTION 16. That Sections 6 and 7 of Sub. H.B. 318 of the 128th General Assembly are hereby repealed.

SECTION 17. Except as otherwise provided in this act, all appropriation items in this act are appropriated out of moneys in the state treasury to the credit of the designated fund that are not otherwise appropriated. For all appropriations in the following sections of this act, the amounts in the first column are for fiscal year 2010 and the amounts in the second column are for fiscal year 2011.

SECTION 18. CAC CASINO CONTROL COMMISSION

State Special Revenue

5HS0	955321	Casino Control – Operating	\$	0	\$	5,500,000
TOTAL SSR State Special Revenue Fund Group			\$	0	\$	5,500,000

SECTION 19. IGO OFFICE OF THE INSPECTOR GENERAL

State Special Revenue

5HS0	965609	Casino Investigations	\$	0	\$	250,000
TOTAL SSR State Special Revenue Fund Group			\$	0	\$	250,000

The foregoing appropriation shall be used only for the performance of casino-related duties.

SECTION 20. ETH ETHICS COMMISSION

Laws, Acts, and Legislation

State Special Revenue

5HS0	146602	Casino Investigations	\$	0	\$	250,000
TOTAL SSR Special Revenue Fund Group			\$	0	\$	250,000

The foregoing appropriation shall be used only for the performance of casino-related duties.

SECTION 21. BOR BOARD OF REGENTS

State Special Revenue

5JC0	235628	Co-Op/Internship Program	\$	0	\$	100,000,000
TOTAL SSR State Special Revenue Fund Group			\$	0	\$	100,000,000
TOTAL ALL BUDGET FUND GROUPS			\$	0	\$	106,000,000

Of the foregoing appropriation item, 235628, Co-Op/Internship Program, \$50,000,000 shall be used by the Chancellor of the Board of Regents to operate the Co-Op/Internship Program under sections 3333.71 to 3333.80 of the Revised Code. Funding for eligible institutions shall be disbursed in accordance with the terms of the agreements entered into under section 3333.75 of the Revised Code. The Chancellor of the Board of Regents shall develop a work force development pilot program, for areas of the state with high unemployment, with funding of \$50,000,000. Of this funding, \$25,000,000 shall be for urban areas and \$25,000,000 shall be for rural areas. Of the funding for rural areas, \$12,500,000 shall be for areas in Appalachia and \$12,500,000 shall be for areas elsewhere in the state. All public institutions of higher education, career technical schools, and joint vocational schools shall be eligible to participate in this program. The Chancellor of the Board of Regents shall propose the pilot program to the Controlling Board. Approval of the pilot program by the Controlling Board shall require at least five votes in favor of the program, including those of at least two Senators and at least two Representatives.

SECTION 22. Section 11 of this act, and the amendment by this act of Sections 265.30.40 and 265.40.60 of Am. Sub. H.B. 1 of the 128th General Assembly and Section 265.10 of Am. Sub. H.B. 1 of the 128th General Assembly, as subsequently amended by Sub. H.B. 318 of the 128th General Assembly, are exempt from the referendum under Ohio Constitution, Article II, Section 1d and section 1.471 of the Revised Code and therefore take effect immediately when this act becomes law.

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Ohio Legislative Service Commission

Final Analysis

Jennifer A. Parker and other LSC staff

Am. Sub. S.B. 181 128th General Assembly (As Passed by the General Assembly)

Sens. Stewart, Goodman, Schaffer, Seitz, Niehaus, Faber, Gibbs, Gillmor, Harris, Hughes, Patton, Wagoner, Wilson, Carey

Reps. Weddington, Boyd, DeBose, Domenick, Driehaus, Evans, Garland, Hagan, Letson, Luckie, Mallory, Reece, Sayre, B. Williams, S. Williams, Winburn, Yuko

Effective date: September 13, 2010; certain sections effective June 13, 2010; contains item vetos

ACT SUMMARY

- Grants an eligible landowner or nonprofit organization qualified immunity from liability for: (1) injury or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management in the Department of Natural Resources while the person is within a reclamation project work area or by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the reclamation project, (2) any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division, or (3) generally the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project.
- Requires an eligible landowner to notify the Division of a known, latent, dangerous condition at a reclamation project work area that is not the subject of the reclamation project, and provides that the immunity does not apply to an eligible landowner if the landowner fails to notify the Division.
- Provides that the immunity does not apply to an eligible landowner or nonprofit organization if an eligible landowner or nonprofit organization engages in unlawful activities with respect to a reclamation project or an injury to a person within the reclamation work area results from an eligible landowner's or nonprofit organization's reckless acts or omissions, gross negligence, or willful or wanton misconduct.

- Designates that methane gas emitted from an abandoned coal mine constitutes a renewable energy resource rather than an advanced energy resource for purposes of the law governing the promotion of renewable energy usage.
- Reestablishes the Ohio Natural Areas Council and specifies its duties.
- Authorizes the transfer of money from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012.
- Provides for the transfer of a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund for the purposes of administering and enforcing the Coal Mining Law.
- Expands the uses for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund and money in the Water Pollution Control Loan Fund may be used.
- Authorizes the Tax Commissioner to refund commercial activity tax paid by a business that doesn't owe any tax (without a CAT liability) regardless of the business's registration status.
- Authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year CAT assessment and refund statute of limitations.
- Modifies the tax exemption applicable to property owned by or leased to a board of education.
- Provides a property tax exemption for a new convention center located in a county with a population exceeding 1.2 million, and exempts construction materials incorporated into such a convention center from sales and use taxation until one year after construction of the convention center is completed.
- Alters the Treasurer of State's authority to invest interim funds of the state in single-issuer debt.
- Extends the time (from October 15, 2010, to October 15, 2011) during which local governments may enter into enterprise zone agreements.
- Adds new sporting events to the list of qualifying events for which local governments can receive state grants for hosting.

- Applies agricultural commodity testing requirements and procedures under the Agricultural Commodity Handlers Law to a depositor or depositor's agent rather than to a producer or producer's agent.
- Authorizes a regional water and sewer district or a regional transit authority to offer up to two additional deferred compensation programs for employees.
- Revises the requirement to lower the excellent or effective rating of a school district or building that fails to make adequate yearly progress (AYP) for three or more consecutive years, by specifying (1) that the failure must involve two or more of the same student subgroups each year and (2) that an excellent rating may be lowered only one level, to effective (instead of two levels, to continuous improvement, as in prior law).
- Repeals the prohibition against lowering a district's or building's performance rating from the previous year based solely on one subgroup not making AYP.
- Makes appropriations for the Job Ready Site and Clean Ohio programs.
- Makes changes to appropriations for primary and secondary education to ensure compliance with the State Fiscal Stabilization Fund requirements for fiscal year 2010 under the federal American Recovery and Reinvestment Act.
- Makes additional appropriations, including appropriations for chartered nonpublic schools; the operating expenses of the Casino Control Commission; the casino-related duties of the Inspector General and the Ohio Ethics Commission; the operation of the Co-Op/Internship Program by the Chancellor of the Ohio Board of Regents; and a work force development pilot program to be developed by the Chancellor for areas of the state with high unemployment (PARTIALLY VETOED).

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CONTENT AND OPERATION

Immunity from liability of eligible landowner in relation to reclamation project

(R.C. 1513.372)

The act provides that, with certain exceptions described below, an "eligible landowner" or "nonprofit organization" is immune from liability as follows (terms in quotation marks are defined in "**Definitions**," below):

(1) For any injury to or damage suffered by a person working under the direct supervision of the Division of Mineral Resources Management while the person is within the "reclamation project work area";

(2) For any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of the Division during the construction, operation, and maintenance of the "reclamation project";

(3) For any failure of an acid mine drainage abatement facility constructed or installed during a reclamation project that is supervised by the Division;

(4) For the operation, maintenance, or repair of any acid mine drainage abatement facility constructed or installed during a reclamation project unless the eligible landowner negligently damages or destroys the acid mine drainage abatement

facility or denies access to the Division of Mineral Resources Management that is responsible for the operation, maintenance, or repair of the acid mine drainage abatement facility.

Notification of dangerous condition; exceptions to immunity

The act requires the eligible landowner to notify the Division of a known, latent, dangerous condition located at a reclamation project work area that is not the subject of the reclamation project. The immunity of an eligible landowner provided by the act does not apply to any injury, damage, or pollution (see **COMMENT 1**) resulting from the landowner's failure to notify the Division of such a known, latent, dangerous condition.

The immunity additionally does not apply to an eligible landowner or nonprofit organization in both of the following circumstances:

(1) An injury to a person within the reclamation project work area that results from an eligible landowner's or nonprofit organization's acts or omissions that are reckless or constitute gross negligence or willful or wanton misconduct;

(2) An eligible landowner or nonprofit organization who engages in any unlawful activities with respect to a reclamation project.

Rules

The act requires the Chief of the Division of Mineral Resources Management to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the act's provisions.

Definitions

The act defines the following terms for purposes of these immunity provisions:

"Abandoned mine land" means land or water resources adversely affected by coal mining practices to which one of the following applies:

(1) The coal mining practices occurred prior to August 3, 1977, and there is no continuing reclamation responsibility under state or federal law;

(2) The coal mining practices occurred prior to April 10, 1972; or

(3) The coal mining practices were conducted pursuant to a license that was issued prior to April 10, 1972.

"Eligible landowner" means a landowner who provides access without charge or other consideration to "abandoned mine land" that is located on the landowner's

property for the purpose of allowing the implementation of a reclamation project on the abandoned mine land. "Eligible landowner" does not include a person that is responsible under state or federal law to reclaim the land or address acid mine drainage existing or emanating from the abandoned mine land. (See **COMMENT 2.**)

"Landowner" means a person who holds a fee interest in real property.

"Nonprofit organization" means a corporation, association, group, institution, society, or other organization that is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code of 1986, that provides funding or services at no cost or at cost for a reclamation project.

"Reclamation project" means an acid mine drainage abatement project that is conducted in compliance with the Coal Surface Mining Law, and rules adopted under it, on abandoned mine land that is located on property owned by an eligible landowner.

"Reclamation project work area" means the portion of a parcel of real property on which a reclamation project is conducted and the roads providing ingress to and egress from the reclamation project.

Designation of methane gas as a renewable energy source

(R.C. 4928.01)

Ongoing law promotes advanced energy usage and electricity supplies from advanced energy resources. Prior law defined "advanced energy resource" to include methane gas emitted from an operating or abandoned coal mine. The act removes such methane gas from the definition. The act instead includes "methane gas emitted from an abandoned coal mine" in the definition of "renewable energy resource" for purposes of ongoing law, which are to promote renewable energy usage, electricity supplies from renewable energy resources, and renewable energy credits.

Natural Areas and Preserves

Ohio Natural Areas Council

(R.C. 1501.04, 1517.03, 1517.04, and 1517.23)

The act recreates the Ohio Natural Areas Council, which was abolished in 2004. The Council is to advise the Chief of the Division of Natural Areas and Preserves in the Department of Natural Resources on the administration of nature preserves and the preservation of natural areas.

The Council must have no fewer than five members as determined by the Director of Natural Resources, and the members must be appointed by the Director. Not more than 30 days after the effective date of this portion of the act, the Director must make initial appointments to the Council. The Director also must establish the members' terms of office.

The Council annually must select from among its members a chairperson and a secretary. Members are to receive no compensation and cannot be reimbursed for expenses incurred as members of the Council.

The Council must hold at least one regular meeting in each calendar year. Special meetings may be called by the chairperson and must be called by the chairperson upon written request by two or more members of the Council. A written notice of the time and place of each meeting must be sent to each member and to the Director. A majority of the members constitutes a quorum. The Council must keep a record of its proceedings at each meeting and must send a copy of the record to the Director. Additionally, the record must be open to the public for inspection.

The act requires the Council to do all of the following:

- (1) Review and make recommendations regarding criteria used by the Department for acquisition and dedication of nature preserves;
- (2) Review and make recommendations regarding inventories and registries of natural areas and preserves;
- (3) Review and make recommendations regarding departmental plans for the selection of particular natural areas for state acquisition;
- (4) Advise the Chief on policies and rules governing the management, protection, and use of nature preserves;
- (5) Recommend the extent and type of visitation and use to be permitted within each nature preserve;
- (6) Advise and consult with the Chief and with employees of the Division on preservation matters; and
- (7) Advise the Chief on the program to identify and protect the state's cave resources that is established under ongoing law.

Finally, the act requires the Council's chairperson to serve on the Recreation and Resources Commission created by ongoing law in the Department.



Transfer of money to Departmental Projects Fund

(Section 3)

Under the act, beginning July 1, 2010, and ending January 1, 2012, the Director of Budget and Management, upon the request of the Director of Natural Resources, must transfer an amount not to exceed \$1.2 million from the Natural Areas and Preserves Fund to the Departmental Projects Fund for the purpose of paying the salaries of permanent employees of the Division of Natural Areas and Preserves through January 1, 2012. If such an amount is so transferred, the Director of Natural Resources, not later than March 1, 2011, must submit to the Speaker of the House of Representatives and the President of the Senate a detailed report of expenditures from the Departmental Projects Fund for payment of salaries of permanent employees of that Division.

Transfer of money from Coal-Workers Pneumoconiosis Fund to Strip Mining Administration Fund

(Section 4)

Under the act, beginning July 1, 2010, and ending December 31, 2010, the Administrator of the Bureau of Workers' Compensation must transfer a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund in an amount not to exceed \$2.28 million to the Strip Mining Administration Fund for the purposes of administering and enforcing the Coal Mining Law. The act states that transfers from the Coal-Workers Pneumoconiosis Fund to the Strip Mining Administration Fund are prohibited after December 31, 2010.

Additional purposes for expenditures from Water Supply Revolving Loan Account in Drinking Water Assistance Fund and from Water Pollution Control Loan Fund

(R.C. 6109.22 and 6111.036)

Ongoing law specifies the purposes for which money in the Water Supply Revolving Loan Account in the Drinking Water Assistance Fund, created in the Safe Drinking Water Law, may be used. One of the specified uses is to provide assistance authorized by the federal Safe Drinking Water Act. The act adds that expenditures may be made to provide assistance authorized by any other federal law related to the use of federal funds administered under that Act.

Ongoing law also specifies the purposes for which money in the Water Pollution Control Loan Fund, created in the Water Pollution Control Law, may be used. The act adds that money in the Fund may be used to provide assistance in any manner or for

any purpose that is consistent with Title VI of the Federal Water Pollution Control Act or with any other federal law related to the use of federal funds administered under Title VI of that Act.

Commercial activity tax (CAT)

Refunds

(R.C. 5751.08(E); Section 6)

Under ongoing law, businesses with annual gross receipts of less than \$150,000 are not required to register for or pay commercial activity tax. Businesses with gross receipts between \$150,000 and \$1 million must pay the minimum tax of \$150.

The act enables a business that paid the \$150 minimum CAT unnecessarily to receive a refund even if it failed to cancel its CAT registration on time. Under prior law, if a business did not cancel its registration by May 10, the date the return is due, the Tax Commissioner was not authorized to issue a refund.

The act also authorizes refunds of the annual minimum commercial activity tax paid for 2007, 2008, or 2009, if the business erroneously registered for the tax and failed to cancel the registration before February 10 of the calendar year for which the tax was paid.

Statute of limitations

(R.C. 5751.08(A) and 5751.09(F))

Ongoing law provides a four-year statute of limitations within which the Tax Commissioner must issue assessments or refunds for the CAT. (The limit does not apply if no return is filed or if a return is fraudulent.)

The act expressly authorizes a taxpayer and the Tax Commissioner to agree to extend the four-year limitation period. Such agreements are authorized under ongoing law for other taxes such as the personal income, sales and use, and corporation franchise taxes.

Tax exemption for school property

(R.C. 3313.44; Section 5)

Prior law exempted from taxation all real or personal property "vested in" any board of education. The property was also exempt from sale on execution or other writ or order in the nature of an execution.



The act instead provides that any real or personal property "owned by or leased to" a board of education, where the lease term is at least 50 years, is exempt from taxation. The act states that its amendments to this provision are remedial in nature and apply to tax years and property at issue in any application for exemption from taxation pending before the Tax Commissioner, Ohio Board of Tax Appeals, any Court of Appeals, or the Ohio Supreme Court on the act's effective date.

Convention centers

Property tax exemption

(R.C. 5709.084)

Ongoing law allows the board of county commissioners in a county with a population exceeding 1.2 million to purchase, lease, or construct a convention center. Alternatively, the board may enter into an agreement with a county convention and visitors' bureau under which the bureau agrees to construct a convention center with revenue from a lodging tax that the board levies for that purpose. (R.C. 307.695(B) and (F), not in the act.)

The act authorizes a real and personal property tax exemption for a convention center located in a county with a population exceeding 1.2 million if:

- (1) The convention center is constructed, or the personal property comprising the convention center is acquired, after January 1, 2010; and
- (2) The convention center, or the land upon which the convention center is located, is owned or leased by the county.

The population of a county is determined for purposes of the exemption by reference to the most recent federal decennial census at the time construction of the convention center commences. The act defines commencement of construction as the earlier of (1) the issuance of debt to finance the convention center, (2) the demolition of existing structures on the site, or (3) grading of the site in preparation for construction.¹

Sales tax exemption

(R.C. 5739.02(B)(13))

Under ongoing law, sales and use taxes apply to contractor purchases of building materials, unless the materials are purchased for incorporation into a structure or

¹ According to the 2000 census, Cuyahoga County is the only Ohio county that satisfies the population threshold.

improvement under a construction contract with a government entity or are for incorporation into certain kinds of real property, including government-owned property, agricultural property, property owned by a church or charitable organization, certain sports facilities, and property in a different state if the materials would be exempt from sales tax in that state.

The act additionally exempts construction materials and services sold to a contractor for incorporation into a convention center from sales and use taxation, if the convention center qualifies for property tax exemption as described immediately above. This exemption expires one year after construction of the convention center is completed.

State investments in single-issue foreign debt

(R.C. 135.143)

Under ongoing law, the Treasurer of State may invest or execute transactions for interim funds of the state in a variety of obligations, including U.S. treasury bills, bonds, certificates of deposit, various qualified forms of commercial paper issued by corporations that are incorporated under United States or state law, and qualified debt interests other than the foregoing commercial paper. Regarding investment in qualified debt interests, the law places limitations on the aggregate amount the Treasurer may invest. The total investment must not exceed 25% of the state's total average portfolio (as determined by the Treasurer). Also, the investments in those debt interests issued by foreign nations must not exceed 1% of the state's total average portfolio and the interests must be backed by the full faith and credit of that nation. Finally, the investments in debt interests of a single issuer must not exceed one-half of 1% of the state's total average portfolio.

The act provides that, in the case of an investment in debt interests of a single issuer that is a *foreign nation*, the amount of investment must not exceed, in the aggregate, 1% of the state's total average portfolio.

Enterprise zone agreements

(R.C. 5709.62, 5709.63, and 5709.632)

Under ongoing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into an enterprise zone agreement with a business for the purpose of

fostering economic development in the enterprise zone. Under an enterprise zone agreement, the business agrees to establish or expand within the enterprise zone, or to relocate its operations to the zone, in exchange for tax relief and other incentives.

Prior law authorized local governments to enter into enterprise zone agreements through October 15, 2010. The act extends the time during which local governments may enter these agreements to October 15, 2011.

State subsidy for hosting sports events

(R.C. 122.12)

Ongoing law authorizes the Director of Development to make grants of General Revenue Fund money to counties or municipal corporations hosting major sporting events (specified below), beginning July 1, 2011. The grant amount is to be "based on" the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than \$250,000. No individual grant may exceed \$500,000, and the total of all grants in any fiscal year may not exceed \$1 million.

The games that qualify for grants are the following: the National Football League "Super Bowl," World Cup soccer matches, NCAA championship games, NCAA football Bowl Championship Series games, all-star games of the National Basketball Association, National Hockey League, or Major League Baseball, the National Senior Games, and the Olympic Games.

The act adds the following to the list of qualifying events:

- (1) National Association for Stock Car Auto Racing (NASCAR) races;
- (2) The Air New Zealand Golden Oldies World Rugby Festival;
- (3) The Golden Gloves of America, Inc., National Golden Gloves Tournament;
- (4) The USA Boxing Association National Championships;
- (5) The International Boxing Association World Cup or World Championships.

Under ongoing law, a county or municipal corporation enters into an agreement with a site selection organization when seeking a grant under the state program. The law lists organizations that correspond to the qualifying games or matches in the definition of "site selection organization." The act adds NASCAR, the Air New Zealand Golden Oldies World Rugby Secretariat, the Golden Gloves of America, Inc., the USA

Boxing Association, and the International Boxing Association to the list of site selection organizations.

Finally, the act clarifies that in addition to a National Collegiate Athletic Association championship game, a championship *match* also qualifies for the grant program.

Agricultural commodity testing

(R.C. 926.31; R.C. 926.01, not in the act)

The ongoing Agricultural Commodity Handlers Law defines all of the following terms:

"Producer" means any person who grows an agricultural commodity on land that the person owns or leases.

"Agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling, that is, a person who does any of the following:

(1) Engages in or participates in the business of purchasing from producers agricultural commodities for any use in excess of 30,000 bushels annually;

(2) Operates a warehouse as a bailee for the receiving, storing, shipping, or conditioning of an agricultural commodity;

(3) Receives into a warehouse an agricultural commodity purchased under a delayed price agreement; or

(4) Provides marketing functions, including storage, delayed price marketing, deferred payment, feed agreements, or any other marketing transaction whereby control is exerted over the monetary proceeds of a producer's agricultural commodities by a person other than the producer.

"Depositor" means:

(1) Any person who delivers an agricultural commodity to a licensed handler for storage, conditioning, shipment, or sale;

(2) Any owner or legal holder of a ticket or receipt issued for an agricultural commodity who is a creditor of the licensed handler for the value of the agricultural commodity; or

(3) Any licensed handler storing an agricultural commodity that the licensed handler owns solely, jointly, or in common with others in a warehouse owned or controlled by the licensed handler or any other licensed handler.

"Agricultural commodity" means barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, speltz, or any other agricultural crop that is designated by the Director of Agriculture by rule.

Ongoing law modified by the act establishes requirements and procedures governing the licensing of handlers, the operation of grain warehouses, and the deposit and storage of agricultural commodities at them. Included are requirements and procedures for agricultural commodity testing. Under those requirements and procedures, when a licensed handler receives a shipment of an agricultural commodity from a producer or a producer's agent, either for sale or for storage under a bailment agreement, the handler must have a representative sample drawn for testing by an agricultural commodity tester to determine the commodity's quality. At the request of the producer or the producer's agent, the tester must immediately test the sample and notify the producer or agent of the test results and of any price discount, premium, or conditioning charge that is applicable to the commodity's value. If, prior to or during the unloading of the shipment, the handler believes that the original sample is not representative or if the producer or the producer's agent requests a second sample to be drawn, the handler must have a second sample drawn to be used for the testing.

Upon notification of the test results and value adjustment to be applied, the producer or agent must: (1) refuse to sell or store the commodity unless it has been unloaded prior to testing, (2) agree to sell or store the commodity and accept the test results and the applicable value adjustment, or (3) agree to sell or store the commodity, but reject the test results and order the handler to forward the sample to a federally licensed grain inspector for a final testing. If option (3) is selected, the producer, agent, or handler may specify which factor or factors are to be tested by the federal inspector. The federal inspector's determination is binding on both the handler and the producer or agent as the basis for determining the premium or discount and settlement price or the conditioning charge, as applicable. Additionally, if the test does not change or lowers the value of the commodity, the producer is responsible for the cost of forwarding the sample and the cost of the federal inspection; if the test increases the commodity's value, the handler is responsible for those costs.

The law also specifies that a licensed handler and any producer or the producer's agent may agree to combine representative samples of each of several shipments of the same commodity that the handler receives during any one business day to obtain a single test result. Finally, the requirements and procedures discussed above do not relieve any contractual obligations in effect between the licensed handler or producer.

The act applies all of the agricultural commodity testing requirements and procedures discussed above to a depositor or depositor's agent rather than to a producer or producer's agent.

Deferred compensation programs

(R.C. 148.06)

Public employees in Ohio are eligible under ongoing law to participate in a deferred compensation program administered by the Ohio Public Employees Deferred Compensation Board. In addition to this program, certain governmental entities, such as counties and park districts, may offer up to two additional deferred compensation programs. The act adds regional water and sewer districts and regional transit authorities to the list of governmental entities that may offer additional deferred compensation programs.

School district and building performance ratings

(R.C. 3302.03)

The act revises Ohio's method of rating school district and school building academic performance. Under prior law, if a district or building failed to make the federal standard of adequate yearly progress (AYP) for three or more consecutive years, the highest rating it could receive was continuous improvement. The act makes three changes to the way AYP affects individual district and building ratings.

First, under the act, the failure of an otherwise excellent or effective district or building to make AYP does not affect the district's or building's rating at all, unless the district or building has failed to make AYP for two or more of the same student subgroups for three or more consecutive years. Whereas prior law considered only how long the district or building had not made AYP, the act also takes into account which subgroups are not making it. The district or building will have its rating lowered for not making AYP only when there is a pattern of missing AYP with the same subgroups of students.

For example, an otherwise excellent building could fail to make AYP for disabled students and economically disadvantaged students for two consecutive years, but, in the third year, make AYP for economically disadvantaged students and not make AYP for disabled students and limited English proficient students. That building formerly would be rated continuous improvement because it failed to make AYP for three straight years. Under the act, though, the building would still receive an excellent rating since it did not miss AYP for the same two subgroups all three years. However, if, in the third year, the building again failed to make AYP for economically

disadvantaged students, its rating would drop because it would have missed AYP for two of the same subgroups (disabled students and economically disadvantaged students) for three years.

Second, in the case of an otherwise excellent district or building that repeatedly fails to make AYP for two or more of the same subgroups, the act requires that its rating be lowered only one level, to effective, instead of two levels, to continuous improvement. A district or building that otherwise achieves an effective rating would still be reduced one level, to continuous improvement, for failing to make AYP for two or more of the same subgroups over three or more consecutive years.

Third, the act repeals a provision prohibiting the Department of Education from lowering a district's or building's rating from the previous year based solely on one subgroup not making AYP. This change will affect only continuous improvement districts and buildings, since under the act AYP is a factor for excellent and effective districts and buildings only when multiple subgroups fail to make AYP over several years. As a result, a continuous improvement district or building may be penalized for not making AYP sooner than a highly performing district or building. Whereas a district or building that was previously rated continuous improvement could receive a lower rating after one subgroup fails to make AYP for one year, an excellent or effective district or building would not be penalized with a lower rating until the same two subgroups did not make AYP for three consecutive years.

Background

Ongoing law provides for the annual rating of school districts and individual school buildings based on their academic performance.² The five classes of performance under the rating system are "excellent," "effective," "continuous improvement," "academic watch," and "academic emergency." The ratings are determined by:

- (1) Meeting or not meeting specified performance indicators (75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate);
- (2) Attaining a specified performance index score;³ and
- (3) Making or not making AYP on state achievement assessments among specified subgroups of test takers.⁴

² R.C. 3302.03(B).

³ The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels.

The following table shows how the performance ratings were determined under prior law using these criteria.

<i>Rating</i>	<i>Percentage of performance indicators met</i>		<i>Performance Index score</i>		<i>Makes AYP</i>
Excellent	94%-100%	<i>or</i>	100 to 120	<i>and</i>	Yes
	94%-100%	<i>or</i>	100 to 120	<i>and</i>	No*
Effective	75%-93%	<i>or</i>	90 to 99	<i>and</i>	Yes
	75%-93%	<i>or</i>	90 to 99	<i>and</i>	No*
Continuous improvement	0%-74%	<i>and</i>	0 to 89	<i>and</i>	Yes
	50%-74%	<i>or</i>	80 to 89	<i>and</i>	No
Academic watch	31%-49%	<i>or</i>	70 to 79	<i>and</i>	No
Academic emergency	0%-30%	<i>and</i>	0 to 69	<i>and</i>	No

* A district or school could be rated no higher than continuous improvement if it missed AYP for more than two consecutive years. However, no district or school could be rated lower than the prior year solely because one subgroup did not make AYP.

Beginning with the 2007-2008 school year, the performance ratings incorporated a fourth component known as the "value-added progress dimension," which tracks the amount of a student's academic growth attributable to a particular district or building.⁵ With this component, if a district or building demonstrates more than a standard year of academic growth in reading and math for two consecutive years, its rating is raised one level. If a district or building shows less than a standard year of academic growth in those subjects for three straight years, its rating is lowered one level.

AYP

AYP is a measure of performance used to determine whether a particular school district or building is meeting the goals of the federal No Child Left Behind Act. Under that act, certain graduated sanctions (ranging from curricular changes and offering tutoring opportunities to reconstitution of administrative and instructional staff) must be imposed if a district or building repeatedly fails to make AYP.⁶ Generally, no district or building may make AYP unless (1) 95% of the students in each subgroup required to

⁴ The subgroups are each of the federally recognized ethnic classifications (African-American, American Indian or Native Alaskan, Asian or Pacific Islander, Hispanic, multi-racial, and white); disabled students; economically disadvantaged students; and limited-English proficient students.

⁵ R.C. 3302.021, not in the act.

⁶ 20 United States Code (U.S.C.) 6316.

take a test actually take the test and (2) a specified percentage of each subgroup of test takers attains scores set by the state Department of Education.⁷ The expected scoring performance on the state assessments for purposes of AYP varies from district-to-district and building-to-building. It is generally different from (and often lower than) the 75% proficiency rate required under the state performance indicators.

While the state must have in place a system to measure AYP and to impose sanctions for districts or buildings that persistently do not make AYP, the use of that measure in the state rating system is not required under federal law.

Appropriations

Job Ready Site

(Sections 7 and 8)

Under ongoing law, the Department of Development administers the Job Ready Site program to provide grants to pay for construction and other costs for sites and facilities primarily intended for commercial, industrial, or manufacturing use on behalf of eligible applicants, such as political subdivisions (R.C. 122.085 to 122.0820, not in the act). The act appropriates \$30 million for fiscal years 2011 and 2012 to the Job Ready Site program. To fund this capital appropriation, the act authorizes the Ohio Public Facilities Commission to issue and sell original obligations of the state in the aggregate amount not to exceed \$30 million, as previously authorized under Section 2p of Article VIII, Ohio Constitution.

Clean Ohio

(Sections 9 and 10)

Under ongoing law, the Clean Ohio Program funds, among other things, projects aimed at brownfield revitalization (R.C. 122.65 to 122.659, not in the act). The act appropriates \$80 million for fiscal years 2011 and 2012 for Clean Ohio Revitalization and \$20 million for fiscal years 2011 and 2012 for Clean Ohio Assistance. To fund this capital appropriation, the act authorizes the Treasurer of State to issue and sell original obligations of the state in the aggregate amount of \$100 million, as previously authorized under Sections 2o and 2q of Article VIII, Ohio Constitution.

The act also authorizes the Director of Development to reallocate moneys for the purpose of funding certain revitalization grants or loans if the Department of

⁷ 20 U.S.C. 6311(b)(2)(E) to (J).



Development realizes Clean Ohio Fund project savings attributable to any of the following instances:

(1) The completion of any project for less than the amount of grant funds awarded, subject to the local matching funds participation requirement;

(2) The cancellation of grant awards in which Clean Ohio Fund moneys have been encumbered for a project but not disbursed;

(3) Any recapture of Clean Ohio Fund moneys due to a grantee's default or failure to perform the conditions of the grant agreement.

Education

(Sections 11 through 16 and 22)

To ensure compliance with the State Fiscal Stabilization Fund requirements for fiscal year 2010 under the federal American Recovery and Reinvestment Act (ARRA; the federal stimulus act), the act makes changes to appropriations for primary and secondary education. The act creates the ARRA Compliance Fund, from which funds will be paid out to school districts and other schools to fulfill the state's obligations under ARRA. The act requires the transfer of cash from the Lottery Profits Education Reserve Fund to the Lottery Profits Education Fund in fiscal year 2010 and increases the Foundation Funding appropriation by the same amount. It also appropriates money in fiscal year 2010 for chartered nonpublic schools.

Casino Control Commission

(Section 18)

The act makes appropriations in fiscal year 2011 for operating expenses of the Casino Control Commission established in Am. Sub. H.B. 519 of the 128th General Assembly.

Inspector General; Ohio Ethics Commission

(Sections 19 and 20)

The act appropriates money in fiscal year 2011 to both the Inspector General and the Ohio Ethics Commission to be used solely for the performance of their casino-related duties.

Ohio Board of Regents (PARTIALLY VETOED)

(Section 21)

The Chancellor of the Ohio Board of Regents is required by the act to develop a work force development pilot program for areas of the state with high unemployment. Public institutions of higher education, career technical schools, and joint vocational schools are eligible to participate in the program. A total of \$50 million is appropriated in fiscal year 2011 for the operation of the program, with \$25 million designated for urban areas and \$25 million designated for rural areas. Of the funding for rural areas, half must be used for areas in Appalachia. The Chancellor must propose the pilot program to the Controlling Board. The Governor vetoed a provision that would have required Controlling Board approval of the program with at least five votes in favor of the program, including those of at least two Senators and at least two Representatives.

The act also appropriates \$50 million to the Board of Regents in fiscal year 2011 for operation of the Co-Op/Internship Program.

COMMENT

1. R.C. 1513.01(N) (Coal Surface Mining Law), not in the act, defines "pollution" as placing any sediments, solids, or waterborne mining related wastes, including, but not limited to, acids, metallic cations, or their salts, in excess of amounts prescribed by the Chief of the Division of Mineral Resources Management into any waters of the state or affecting the properties of any waters of the state in a manner that renders those waters harmful or inimical to the public health, or to animal or aquatic life, or to the use of the waters for domestic water supply, industrial or agricultural purposes, or recreation.

2. R.C. 1513.01(P), not in the act, defines "reclamation" as backfilling, grading, resoiling, planting, and other work that has the effect of restoring an area of land affected by coal mining so that it may be used for forest growth, grazing, agricultural, recreational, and wildlife purpose, or some other useful purpose of equal or greater value than existed prior to any mining.

HISTORY

ACTION	DATE
Introduced	10-06-09
Referred, S. Judiciary - Civil Justice	10-20-09
Re-referred, S. Environment & Natural Resources	11-18-09
Reported, S. Environment & Natural Resources	12-15-09

Passed Senate (33-0)	01-12-10
Reported, H. Agriculture & Natural Resources	05-17-10
Re-referred, H. Finance & Appropriations	05-25-10
Reported, H. Finance & Appropriations	05-27-10
Passed House (79-17)	05-27-10
Senate refused to concur in House amendments (12-19)	06-02-10
House requested conference committee	06-02-10
Senate acceded to request for conference committee	06-02-10
Senate agreed to conference committee report (32-0)	06-03-10
House agreed to conference committee report (98-0)	06-03-10

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WITH ANY INFORMATION REASONABLY NECESSARY FOR THE COUNCIL TO MAKE THE DETERMINATIONS REQUIRED UNDER DIVISION (C) OF THIS SECTION, INCLUDING RETURNS FILED PURSUANT TO SECTION 5711.02 OF THE REVISED CODE.

(D) ANNUALLY, THE TAX INCENTIVE REVIEW COUNCIL SHALL REVIEW THE COMPLIANCE OF EACH RECIPIENT OF A TAX EXEMPTION UNDER CHAPTER 725, OR 1728, OR SECTION 3735.67, 5709.40, 5709.41, 5709.62, 5709.63, 5709.632, 5709.73, OR 5709.78 OF THE REVISED CODE WITH THE NONDISCRIMINATORY HIRING POLICIES DEVELOPED BY THE COUNTY, TOWNSHIP, OR MUNICIPAL CORPORATION UNDER SECTION 5709.832 OF THE REVISED CODE. UPON THE REQUEST OF THE COUNCIL, THE RECIPIENT SHALL PROVIDE THE COUNCIL ANY INFORMATION NECESSARY TO PERFORM ITS REVIEW. ON THE BASIS OF ITS REVIEW, THE COUNCIL MAY SUBMIT TO THE LEGISLATIVE AUTHORITY WRITTEN RECOMMENDATIONS FOR ENHANCING COMPLIANCE WITH THE NONDISCRIMINATORY HIRING POLICIES.

Sec. 5709.86. (A) AS USED IN THIS SECTION:

(1) "ABANDONED SCHOOL PROPERTY" MEANS IMPROVEMENTS TO A PARCEL OF LAND, THE PARCEL ON WHICH SUCH IMPROVEMENTS ARE SITUATED, AND ADJACENT PARCELS OWNED, OR OWNED PRIOR TO A DECLARATION UNDER THIS SECTION, BY A SCHOOL DISTRICT, COUNTY, TOWNSHIP, OR MUNICIPAL CORPORATION THAT HAVE BEEN USED FOR SCHOOL PURPOSES FOR NOT LESS THAN TEN YEARS BUT THAT ARE NOT CURRENTLY USED FOR SCHOOL PURPOSES.

(2) "QUALIFIED TANGIBLE PERSONAL PROPERTY" MEANS TANGIBLE PERSONAL PROPERTY USED IN BUSINESS IN OR UPON ABANDONED SCHOOL PROPERTY BY A PERSON TO WHICH ABANDONED SCHOOL PROPERTY IS SOLD OR LEASED.

(3) "LEGISLATIVE AUTHORITY" MEANS THE BOARD OF EDUCATION OF A SCHOOL DISTRICT, THE BOARD OF COMMISSIONERS OF A COUNTY, THE BOARD OF TRUSTEES OF A TOWNSHIP, OR THE LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION THAT OWNS, OR OWNED PRIOR TO A DECLARATION UNDER THIS SECTION, ABANDONED SCHOOL PROPERTY.

(B) A LEGISLATIVE AUTHORITY, BY RESOLUTION OR ORDINANCE ADOPTED BY A MAJORITY OF THE MEMBERSHIP THEREOF, MAY DECLARE ABANDONED SCHOOL PROPERTY OR QUALIFIED TANGIBLE PERSONAL PROPERTY, OR BOTH, AS BEING USED FOR THE PUBLIC PURPOSE OF RESTORING UNUSED PUBLIC PROPERTY TO PRODUCTIVE USE. THE LEGISLATIVE AUTHORITY THEREAFTER MAY SELL OR LEASE SUCH ABANDONED SCHOOL PROPERTY TO ANY PERSON. ABANDONED SCHOOL PROPERTY AND QUALIFIED TANGIBLE

PERSONAL PROPERTY DECLARED TO BE USED FOR A PUBLIC PURPOSE UNDER THIS SECTION ARE EXEMPTED FROM TAXATION FOR THE NUMBER OF YEARS SPECIFIED IN THE RESOLUTION OR ORDINANCE, NOT TO EXCEED TEN YEARS FROM THE DAY THE PROPERTY IS PURCHASED FROM THE LEGISLATIVE AUTHORITY, OR, IF THE PROPERTY IS LEASED BY THE LEGISLATIVE AUTHORITY, FROM THE DAY THE LEASE AGREEMENT TAKES EFFECT. IF ONLY A PORTION OF ABANDONED SCHOOL PROPERTY IS PURCHASED OR LEASED, THE EXEMPTION FROM TAXATION FOR THE PORTION NOT PURCHASED OR LEASED DOES NOT COMMENCE UNTIL THE DAY THAT PORTION IS PURCHASED OR THE DAY THE LEASE AGREEMENT FOR THAT PORTION OF THE PROPERTY TAKES EFFECT.

THE LEGISLATIVE AUTHORITY MAKING A DECLARATION UNDER THIS SECTION SHALL CERTIFY A COPY OF THE RESOLUTION OR ORDINANCE TO THE TAX COMMISSIONER AND TO THE COUNTY AUDITOR OF EACH COUNTY WITHIN WHICH THE ABANDONED SCHOOL PROPERTY IS SITUATED. THE LEGISLATIVE AUTHORITY OR THE PERSON PURCHASING ABANDONED SCHOOL PROPERTY SHALL FILE APPLICATIONS FOR EXEMPTION FOR THE ABANDONED SCHOOL PROPERTY AND QUALIFIED TANGIBLE PERSONAL PROPERTY IN THE MANNER PRESCRIBED BY LAW.

Sec. 5717.02. Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 OR DIVISION (A) OF SECTION 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if his action is the subject of the appeal or with the director of development if his action is the subject of the appeal, within thirty days after notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the

commissioner or redetermination by the director has been given or otherwise evidenced as required by law. The notice of such appeal may be filed in person or by certified mail. If the notice of such appeal is filed by certified mail, the date of the United States postmark placed on the sender's receipt by the postal employee to whom the notice of appeal is presented shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer or enterprise of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before him, together with all evidence considered by him in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

SECTION 2. That existing sections 122.17, 133.06, 725.01, 725.02, 725.03, 1728.07, 1728.10, 1728.111, 3317.021, 3735.66, 3735.67, 3735.68, 5101.82, 5709.40, 5709.41, 5709.43, 5709.61, 5709.62, 5709.63, 5709.631, 5709.64, 5709.65, 5709.66, 5709.67, 5709.73, 5709.77, 5709.78, 5709.81, 5709.82, 5709.83, and 5717.02 of the Revised Code are hereby repealed.

SECTION 3. (A) Except as otherwise provided in division (B) of this section, the amendments made by this act to sections 3735.67 and 3735.68 and the enactment of sections 3735.671, 3735.672, and 3735.673 of the Revised Code apply only to community reinvestment areas described in resolutions adopted under section 3735.66 of the Revised Code on or after July 1, 1994, and to applications for exemption from taxation under section 3735.67 of the Revised Code for property within community reinvestment areas described in such resolutions and filed with housing officers on or after that date.

(B) The amendments or enactments by this act of sections 3735.67, 3735.671, 3735.672, 3735.673, and 3735.68 of the Revised Code do not apply, and those sections in effect prior to those amendments do apply, to any exemption to be granted based upon or pursuant to any resolution or ordinance enacted under section 3735.66 of the Revised Code prior to the effective date of those amendments or enactments. In addition, those amendments and enactments do not apply, and those sections as in effect prior to those amendments do apply, to the first two amendments to such ordinance or resolution, including amendments of such resolution or ordinance made after the effective date of the amendments or enactments to

those sections by this act, which grant an extension of the date after which the granting of tax exemptions may be terminated pursuant to the provisions of such resolution or ordinance, provided each such extension does not exceed five years and provided further that the applicable housing officer determines in writing, which determination shall be conclusive, that good faith efforts and material progress have been made toward the investments, including but not limited to existing or new buildings, machinery, equipment, furniture, and fixtures, of a nature contemplated in connection with the adoption of any such resolution or ordinance being amended.

(C) For the purposes of section 5709.82 of the Revised Code as amended by this act, "new employee" does not include either of the following:

(1) Persons otherwise described in divisions (A)(1)(a) and (b) of that section if structures exempted or to be exempted from taxation under section 3735.67 or 3735.671 of the Revised Code as amended or enacted by this act has been or will be so exempted pursuant to a resolution or ordinance adopted by the legislative authority of a municipal corporation under section 3735.66 of the Revised Code prior to the day this act becomes law pursuant to Article II, Section 16, of the Ohio Constitution, and those structures are part of a project that has been identified specifically in connection with an ordinance or resolution adopted by the legislative authority prior to that day.

(2) Persons otherwise described in divisions (A)(1)(a) and (b) of that section if the community reinvestment area in which are situated the structures exempted or to be exempted from taxation under section 3735.67 or 3735.671 of the Revised Code as amended or enacted by this act is described in an ordinance or resolution adopted by the legislative authority of a municipal corporation under section 3735.66 of the Revised Code prior to the effective date of this act, the structures so exempted or to be so exempted are part of a project that has been identified specifically in connection with an ordinance or resolution adopted prior to that date, and construction of such structures is completed prior to July 1, 1998.

SECTION 4. Sections 1 and 2 of this act take effect July 1, 1994.

SECTION 5. The Director of Development, on or before July 1, 1994, or as soon as possible after the effective date of this section, shall establish the amount of the application fee as required by division (C) of section 5709.68 of the Revised Code as amended by this act. The fee so established is applicable to applications submitted to a municipal corporation or county on or after July 1, 1994, or the effective date of this section.

SECTION 6. There is hereby created the Joint Legislative Commission on Tax Incentives. The Commission shall consist of three members of the House of Representatives appointed by the Speaker of the House of Representatives, no more than two of whom shall be members of the majority party in the House, and three members of the Senate appointed by the President of the Senate, no more than two of whom shall be

members of the majority party in the Senate. Initial appointments shall be made not later than December 31, 1994. Terms of office shall be three years. Vacancies shall be filled in the manner provided for initial appointments.

The Commission shall meet not less than once every six months beginning with the initial meeting not later than March 1, 1995. The Commission shall review the implementation of Chapters 725. and 1728. and sections 3735.65 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, and 5709.77 to 5709.831 of the Revised Code to determine the effectiveness of the programs provided for under those chapters and sections, the effects on employment in this state, the effects on the finances of school districts and other taxing authorities, the effects on relocations of businesses whether inter- or intra-state, and any other matter the Commission deems necessary. The Department of Development shall provide such information and respond to such inquiries as the Commission may require in the performance of its duties.

The Commission also shall review waivers issued under section 5709.633 of the Revised Code to determine whether such waivers are being issued in accordance with the criteria and policy set forth in that section. For purposes of such review, at each meeting of the Commission the Director of Development shall provide the Commission with a report showing each waiver issued since the previous meeting of the Commission (or, in the case of the first meeting, since the effective date of this act), the zone in which the petitioner's facility is located, the circumstance claimed by the petitioner for the waiver, and any other factors considered by the Director in issuing the waiver.

The Commission shall cease to exist on December 31, 1997.

SECTION 7. By enactment of this act, the General Assembly expresses its policy of encouraging political subdivisions of this state to exercise the authority granted under Chapters 725. and 1728. and under sections 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, and 5709.77 to 5709.81 of the Revised Code for the purposes stated therein, and for the purposes of retaining existing or creating new employment opportunities within the political subdivision to the extent the exercise of such authority is necessary to result in a net increase in employment in this state above that which would prevail in the absence of the use of such authority. Such authority is not intended by the General Assembly to be exercised if not necessary to achieve such a result, nor is it intended to be exercised for the purpose of transferring employment from one political subdivision in this state to another if such exercise does not result in a net increase in or retention of employment in this state.

The Director of Development may adopt such rules as the Director determines will best effect the policy stated under this section. Such rules shall be adopted in accordance with Chapter 119. of the Revised Code, and shall apply only to agreements or actions executed on or after the effective date of such rules.

119.6015

2534

1. EDUCATION, BOARD OF — PROPERTY OWNED, NOT NEEDED FOR SCHOOL PURPOSES—BOARD MAY LAWFULLY PERMIT TEMPORARY USE OF PROPERTY FOR PURPOSE OTHER THAN SCHOOL USE AND ACCEPT MONEY FOR USE — AGREEMENT SHOULD CONTAIN LIMITATION ANY TIME PROPERTY NEEDED FOR SCHOOL PURPOSES, OR IF IT SHOULD BE SOLD, THE RIGHT TO THE USE OF THE PREMISES BY THIRD PARTIES WOULD TERMINATE.
2. TEMPORARY USE OF PROPERTY UNDER REVOCABLE LICENSE—MAY INCLUDE CONSTRUCTION AND OPERATION OF SWIMMING POOL—BY AGREEMENT FACILITIES TO BECOME PROPERTY OF BOARD BY WAY OF GIFT UPON UNILATERAL TERMINATION OF LICENSE BY BOARD.

SYLLABUS:

1. Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district; but where a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate. Opinion No. 4588, Opinions of the Attorney General for 1932, p. 1006, approved and followed.

2. Such temporary use under such revocable license may properly include the construction and operation of swimming pool facilities by the licensee, which facilities, by agreement of the parties, are to become the property of the board by way of gift upon the unilateral termination of such license by the board.

Columbus, Ohio, April 24, 1953

Hon. Frank H. Karns, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested by members of the Worthington School Board to request your opinion as to the authority of the

Worthington Board of Education leasing a portion of an eighty-acre school farm, located on the north side of State Route 161, to the Worthington Cardinal Booster's Association to be used by said group under the incorporated name of Swimmic, a corporation not for profit, for the construction and operation of a swimming pool and allied parking and play areas.

"I have examined the Opinions of the Attorney General for 1927, page 101; Opinions of the Attorney General for 1929, page 1403; Opinions of the Attorney General for 1930, page 1871; Opinions of the Attorney General for 1931, page 127, and Opinions of the Attorney General for 1932, page 1006."

The general question of the power of a board of education in acquiring, holding and disposing of real and personal property was discussed in Opinion No. 4588, Opinions of the Attorney General for 1932, p. 1006, the syllabus of which is as follows:

"1. Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district.

"2. When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate."

The conclusion stated in paragraph one of the syllabus of this opinion is based primarily upon the rule that the boards of education possess only statutory powers, the writer being unable to find any such power in the then existing statutes, either by expression or by necessary implication. The statutes do not appear in the meantime to have been broadened to any extent with respect to such power, and I am inclined, therefore, to conclude that the general rule thus stated is still declarative of the law.

In support of the conclusion stated in paragraph two of the 1932 opinion, *supra*, we find the following statement in the opinion, pp. 1007, 1008:

"There are circumstances, however, which in my opinion, justify a board of education in leasing property where such leasing is a mere incident to the ownership of such property. When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may be said, in my opinion, that the power to lease that property temporarily, until it may be advantageously sold, is an incident to the possession of the property. If such property cannot be advantageously sold, and may be leased so that the school district receives some benefit from the ownership of the property which it would not receive if it lay idle, it certainly cannot be said that the board exceeds its power in so leasing the property. This often happens where a new school building is erected on a new location, leaving the board in possession of a school lot and building which are not needed at that time for school purposes and which, on account of business conditions, may not at that time be advantageously sold. This often happens, especially in city school districts. Any such lease should, in my opinion, be limited so that it would terminate at any time the school board might determine that the property was needed for school purposes, or that it should be sold.

"To acquire property, however, which the board does not intend to utilize for school purposes, and which is not needed for school purposes, merely for the purpose of renting or leasing the same is, in my opinion, wholly unauthorized, and beyond the powers of the board."

In the instant case, I am informed, the land in question is a portion of an "80 acre school farm" and is a part of a tract which was conveyed nearly one hundred fifty years ago by way of gift in a partition deed to the local school authorities for school purposes. I am further informed that the portion of the tract involved is not presently needed for school purposes and that the board does not deem it advantageous to sell it. This being the case, I perceive no reason why the rule stated in the second paragraph of the syllabus of the 1932 opinion should not be deemed applicable.

In the application of such rule to the facts in the case at hand, I note the following statement in a letter from counsel for the proposed lessee:

"I enclose proposed articles of incorporation of the corporation not for profit, the proposed lessee.

"The lease would be for a portion of the lot, the use of which for the purposes of the lessee would in no way interfere with school activities and would be terminable by the Board of Education upon a reasonable notice. It would provide for only nominal rental or other consideration."

The purpose clause in the proposed corporation not for profit, the proposed lessee, is as follows:

"The purpose or purposes for which said corporation is formed are:

"To lease from the Board of Education of the Worthington School District ground required for the construction of a swimming pool and related facilities; to construct and operate a swimming pool and related facilities; to borrow and pledge assets and revenues of the corporation to secure the repayment of funds borrowed; to receive and accept donations and contributions for the accomplishment of the foregoing purposes and to perform all acts and engage in all activities necessary or desirable in connection with the foregoing.

"To transfer, convey and turn over to the Board of Education of the Worthington School District or its nominee, all property and assets of the corporation if, as and when requested so to do by said Board of Education of the Worthington School District."

Assuming that the proposed instrument of conveyance to the proposed corporation is drawn in such a way as to give the board a legal right to terminate the arrangement at such time as it is determined that the land involved is needed for school purposes, or that it can be sold to advantage, I perceive no objection to the proposed arrangement, for it would appear that such a provision in the conveyance would be sufficient notice to the lessee, and to parties claiming under the lessee, to estop the assertion of any claim against the board on the basis of fixed improvements installed on the premises while the lessee is in possession. In passing, it may be observed that such a conveyance may more properly be deemed a mere license revocable at the option of the grantor, rather than a lease in the ordinary sense.

When the proposed arrangement is viewed as a whole, it becomes apparent as a device whereby funds will be raised by a civic group to finance the construction of a swimming pool which will eventually become the property of the board by way of gift. Boards of education are, of course, authorized by statute to accept gifts of property. See Section 4834-9, General Code. Nor is it necessary to anticipate any difficulty in connection with the power of the board to operate such swimming pool facility when the gift is consummated, since the board is required, under the provisions of Section 4837, General Code, to prescribe courses in physical education,

and it has become common practice, in those districts where funds are available to provide the proper facilities, for such physical education programs to include instructions in swimming.

For these reasons I conclude, in specific answer to your inquiry, that:

1. Except as the power may be implied as being necessary to carry into effect some expressly granted power a board of education is not authorized to rent or lease property held by it for the public school purposes of its district; but where a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may lawfully permit the temporary use of said property for some purpose other than a school purpose, and it may lawfully accept money for such use. Any agreement whereby third parties are permitted to use said premises under circumstances as mentioned, should contain a limitation to the effect that at any time the school board might determine that the property was needed for school purposes, or that it should be sold, the right to the use of the premises by said third parties would terminate. Opinion No. 4588, Opinions of the Attorney General for 1932, p. 1006, approved and followed.

2. Such temporary use under such revocable license may properly include the construction and operation of swimming pool facilities by the licensee, which facilities, by agreement of the parties, are to become the property of the board by way of gift upon the unilateral termination of such license by the board.

Respectfully,

C. WILLIAM O'NEILL
Attorney General

OPINION NO. 92-016**Syllabus:**

1. Sections 4 and 6 of Article VIII of the Ohio Constitution do not prohibit a board of education from leasing real property to a private party where the lease arrangement does not effect a union of private and public property.
2. A board of education may lease real property which it determines is not presently needed for school purposes and which cannot be advantageously sold, provided that the lease contains a provision that permits the board of education to terminate the lease upon a determination by the board that the property is needed for school purposes.
3. The authority of a board of education to lease real property is not controlled by R.C. 3313.76--78.
4. A lease of real property by a board of education may contain a provision that automatically renews the term of the lease solely at the option of the lessee if the board of education determines, prior to the execution of the lease, that the lease of property for the full lease term (including all renewal periods) will be advantageous to the school district, regardless of the fact that it may be renewed solely at the option of the lessee, and that the property is not anticipated to be needed for school use during such lease term.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Lee Fisher, Attorney General, May 12, 1992

You have requested an opinion concerning a proposed arrangement involving the lease by a city school district of real property located at its high school football stadium to a cellular telephone company for the erection of a monopole communications tower and a building to house the company's equipment, and the company's lease of a portion of its monopole tower to the school district for the installation of lights and loudspeakers. Additionally, the company will permit the school district to use a portion of the company's building as a ticket booth for athletic events.

Your specific questions are:

1. Is a school district prohibited by Article VIII, Sections 4 or 6, of the Ohio Constitution, from entering into a lease relationship with a private company or corporation, such as that which is described [above]?
2. Is a school district permitted to lease property to private individuals, companies or corporations if the board of education decides that the property is not presently needed for school purposes? In this regard, is the authority of a board of education constricted by Revised Code Sections 3313.76, 3313.77 and 3313.78?
3. If the school district is permitted to enter into such a lease, may the lease contain a provision which automatically renews the term of the lease solely at the option of the individual, company or corporation? Must such a lease contain a provision to allow a board of education to terminate the lease if the board later determines the property is needed for school purposes?
4. If the board of education determines, pursuant to its statutory powers, that its entering into a lease such as that proposed is

necessary and proper to the achievement of some other end, such as improved athletic facilities or improved radio communications for its school bus fleet, may it enter into such a lease, even if not otherwise permitted under Ohio law?

This opinion is based on the information which you submitted with your request and not on the actual lease instruments. This opinion is intended to address the specific questions raised in your request, and does not attempt to consider all of the questions that might arise with respect to the validity or enforceability of the various provisions of the leases or other arrangements relating to the transactions. Therefore, the opinion should not be viewed as an approval of any aspect of the proposed leases that it does not specifically address.

Ohio Const. Art. VIII, §§4 and 6 Do Not Prohibit a Board of Education From Leasing Real Property to a Private Party

Your first question is whether either Ohio Const. art. VIII, §4 or §6, prohibits the school district from entering into a lease transaction as generally described above. Article VIII, §4 mandates that "[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association, in this state, or elsewhere, formed for any purpose whatever."¹ The courts have construed §4 to apply to agencies and instrumentalities of the state. *State ex rel. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964). In 1978 Op. Att'y Gen. No. 78-040, it was determined that a board of education² is subject to art. VIII, §4 as an agency or instrumentality of the state:

Although there is no case holding that a board of education is an agency or instrumentality of the state for the purpose of Ohio Const. art. VIII, §4, this result may reasonably be inferred from the evident meaning and spirit of the constitutional provision. *Walker v. City of Cincinnati*, 21 Ohio St. 14, 53 (1871) School district funds are clearly public funds and are statutorily regulated as such.

Op. No. 78-040 at 2-95. Thus, the arrangement between the board of education and the cellular telephone company must be examined in light of art. VIII, §4. Since the wording of the prohibitions of §4 and §6 of art. VIII is similar, cases applying these sections are often cited interchangeably. See, e.g., *State ex rel. Eichenberger v. Neff*, 42 Ohio App. 2d 69, 74, 330 N.E.2d 454, 458 (Ct. App. Franklin County 1974) ("[t]he language of Article VIII, Section 4 ... is nearly identical to that in Article VIII, Section 6, and we construe the meaning given to Section 6 ... to be equally applicable to the state under Section 4").

The courts have held that a union of public and private property violates the prohibitions of Ohio Const. art. VIII, §6 (and thus §4), where the public entity and the private entity each own parts of a property such that, when the parts are taken together, they constitute but one property. *State ex rel. Wilson v. Hance*, 169 Ohio St. 457, 159 N.E.2d 741 (1959).³ The prohibitions of art. VIII, §6 and their

¹ Ohio Const. art. VIII, §6, which sets forth similar prohibitions directed at counties, cities, towns and townships, provides in relevant part, that "[n]o laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, ... to raise money for, or loan its credit to, or in aid of, any [joint stock] company, corporation, or association."

² Your request letter refers to the authority of a "city school district." However, since the management and control of a city school district is vested in the board of education of the district, R.C. 3313.47, and the board of education has corporate powers, R.C. 3313.17, the authority properly at issue is that of the board of education of the city school district.

³ However, *Wilson v. Hance*, 169 Ohio St. 457, 159 N.E.2d 741 (1959) noted that the transaction which it found to be an impermissible union of

application to transactions involving public and private entities were further analyzed in 1977 Op. Att'y Gen. No. 77-047. There, my predecessor examined a proposed lease of county land to a builder for the purpose of constructing a building to be leased back to the county, with ownership of the building to remain in the builder's name. On those facts, the opinion concluded that

[T]he land and building do not in the strict and primary sense of the term constitute a single property. Although a building might generally be considered a fixture of the realty to which it is annexed, it need not, in every case, become such. Where an article belonging to one party is attached to the realty of another party, the status of the article as either a fixture or a chattel may be controlled by agreement of the parties. *Teaff v. Hewitt*, 1 Ohio St. 511 (1853).

Op. No. 77-047 at 2-167. Accordingly, it was determined that the lease of the property to the builder and the lease back of the building to the county did not violate art. VIII, §6.

In reaching this conclusion, the opinion distinguished the cases of *Alter v. Cincinnati*, 56 Ohio St. 47, 46 N.E. 69 (1897) and *Village of Brewster v. Hill*, 128 Ohio St. 343, 190 N.E. 766 (1934).⁴ Both *Alter* and *Brewster* "involved a union of public and private property that was so inextricable that both parties were wholly dependant upon one another for their worth and usefulness. They both involved entire systems that, although operated as single entities, were owned by two different parties." Op. No. 77-047 at 2-166; see also Op. No. 78-040 at 2-96 (a joint venture proposed by a board of education and a private corporation whereby both "contribute property, money, skill and knowledge in the operation of a common enterprise for mutual profit and gain" violates Ohio Const. art. VIII, §4).

In the proposed arrangement between the cellular telephone company and the board of education, the property owned by the company and the property owned by the school district are not inextricable or wholly dependent upon one another for value or usefulness. According to the information you provided, the ownership of the land and the improvements will remain separate for the duration of the transaction, and, upon termination of the board's lease to the company, the board will have the right to acquire title to all improvements from the company, for one dollar. Additionally, the board will maintain title to its lighting and loudspeaking equipment at all times. The parties clearly contemplate that the business of each will be conducted separately, and that the value and usefulness of the property owned by each is not wholly interdependent. Under these circumstances, the lease of real estate by the board of education to the cellular telephone company for the erection of a monopole tower and a building, and the corresponding lease of a portion of the monopole tower and building by the company to the board, do not violate Ohio Const. art. VIII, §4.

public and private property was distinguishable from a leasing arrangement. "It is clear that this is neither a situation where a city is merely leasing a part of its property to a private corporation, nor is it a situation where a private corporation is leasing its property to a city." *Id.* at 466, 159 N.E.2d at 746.

⁴ *Alter v. Cincinnati*, 56 Ohio St. 47, 46 N.E. 69 (1897) concerned a statute that permitted cities to contract with a private party for the construction of a waterworks to be owned and controlled in part by the city and in part by the private party. The issue in *Brewster v. Hill*, 128 Ohio St. 343, 190 N.E. 766 (1934) was a proposal by which a private contractor was to furnish machinery to generate electrical current to a city that would provide the necessary foundations and buildings for such equipment. A portion of the price of the machinery was to be paid from the expected income of the plant.

The Board of Education Has Authority to Lease Real Property to a Private Party Under Limited Circumstances

Your second question asks whether a board of education is permitted to lease property to private individuals, companies, or corporations if the board determines that the property is not presently needed for school purposes, and whether the board's authority in this regard is controlled by R.C. 3313.76-.78.

A board of education, as a creature of statute, has only the authority expressly granted by statute and that authority which is necessarily implied therefrom. *Verberg v. Board of Educ.*, 135 Ohio St. 246, 20 N.E.2d 368 (1939). Although there are no provisions of the Revised Code that expressly authorize a board of education to lease real property which is not presently needed for school purposes, prior opinions of the Attorney General have inferred such authority. See 1963 Op. Att'y Gen. No. 622, p. 624; 1956 Op. Att'y Gen. No. 7225, p. 738; 1953 Op. Att'y Gen. No. 2534, p. 158; 1932 Op. Att'y Gen. No. 4588, vol. II, p. 1006.

The basis of these opinions is the authority of the board of education to acquire and hold property. R.C. 3313.17 provides that a board of education is "capable of ... acquiring, holding, possessing, and disposing of real and personal property." Although R.C. 3313.17 does not generally authorize a board of education to acquire land for the purpose of leasing for profit, there are circumstances that justify a board of education in leasing property which it had acquired for school purposes. As was stated in 1932 Op. No. 4588 at 1007-08:

When a board of education finds itself in possession of property which is not needed for school purposes and which it cannot advantageously dispose of by sale, it may be said, in my opinion, that the power to lease that property temporarily, until it may be advantageously sold, is an incident to the possession of the property. If such property cannot be advantageously sold, and may be leased so that the school district receives some benefit from the ownership of the property which it would not receive if it lay idle, it certainly cannot be said that the board exceeds its powers in so leasing the property.

Citing the rationale in this opinion, one of my predecessors also determined that it was permissible for a board of education to lease property not then needed by the board to a corporation, and to allow the corporation to construct and operate a swimming pool or such leased property, so long as the agreement provided that at any time the board determined the property was needed for school purposes or that it should be sold, the lease of the premises would terminate. 1953 Op. No. 2534.

Thus, the authority of the board of education to lease property is limited by the duty of the board to preserve the availability of property to which it holds title for school purposes "where a present or probable future need therefor exists or is likely to arise." *State ex rel. Bociak v. Board of Educ.*, 55 Ohio Law Abs. 185, 189, 88 N.E.2d 808, 810 (Ct. App. Cuyahoga County 1949). Although a board of education may lease real property which it determines is not presently needed for school purposes and which cannot advantageously be sold, the board is required to preserve the availability of the real property for future need. As noted in the discussion of your third question below, the lease must, therefore, provide for termination by the board of education if it is determined that the property is needed for school purposes in the future.⁵

⁵ This opinion, as noted above, does not address the viability or enforceability of the specific provisions of the proposed leases, including the exact form of the provision for termination of the lease by the school board. An appropriate termination clause might, for example, permit the company to remove the improvements made by it and return the premises to the board in the condition they were in at the beginning of the lease. However, a termination clause which would cause the board to suffer penalties or which would require the board to purchase the improvements made by the company may exceed the board's authority.

R.C. 3313.76-78 Do Not Control the Lease of Real Property by the Board of Education

The lease of real property by a board of education pursuant to the authority discussed above is not controlled by R.C. 3313.76-78. These statutes, along with R.C. 3313.75,⁶ govern the use of schoolhouses and school grounds for purposes other than the education of pupils of the school district. While they authorize the board of education to permit the use of schoolhouses and school grounds for various purposes, they do not contemplate the grant of a leasehold or other interest in the real property. Essentially, R.C. 3313.76-78 authorize the board to grant a license for the use of schoolhouses and school grounds. A license is "an authority to do some act or series of acts on the land of another without passing any interest in the land." *Ripple v. The Mahoning Nat'l Bank*, 143 Ohio St. 614, 619, 56 N.E.2d 289, 291 (1944) (citations omitted). A lease, on the other hand, "is a contract for the possession and profit of land by the lessee and in recompense of rent or increase to the lessor, and is a grant of an estate in the land." *Id.*; see also *DiRenzo v. Cavalier*, 165 Ohio St. 386, 135 N.E.2d 394 (1956).

The Lease May Permit Automatic Renewals at the Option of a Private Entity Under Certain Circumstances

Your third question asks whether, if the board of education is permitted to lease real property to a private individual, company or corporation, the lease may contain a provision which automatically renews the term of the lease solely at the option of the individual, company or corporation. You have also asked whether the lease must contain a provision permitting the board of education to terminate the lease if the board determines that the property is needed for school purposes.

R.C. 3313.17 generally authorizes the board of education to enter into contracts. R.C. 3313.47 vests the board of education with the authority for "the management and control of all of the public schools of whatever name or character in its respective district." This statute, along with R.C. 3313.20,⁷ has been construed to require the board to maintain the management and control of the schools. See generally *Dayton Teachers Ass'n v. Dayton Bd. of Educ.*, 41 Ohio St. 2d 127, 323 N.E.2d 714 (1975); *Xenia City Bd. of Educ. v. Association*, 52 Ohio App. 2d 373, 370 N.E.2d 756 (Greene County 1977).

A provision authorizing an automatic renewal of the lease at the sole option of a private party raises a question as to whether the board has relinquished in part the management and control of a school district. A similar issue was addressed in *Xenia City Board of Education*. In that case, a provision of a collective bargaining agreement required any contract proposal upon which negotiations had reached an impasse between the board and the Xenia Education Association to be referred to binding arbitration. The court determined that the binding arbitration provision "conflicts with and abrogates the board's duties and responsibilities to enter into new collective bargaining agreements ... and to manage the schools in the public interest." 52 Ohio App. 2d at 376-77, 370 N.E.2d at 758. The court's concern was that a new employment contract could eventually be written by arbitrators, without regard to the management and control of the board of education.

A provision in a lease of real property by a board of education to a private party that allows the private party solely to determine whether the lease shall be renewed might abrogate, in part, the duty of the board to control and manage the schools. As discussed above, the board's authority to lease real property is derived from its authority to acquire and hold property for school purposes, and is limited to a temporary lease of property that is not presently needed for school purposes. Such

⁶ R.C. 3313.75 applies only to schoolhouses, and thus clearly has no application to the question at hand.

⁷ R.C. 3313.20 authorizes the board of education to make certain rules necessary for the government of the board and school employees, pupils, and other persons entering upon school grounds or premises.

a lease permits the school district to benefit from the ownership of the property during the period it continues to own such property pending its use or sale. 1932 Op. No. 4588. If the board reasonably determines, prior to the execution of the lease, that the lease of property for the full lease term (including all renewal periods) will be advantageous to the school district regardless of the fact that it may be renewed solely at the option of the private party, and that the property is not anticipated to be needed for school use during such lease term, then the duty of the board to manage and control the school district will not be abrogated by the renewal provision.

The Lease Must Provide for Termination by The Board of Education if the Property Is Needed for School Purposes

As noted above, the board of education must retain the effective right to terminate the lease at any time if it subsequently determines that the property is needed for school purposes. As discussed in the answer to your second question, the board of education's authority to lease property that is not presently needed for school use is limited by the board's duty to preserve the availability of the property for future need if and when it arises. *Baciak*. This can be accomplished only by a provision in the lease that permits the board to terminate the lease upon a determination by the board that the property is needed for school purposes.

Since I have determined that the board of education has the authority, with certain restrictions, to lease real property, there is no need to answer your fourth question.

Conclusion

On the basis of the foregoing analysis, it is my opinion, and you are hereby advised, that:

1. Sections 4 and 6 of Article VIII of the Ohio Constitution do not prohibit a board of education from leasing real property to a private party where the lease arrangement does not effect a union of private and public property.
2. A board of education may lease real property which it determines is not presently needed for school purposes and which cannot be advantageously sold, provided that the lease contains a provision that permits the board of education to terminate the lease upon a determination by the board that the property is needed for school purposes.
3. The authority of a board of education to lease real property is not controlled by R.C. 3313.76-.78.
4. A lease of real property by a board of education may contain a provision that automatically renews the term of the lease solely at the option of the lessee if the board of education determines, prior to the execution of the lease, that the lease of property for the full lease term (including all renewal periods) will be advantageous to the school district, regardless of the fact that it may be renewed solely at the option of the lessee, and that the property is not anticipated to be needed for school use during such lease term.

OPINION NO. 92-017

Syllabus:

A board of township trustees and a village council that create a joint fire district pursuant to R.C. 505.371, but do not retain the authority to appoint or remove the persons who are to serve upon the board of fire district trustees, may not thereafter undertake joint legislative

June 1992

February 2, 1999

OPINION NO. 99-007

The Honorable Michael K. Allen
Hamilton County Prosecuting Attorney
230 E. Ninth Street, Suite 7000
Cincinnati, Ohio 45202-2151

Dear Prosecutor Allen:

We received from your predecessor a request for an opinion concerning the authority of a vocational school district known as Great Oaks to operate a system for access to the Internet and make access services available to other entities and individuals.¹ The request asked the following questions:

1. Is Great Oaks' investment in the necessary hardware and software, contracting with bulk providers of communication services (*i.e.*, T-1 lines), and operation of a system for access to the Internet authorized and/or permitted by R.C. 3311.19, 3311.215, 3313.75, 3313.90, 3313.76, 3313.77 or any other applicable statute?
2. Is Great Oaks' provision of Internet access services to governmental entities, nonprofit organizations, students, business and industry advisory groups, vendors, or employees authorized and/or permitted by R.C. 3311.19, 3311.215, 3313.75, 3313.90, 3313.76, 3313.77 or any other applicable statutes?
3. May Great Oaks charge a fee, which covers the costs of such services, for such services and is the fee of \$160 per year for each individual subscriber and \$300 per year for participating governmental agencies a "reasonable"

¹ Great Oaks is a vocational school district (also known as a joint vocational school district) established under R.C. 3311.18. *See* R.C. 3311.01. We have been informed that the vocational school district includes twelve counties and thirty-six school districts in southwest Ohio.

fee as contemplated by R.C. 3313.76 and 3313.77 or any other applicable statute?

4. Is the provision of services as proposed permissible under the Ohio law and Ohio Constitution?
5. If a joint vocational school district may provide Internet service to any or all of the above-referenced entities, what impact, if any, does providing such Internet service have on the joint vocational school district with regard to taxes and its status as a tax exempt educational entity (*i.e.*, would its status be affected by engaging in activity which may compete with private enterprise)?
6. If a joint vocational school district may provide Internet service to any or all of the above-referenced entities, what impact, if any, does providing such Internet service have on the joint vocational school district with regard to its ability to levy taxes or obtain public funding?

The facts that were presented to us indicate that an Internet access system known as Oak Web was established in February of 1995 by Fayette County residents through grants and public funding in order to provide Internet access services to rural areas not served by a commercial access provider. The Oak Web system's hardware and software are currently owned by Great Oaks, which proposes to expand the Oak Web system to cover the Great Oaks' district. The cost of the equipment was approximately one hundred fifty thousand dollars, which is less than one percent (.0035%) of Great Oak's budget. The Oak Web system also includes leased telephone lines and a temperature-controlled room. The computer hardware and software have an excess capacity that could be used to serve various groups. The excess capacity is not divisible and, therefore, cannot readily be disposed of by sale.

Great Oaks has identified three types of uses for the Oak Web system. The primary use is as part of the educational functions of the vocational school district. The Oak Web system would be part of Great Oaks' curriculum and would be used to offer its students courses on the uses of the Internet. Great Oaks could also offer educational courses to its students through the Internet. In addition, Great Oaks could use the Internet to provide its students and the community with course catalog information, registration for courses, information regarding the school district, and educational courses.

The second purpose for which the Oak Web system could be used is community access. Great Oaks proposes, for a reasonable fee, to offer excess capacity of Oak Web to the general community located in the district. As the request letter states: "Great Oaks believes that community access to the Internet will promote the welfare of the community through educational instruction, holding religious, civic and social meetings over the Internet."

The third purpose for which the Oak Web system could be used is communication by or with Great Oaks. The request letter lists various types of communication: communication of assignments to students, communication between educators and students, submission of course work by students, Great Oaks' communication with other governmental entities, communication with nonprofit support organizations, communication with business and industry partners providing employment opportunities for Great Oaks' students, communication with vendors, and communication with employees of the district.

Great Oaks proposes, for a reasonable fee, to sell excess capacity to the following groups:

- (1) governmental entities, consisting of local, state, or federal agencies that are funded at least in part with tax money and are located where the Oak Web service is available (examples include public school districts, public libraries, and county offices), to ensure access to governmental information;
- (2) nonprofit organizations, as classified under IRS guidelines, that support the Great Oaks mission, whether located within or outside the district boundaries;
- (3) students, for communication with the district and access to Internet educational materials;
- (4) business and industry advisory groups, to communicate hiring needs and other support initiatives;²
- (5) vendors of Great Oaks, for ordering, delivery, and invoicing purposes;
- (6) employees of Great Oaks.

Great Oaks proposes pricing that is reasonably calculated to offset the costs associated with the provision of Internet access services. The amounts proposed are \$160 per year for an individual subscriber (a typical commercial provider fee would be \$240) and \$300 per year for a governmental agency, plus the cost of its own communications line (a typical commercial provider fee would be \$600 to \$800). Individuals would be required to take a training course to subscribe to Oak Web, and the cost of training would be covered by the subscription fee.

Subscribers would be required to sign a written contract. All subscription rentals that are not related to school functions would be subject to termination if Great Oaks needs the Oak Web

² R.C. 3313.174 provides for the board of education of each city and exempted village school district and the governing board of each educational service center to appoint a business advisory council to advise the board on matters relating to employment skills and training. It does not apply to the board of education of a vocational school district. R.C. 3313.174.

property for school purposes. The Oak Web system would have technical support provided by personnel who also provide support for other Great Oaks' computer equipment and functions. There would be two types of subscriptions, one for individuals who use a modem and single phone line (single node members) and one for organizations or entities that use a dedicated line (multi-node members).

Let us consider first the question whether a vocational school district is permitted to operate a system for Internet access. In order to answer that question, we must look to the statutes setting forth the powers of a vocational school district.

A vocational school district created pursuant to R.C. 3311.18 is managed and controlled by the joint vocational school district board of education. R.C. 3311.19. As a creature of statute, the board has only those powers that it is granted by statute, either expressly or by necessary implication. *See Verberg v. Board of Educ.*, 135 Ohio St. 246, 20 N.E.2d 368 (1939); 1965 Op. Att'y Gen. No. 65-17. Subject to certain exceptions, a joint vocational school district board of education is granted the same powers, duties, and authority for the management and operation of its district as the board of education of a city school district. R.C. 3311.19(D); *see* R.C. 3313.47.

A vocational school district has the responsibility of providing vocational education programs for students, in accordance with standards established by the State Board of Education. R.C. 3313.90; *see also* R.C. 3313.901; 5 Ohio Admin. Code Chapter 3301-61. The major goal of such a district is to provide opportunities for individuals to gain the skills and knowledge required for employability. 5 Ohio Admin. Code 3301-67-01(A)(2).

A vocational school district may offer a variety of programs and activities. R.C. 3313.53. Upon approval of the voters, a vocational school district may issue bonds and levy taxes. *See* R.C. 3311.20-.21; R.C. 3311.213; R.C. 3313.911; R.C. 5705.194; R.C. 5705.21; R.C. 5705.212; R.C. 5705.213.

A vocational school district is authorized to acquire the land, buildings, and apparatus needed to perform its functions. R.C. 3313.17; R.C. 3313.37; R.C. 3313.374-.375; R.C. 3313.39; R.C. 3313.46. A board of education has express authority to acquire necessary office equipment and computer hardware and software for instructional purposes for the schools under its control through a variety of financial arrangements. R.C. 3313.37(B)(4). A vocational school district is expressly permitted to use its facilities for post-high school training, technical training, and re-training programs of vocational education and to construct and operate facilities for those purposes. R.C. 3311.215; *cf.* R.C. 3313.52 (evening schools); R.C. 3313.53 (vocational schools); R.C. 3313.531 (adult high school continuation programs).

A vocational school district has broad discretion to determine the manner in which it carries out its statutory duties. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-092; 1978 Op. Att'y Gen. No. 78-040; 1974 Op. Att'y Gen. No. 74-063, at 2-262 (“[i]t is the settled law of this state that the courts will not interfere with the discretionary power of a board of education where the

exercise of such power is reasonable, in good faith, and not an abuse of discretion”); 1971 Op. Att’y Gen. No. 71-026.

There is no statute that expressly authorizes a vocational school district to acquire necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet. A vocational school district, however, may acquire and operate such a system as part of its statutory functions if the acquisition and operation of the system is part of its curriculum or is otherwise necessary for the performance of its statutory duties. *See* R.C. 3313.17; 1981 Op. Att’y Gen. No. 81-092; 1959 Op. Att’y Gen. No. 922, p. 619. Thus, a vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasonably finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.³

Let us turn now to the second question, which is whether a vocational school district is permitted to provide Internet access services to governmental entities, nonprofit organizations, students, business and industry advisory groups, vendors, or employees. As discussed above, a vocational school district is responsible for providing educational programs and is given broad discretion in determining how to carry out its statutory duties. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their training or to others as services that

³ The State Board of Education is required to adopt rules for a statewide Education Management Information System (EMIS) containing information about student enrollment and performance, staffing, and costs. R.C. 3301.0714; 5 Ohio Admin. Code Chapter 3301-14 and Chapter 3301-19. The State Board of Education is also required to adopt rules governing the purchasing and leasing of data processing services and equipment for school districts, including vocational school districts. R.C. 3301.075. The rules include provisions for the establishment of an Ohio Education Computer Network (OECN) and procedures, guidelines, and specifications for the OECN. R.C. 3301.075; 5 Ohio Admin. Code Chapter 3301-3; *see also* R.C. 3313.92. Our research does not disclose that any provision of law or rule relating to the EMIS or OECN restricts the authority of a vocational school district to own and operate a system for Internet access. To the extent that any such provisions may apply to the proposed activity, Great Oaks must, of course, comply with those provisions.

State government also includes an independent agency known as the Office of Information, Learning, and Technology Services, which is monitored by the Information, Learning, and Technology Authority. R.C. 3301.80. Those entities have various responsibilities relating to the use of educational technology by school districts and other educational institutions. *Id.*, *see also* 5 Ohio Admin. Code Chapter 3301-28 (Schoolnet Plus Program: Computers for K-4 Classrooms).

students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.

A school district that decides that it needs to operate an Internet access system as part of its curriculum may clearly provide its students with access to that system in order for them to participate in the curriculum. *See* R.C. 3311.19; R.C. 3313.90. This authority extends to all students of the district, including those participating in post-high school training, technical training, and re-training programs. R.C. 3311.215.

Vocational schools are permitted to include in their curriculum, as part of their training of pupils, programs that result in the production of products or provision of services and in the sale of those products or services. *See, e.g.*, 1989 Op. Att’y Gen. No. 89-061 (students of a joint vocational school may construct a juvenile treatment facility for the county); 1981 Op. Att’y Gen. No. 81-092 (the board of education of a vocational school district may enter into an agreement with a nonprofit corporation under which students construct houses on property owned by the corporation, provided that such action is reasonably necessary to fulfill the requirements of the vocational education curriculum, or the board may purchase land, have students construct houses, and then sell the houses); 1976 Op. Att’y Gen. No. 76-065 (syllabus) (“[a] joint vocational school may, as part of its vocational education program, construct and sell single family residences on school land which may be subdivided for this purpose”); 1971 Op. Att’y Gen. No. 71-068 (a school may engage and compete in private enterprise, even at a profit, if the program is reasonably necessary to the vocational education curriculum); 1971 Op. Att’y Gen. No. 71-026 (to the extent reasonably necessary to fulfill the requirements of the curriculum, the facilities of a vocational school may be used on occasion for the preparation, serving, and management of meals and banquets to organizations in the community as part of the training in the vocational food service program). Sales may be made to the general public. *See, e.g.*, 1971 Op. Att’y Gen. No. 71-068. Thus, if a vocational school district operates a program for training in Internet access under which it offers for sale services provided by its students, the sale of those services can be a proper part of the district’s functions. The sale of such services as part of the curriculum of the district may not, however, go beyond what is reasonably necessary to fulfill the requirements of the curriculum. *See, e.g.*, 1981 Op. Att’y Gen. No. 81-092; 1971 Op. Att’y Gen. No. 71-026, at 2-84.

In addition to providing Internet access as part of its curriculum, a vocational school district that finds a need for an Internet access service in order to carry out its administrative and organizational duties may grant its students and employees access so that they can make use of the programs and information that the district provides by means of the Internet. *See* R.C. 3311.19. It might also be found that the provision of access to other groups — such as vendors and business and industry advisory groups — enables the district more efficiently to perform its statutory functions. If this is the case, the district is permitted to provide that access. In general, then, if providing Internet access to particular persons or entities is incidental to, or would

facilitate the performance of, the district's statutory duties, the district may provide that access as part of the provision of programs and operation of the district.

A vocational school district, like other school districts, is entrusted with the management and control of its schools, and has been given authority to adopt rules governing its schools and premises. R.C. 3313.20; R.C. 3313.47. The board of education of a school district is authorized by statute to make its schoolhouses available for lawful purposes that do not interfere with the operations of the public schools. R.C. 3313.75; R.C. 3313.76. Lawful purposes include entertainment, education, religious exercises, and the discussion of topics that tend to develop personal character and civic welfare. R.C. 3313.76. Other statutory provisions authorize a board of education, upon the payment of a reasonable fee and subject to regulation by the board, to "permit the use of any schoolhouse and rooms therein and the grounds and *other property under its control*" for purposes of instruction; for holding educational, religious, civic, social, or recreational meetings and entertainments that are open to the general public and for other purposes that promote the welfare of the community; for public library purposes or reading rooms; and for polling places, voter registration, or grange or similar meetings. R.C. 3313.77 (emphasis added). Thus, a school district may share its facilities with the community by making them available, subject to standards that it establishes. *See, e.g.,* 1974 Op. Att'y Gen. No. 74-086 (a school cafeteria and equipment may be used by the board of education and a municipality for a program to sell warm meals to senior citizens at approximately actual cost because such a program promotes the welfare of the community).

Although the statutes governing access speak primarily to real property, they also refer generally to "other property" under the control of the board of education. R.C. 3313.77; *see also* 1974 Op. Att'y Gen. No. 74-086, at 2-356 ("[t]he cafeteria and equipment needed are property under the control of the board"). This reference, together with the school district's general authority to manage its property, would permit the district to grant access to any of its property, including Internet access services, when such access would serve educational or civic purposes or promote the welfare of the community.

Thus, a vocational school district that properly operates an Internet access system may permit persons or organizations to have access to the system pursuant to its general authority to make its facilities available to the community. Property that is made available pursuant to that authority may be used, however, only for the statutory purposes and may not be used solely for a revenue-producing enterprise, though incidental fees may be charged in conjunction with a proper purpose. *See* 1974 Op. Att'y Gen. No. 74-063 (syllabus, paragraphs 2 and 3) ("[a] board of education may not permit school-owned property to be used, by a school activity group or a private enterprise, for the sole purpose of operating a revenue-producing parking lot" but may permit an organization using the property "for a purpose authorized by R.C. 3313.76 or 3313.77, to charge a fee for parking on the school grounds").

Another means by which a vocational school district may grant Internet access to others is through its authority to sell or lease property. If a school district has property that it does not currently need for public use, it may sell or lease the property, if it finds that the sale or lease

serves the public interest. *See* R.C. 3313.17; R.C. 3313.41; 1992 Op. Att’y Gen. No. 92-016; 1986 Op. Att’y Gen. No. 86-062; 1983 Op. Att’y Gen. No. 83-082. In selling its property, a school district must comply with any statutory provisions that apply. *See* R.C. 3313.41 (requiring that real or personal property that exceeds ten thousand dollars in value be offered for sale at public auction, unless it is sold to a named public entity or traded for an item of similar personal property). A lease of property that the school district does not currently need must include the condition that the district may terminate the lease if the property becomes needed for school district purposes. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051; 1992 Op. Att’y Gen. No. 92-016; 1953 Op. Att’y Gen. No. 2534, p. 158; 1932 Op. Att’y Gen. No. 4588, vol. II, p. 1006. Within these limitations, a school board has broad discretion in determining when and how to dispose of its property. *See, e.g.*, 1986 Op. Att’y Gen. No. 86-062.

A school district does not have general authority to acquire property for the purpose of going into the business of selling or leasing the property. Rather, a school district is permitted to own property — including an Internet access system — only if that property is required for proper purposes of the district. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051, at 2-198 to 2-199; 1981 Op. Att’y Gen. No. 81-092, at 2-355. *See generally* R.C. 3313.811 (a school board, principal, teacher, class organization, or student may sell uniform school supplies, foods, candies or the like for profit only when the profit is to be used for purposes of the school or school activities).

If a vocational school district acquires and operates an Internet access system for purposes that are consistent with the district's statutory powers and duties and the vocational school district finds that it has excess capacity, it may sell or lease that capacity, if it finds that such sale or lease serves the public interest. There are no limitations on the persons or entities to which such sale or lease may be made. *See, e.g.*, 1959 Op. Att’y Gen. No. 922, p. 619 (syllabus, paragraph 2) (“[a] local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, after [*sic*] so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of [R.C. 3313.17]”).

Let us now consider whether the vocational school district may charge a fee for the Internet access services in question. As noted in the request, the fee will cover the cost of providing the services.

A vocational school district has limited authority to charge students fees in connection with courses. Students who are entitled to attend schools of the district without payment of tuition may not be charged for attendance. *See* R.C. 3313.48; R.C. 3313.64; R.C. 3313.641; R.C. 3313.645. They may, however, be charged for summer school, for certain kinds of classes, or for materials other than textbooks. *See* R.C. 3313.641; R.C. 3313.642; *see also* 1974 Op. Att’y Gen. No. 74-063 (syllabus) (“[a] board of education may charge a fee for parking on school-owned property for school functions, but may not charge such a fee to students who are attending classes”).

No statute expressly authorizes a vocational school district to impose a fee for Internet access services upon students who are entitled by statute to attend school without payment, when they are using the Internet access as part of their educational program. It does not appear that Internet access is a “material” for which a charge can be instituted in connection with a student’s course of instruction. R.C. 3313.642. The board of education, however, may prescribe a schedule of charges for damage or destruction of school apparatus, equipment, or library materials, including computer systems. *Id.*

Individuals attending adult education programs may be charged tuition or other fees. R.C. 3313.52; R.C. 3313.531; R.C. 3313.54; R.C. 3313.641. Similarly, a student who seeks Internet access for personal educational, civic, and social reasons, rather than as a course work requirement, could be charged for such access. *See* 1974 Op. Att’y Gen. No. 74-063.

A similar analysis applies to employees. If Internet access is required for the performance of their jobs, it should ordinarily be provided by the employer, absent a requirement in a particular instance that the employee provide it as a condition of the job. Teaching staff and nonteaching employees may be governed both by statute and by contract, including provisions of collective bargaining agreements. Applicable provisions must be examined to determine what fees may be charged. *See, e.g.*, R.C. 3317.12; R.C. 3317.13; R.C. 3317.14; R.C. 3319.07; R.C. 3319.08; R.C. 3319.12; R.C. 4117.10; 1997 Op. Att’y Gen. No. 97-047. If the employees are obtaining access for personal use, however, a reasonable fee would be appropriate. *See generally* 1983 Op. Att’y Gen. No. 83-029.

The other entities to which the vocational school district proposes to sell excess capacity are governmental entities, nonprofit organizations, business and industry advisory groups, and vendors. Whether the district provides access as part of its effort to share facilities with the community, as the lease or sale of excess capacity, or as the sale of a product generated by its students as part of their educational program, the district is authorized to charge a reasonable fee. *See, e.g.*, R.C. 3313.77; 1992 Op. Att’y Gen. No. 92-016; 1981 Op. Att’y Gen. No. 81-092; 1959 Op. Att’y Gen. No. 922, p. 619.

It can be concluded, then, that if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee. The request letter outlines proposed fees and asks whether they are reasonable. The reasonableness of a fee is a question of fact that cannot be determined by means of a formal opinion of the Attorney General. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051, at 2-192; 1984 Op. Att’y Gen. No. 84-083.

The next question is whether the proposed provision of Internet access services is permissible under the Ohio law and Ohio Constitution. The provision of these services in appropriate circumstances is authorized by statute, as discussed above. The arrangements proposed for allowing access to the Internet do not appear to violate any provision of the Ohio Constitution. In particular, they do not create a union of public and private interests and, thus, do not constitute a joint venture or lending of credit that would violate Ohio Const. art. VIII, §§ 4 and 6. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-051; 1992 Op. Att’y Gen. No. 92-016; 1981 Op. Att’y Gen. No. 81-092; *cf.* 1978 Op. Att’y Gen. No. 78-040 (syllabus) (“[a] board of education is prohibited by Ohio Const art. VIII, § 4 from entering into a joint venture with a commercial oil company to construct and operate for profit a gas and service station on school property as part of a vocational education program”). An examination of relevant provisions thus leads to the conclusion that if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.

Let us now consider the question whether the provision of Internet access services would affect the status of a vocational school district as a tax exempt educational entity. Let us look first at Ohio law governing real and personal property taxes.

Pursuant to R.C. 3313.44, all real or personal property owned by the board of education of a school district is exempt from taxation. This exemption is granted regardless of the purpose for which the property is used, consistent with the principle that a school district is empowered to acquire property only for school purposes and not for the purpose of undertaking a business enterprise. *See* Ohio Const. art. XII, § 2; *Board of Educ. v. Board of Tax Appeals*, 149 Ohio St. 564, 568, 80 N.E.2d 156, 158 (1948) (“the property became subject to exemption from taxation when title vested in the board of education. The board was without authority or power to purchase it for any other purpose than a public use”).

A related grant of tax exemption appears in R.C. 5709.07. That exemption applies to “[p]ublic schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit.” R.C. 5709.07(A)(1). The exemption extends to “leaseholds, or other estates or property, real or personal, the rents, issues, profits, and income of which is given to a ... school district ... in this state exclusively for the use, endowment, or support of schools for the free education of youth without charge” as long as the property or income “is used and exclusively applied for the support of free education.” R.C. 5709.07(B). Thus, provided that proceeds received from the provision of Internet access services are used for purposes of the vocational school district, it appears that the district would qualify for tax exemption under R.C. 5709.07. *See also* R.C. 5709.12 and R.C. 5709.121 (providing tax exemption for real and tangible personal property belonging to an educational institution or political subdivision if the property is used for charitable, educational, or public purposes or if it

is made available for use incidental to charitable, educational, or public purposes and not with a view to profit).

The tax exempt status of real and personal property of a school district thus is established by provisions of statute. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.

Provisions governing sales tax are less definitive. Sales by a board of education of tangible personal property, or licenses to use or consume personal property, are generally considered to be subject to sales tax if the purpose of the sales is to make a profit. R.C. 5739.01; R.C. 5739.02; 1974 Op. Att’y Gen. No. 74-052; 1971 Op. Att’y Gen. No. 71-068. The sales tax does not apply, however, to sales of services provided by the state or political subdivisions, including school districts. R.C. 5739.02(B)(22).

With respect to electronic technology, the statutes provide that the sales tax applies when “[a]utomatic data processing, computer services, or electronic information services are or are to be provided for use in business when the true object of the transaction is the receipt by the consumer of automatic data processing, computer services, or electronic information services rather than the receipt of personal or professional services to which automatic data processing, computer services, or electronic information services are incidental or supplemental.” R.C. 5739.01(B)(3)(e); *see also* R.C. 5739.01(Y)(1). The provision of telecommunications service is included as a sale when the service originates in Ohio and is charged to the consumer’s telephone number or account in Ohio, or when it both originates and terminates in Ohio, with certain exceptions. R.C. 5739.01(B)(3)(f); R.C. 5739.01(AA). Among the exceptions are “[s]ales of telecommunications service to a provider of telecommunications service, including access services, for use in providing telecommunications service.” R.C. 5739.01(AA)(4).

It is not clear from these provisions precisely how the sales tax provisions would apply to the situation described in the opinion request. To obtain a determination relating to particular circumstances, the vocational school district could request an opinion of the Tax Commissioner. R.C. 5703.53; *see also* R.C. 5703.50(A) (sales taxes are included as taxes under R.C. 5703.53); 16 Ohio Admin. Code 5703-1-12.

We have been informed that your predecessor was interested also in the tax exempt status of the school district under federal law and particularly in the question whether income accrued from the sale of Internet access services would constitute unrelated business taxable income pursuant to section 511 of the Internal Revenue Code. 26 U.S.C.A. § 511 (West 1988 & Supp. 1998); *see also* 26 U.S.C.A. §§ 512-513 (West 1988 & Supp. 1998). This office is not empowered to render authoritative interpretations of federal law. *See, e.g.*, 1997 Op. Att’y Gen. No. 97-025, at 2-146; 1989 Op. Att’y Gen. No. 89-001, at 2-1 n.1; 1988 Op. Att’y Gen. No. 88-

007. We note, however, that federal regulations state that “[e]lementary and secondary schools operated by ... governments are not subject to the tax on unrelated business income.” 26 C.F.R. § 1.511-2(a)(2) (1998).

We turn now to the final question, which asks what impact the provision of Internet service has on the joint vocational school district with regard to its ability to levy taxes or obtain public funding. The facts that were presented to us suggest that the fees charged for services will simply cover the costs of providing services, so that the provision of Internet access services will not be a profit-making endeavor. If, however, the provision of such services should result in the receipt of additional moneys by the district, those moneys may be relevant to a determination of the amount of taxes required to meet the needs of the district. *See, e.g.,* R.C. 5705.28; R.C. 5705.29; R.C. 5705.34; R.C. 5705.35; R.C. 5705.36; R.C. 5705.391; R.C. 5705.412.

A vocational school district must submit to the county budget commission an annual tax budget setting forth its estimated expenditures and receipts from all sources. R.C. 5705.29; *see* 1954 Op. Att’y Gen. No. 3793, p. 230, at 234 (“[t]he statute makes no exception in requiring all sources of income to be laid before the commission. The law plainly contemplates that the commission is to have before it all possible data which will throw light upon the financial situation and needs of the ... taxing subdivisions”). The district is not permitted to levy property taxes at a rate greater than required to meet its needs, as set forth in its tax budget. R.C. 5705.341 (“[n]othing in this section or any section of the Revised Code shall permit or require the levying of any rate of taxation, whether within the ten-mill limitation or whether the levy has been approved by the electors of the taxing district, the political subdivision or the charter of a municipal corporation in excess of such ten-mill limitation, unless such rate of taxation for the ensuing fiscal year is clearly required by a budget of the taxing district or political subdivision properly and lawfully advertised, adopted, and filed pursuant to the provisions of [R.C. 5705.01 to 5705.47]”); *Village of South Russell v. Budget Comm’n*, 12 Ohio St. 3d 126, 456 N.E.2d 876 (1984); 1989 Op. Att’y Gen. No. 89-047. If the district’s budget reflects that proceeds from providing Internet access services reduce its need to levy taxes, then taxes may be levied only at the reduced level.

Joint vocational school districts receive state funds in accordance with R.C. 3317.16. *See also* R.C. 3317.01; 1972 Op. Att’y Gen. No. 72-049. It does not appear that the receipt of fees for providing Internet access, in itself, would affect the amounts of state funding granted pursuant to that provision. The number of vocational units provided, however, may affect those amounts. *See* R.C. 3317.05(A); R.C. 3317.16.

A vocational school district is permitted to undertake the sale of property or provision of services only in accordance with its statutory authority, as discussed above. Taking such action will not affect the general authority of the district to levy taxes or obtain public funding. However, if, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a

determination of the amount of taxes or other public funding required to meet the needs of the district.

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

1. A vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasonably finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.
2. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their training or to others as services that students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.
3. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee.
4. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.
5. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.

The Honorable Michael K. Allen

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6. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a determination of the amount of taxes or other public funding required to meet the needs of the district.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 2, 1999

The Honorable Michael K. Allen
Hamilton County Prosecuting Attorney
230 E. Ninth Street, Suite 7000
Cincinnati, Ohio 45202-2151

SYLLABUS:

99-007

1. A vocational school district may invest in necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet pursuant to R.C. 3311.19 and R.C. 3313.90, provided that the vocational school district reasonably finds that such action is an integral part of its curriculum or is otherwise necessary for the performance of its statutory duties.
2. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may make access services available in several different manners: (1) as part of its educational program, either to students as part of their training or to others as services that students provide as part of their training, pursuant to R.C. 3311.19, R.C. 3311.215, and R.C. 3313.90; (2) as part of the administrative operation of the district pursuant to R.C. 3311.19; (3) by making facilities available to groups and organizations pursuant to R.C. 3313.77; and (4) by selling or leasing excess services.
3. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system, the district may impose a fee, which covers the costs of the service, upon individual subscribers or participating agencies, but the district may not impose a fee upon students who are entitled to a free public education and need Internet access as part of their course work or upon employees who need access as part of their employment, absent specific authority to impose such a fee.
4. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the arrangement will not violate the lending credit or joint ownership prohibitions of Ohio Const. art. VIII, §§ 4 and 6, provided that the property interests of the district remain separate from the interests of the subscribers.

5. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, the school district will retain its exemption from Ohio real and personal property taxes pursuant to R.C. 3313.44 and R.C. 5709.07.
6. If, in the proper exercise of its statutory authority, a vocational school district acquires and operates an Internet access system and provides access to individual subscribers and participating entities for a reasonable fee, amounts received by the district may be relevant to a determination of the amount of taxes or other public funding required to meet the needs of the district.

October 30, 2012

The Honorable David P. Fornshell
Warren County Prosecuting Attorney
500 Justice Drive
Lebanon, Ohio 45036

SYLLABUS:

2012-037

1. R.C. 3313.17 authorizes a board of education of a local school district to sell water from an aquifer located beneath real property owned by the district.
2. A board of education of a local school district may not operate a water bottling plant as a for-profit business.
3. A board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes. (1992 Op. Att'y Gen. No. 92-016, approved and followed.)
4. A board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. (1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), overruled.)

October 30, 2012

OPINION NO. 2012-037

The Honorable David P. Fornshell
Warren County Prosecuting Attorney
500 Justice Drive
Lebanon, Ohio 45036

Dear Prosecutor Fornshell:

You have requested an opinion concerning the authority of a board of education of a local school district to use and sell water from an aquifer located beneath real property owned by the district.¹ Specifically, you ask:

1. May a board of education of a local school district sell water from an aquifer located beneath real property owned by the district?
2. May a board of education of a local school district operate a water bottling plant as a for-profit business?
3. May a board of education of a local school district enter into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business?
4. Is a board of education of a local school district exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water?

Authority of a Board of Education to Sell Water

Your first question concerns the authority of a board of education of a local school district to sell water from an aquifer located beneath real property owned by the district.² It is firmly established

¹ An aquifer is a “water-bearing stratum of permeable rock, sand, or gravel.” *Merriam-Webster’s Collegiate Dictionary* 62 (11th ed. 2005); see R.C. 1521.01(C); R.C. 6101.01(G).

² For the purpose of this opinion, it is assumed that no deed restriction, covenant, or condition of a gift, devise, or bequest of land prohibits a board of education of a local school district from selling

in Ohio that a board of education of a local school district, as a creature of statute, *see* R.C. 3311.03; R.C. 3313.01, has “no more authority than what has been conferred on [it] by statute or what is clearly implied therefrom.” *Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*, 52 Ohio St. 3d 222, 223, 556 N.E.2d 511 (1990); 2003 Op. Att’y Gen. No. 2003-019 at 2-146. R.C. 3313.17 provides that a board of education of a local school district is a body politic and corporate, with authority to acquire, hold, and dispose of real and personal property and to enter into contracts. *See* R.C. 3313.41 (setting forth procedures for disposing of real and personal property that is owned by a board of education in its corporate capacity).

For purposes of R.C. 3313.17, “property” means “any property, real or personal, tangible or intangible, and any interest or license in that property.” R.C. 2901.01(A)(10)(a). R.C. 5739.01(YY) further provides that “water” is “tangible personal property” for purposes of Ohio’s sales tax law, which is set forth in R.C. Chapter 5739. *See generally* R.C. 5739.02 (authorizing the state to levy an excise tax on each retail sale made in this state); R.C. 5739.021 (authorizing a county to levy an additional tax on certain retail sales made in the county). Given that the General Assembly has recognized water as tangible personal property for purposes of Ohio’s sales tax law, water is personal property for purposes of R.C. 3313.17 that may be sold by a board of education of a local school district.³ *See generally* R.C. 3313.45 (“[w]hen, in its opinion, the school district would be benefited thereby, the board of education may make, execute, and deliver contracts or leases to mine iron ore, stone, coal, petroleum, gas, salt, and other mineral[s] upon lands owned by such school district, to any person, association, or corporation, who complies with the terms prescribed by the board as to consideration, rights of way, and occupancy of ground for necessary purposes, and all other matters of contract shall be such as the board deems most advantageous to the school district”); R.C. 3313.451 (a board of education “may enter into contracts with others . . . for the purposes of extracting, producing, selling, using, or transporting such petroleum, gas, components, and by-products”). Accordingly, R.C. 3313.17 authorizes a board of education of a local school district to sell water from an aquifer located beneath real property owned by the district.⁴ *See generally* 1959 Op. Att’y Gen. No. 922, p.

water from an aquifer located beneath real property owned or held in trust by the district. *See generally* R.C. 3313.17 (a board of education of a local school district may take and hold in trust for the use and benefit of such district any grant or devise of real property); 1929 Op. Att’y Gen. No. 809, vol. II, p. 1246 (syllabus) (“[w]here the board of education of a school district obtains title to land under a deed which conveys such land to the board of education ‘so long as the same may be used for school purposes,’ said board of education . . . may lease such lands for gas and oil purposes, unless the use of the land for such purposes makes it impossible to use the same for school purposes”).

³ This opinion does not consider whether a person who purchases water from an aquifer located beneath real property owned by a board of education of a local school district must pay any sales tax under R.C. Chapter 5739.

⁴ The sale of water by a board of education of a local school district must be done in accordance with the provisions of law governing the sale of personal property by the board of education. *See Schwing v. McClure*, 120 Ohio St. 335, 342, 166 N.E. 230 (1929); 1999 Op. Att’y Gen. No. 99-007 at

619 (syllabus, paragraph 2) (“[a] local school district board of education may construct a water main from its school to a nearby unincorporated community for the purpose of securing a water supply for its school and, [after] so doing, may permit private property owners to tap such water main, provided a suitable fee is charged for the privilege, under the authority of [R.C. 3313.17]”).

Authority of a Board of Education to Operate a Water Bottling Plant

Your second question asks whether a board of education of a local school district may operate a water bottling plant as a for-profit business. No statute expressly authorizes a board of education to operate a water bottling plant. Nor is such authority necessary to enable the board to perform its statutory function of providing an education to its students. *See generally* Ohio Const. art. VI, § 3 (“[p]rovision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds”); R.C. 3313.37(A) (the board of education of a local school district may acquire school buildings and playgrounds, “provide the necessary apparatus and make all other necessary provisions for the schools under its control”); R.C. 3313.47 (each “local board of education shall have the management and control of all of the public schools of whatever name or character that it operates in its ... district”); R.C. 3319.08 (the board of education of a local school district “shall enter into written contracts for the employment and reemployment of all teachers”).

As explained in *Groveport Madison Local Educ. Ass’n v. Groveport Madison Local Bd. of Educ.*, 72 Ohio App. 3d 394, 396-97, 594 N.E.2d 994 (Franklin County 1991):

In examining the nature of corporate powers invested in a board of education, it is clear that a board of education is not deemed to be a full corporation. “It is well settled that a board of education is a quasi-corporation acting for the public as one of the state’s ministerial education agencies “for the organization, administration and control of the public school system of the state.”” *Wayman v. Bd. of Edn.* (1966), 5 Ohio St. 2d 248, 249, 34 O.O.2d 473, 474, 215 N.E.2d 394, 395, citing *Cline v. Martin* (1916), 94 Ohio St. 420, 426, 115 N.E. 37, 38. A board of education “* * * is constituted a body politic and corporate, but it is not a corporation within the provisions of the statutes governing corporations or a corporation for profit * * *.” *Brown v. Bd. of Edn.* (1969), 17 Ohio App. 2d 1, 3, 46 O.O.2d 1, 2, 243 N.E.2d 767,

2-52; 1986 Op. Att’y Gen. No. 86-062 at 2-339; 1983 Op. Att’y Gen. No. 83-082 at 2-329; 1934 Op. Att’y Gen. No. 2474, vol. I, p. 422, at 424; *see, e.g.*, R.C. 3313.41(A) (“[e]xcept as provided in divisions (C), (D), (F), and (G) of this section, when a board of education decides to dispose of real or personal property that it owns in its corporate capacity and that exceeds in value ten thousand dollars, it shall sell the property at public auction, after giving at least thirty days’ notice of the auction by publication in a newspaper of general circulation in the school district, by publication as provided in [R.C. 7.16], or by posting notices in five of the most public places in the school district in which the property, if it is real property, is situated, or, if it is personal property, in the school district of the board of education that owns the property”).

768, reversed on other grounds (1969), 20 Ohio St. 2d 68, 49 O.O.2d 347, 253 N.E.2d 767, citing 48 Ohio Jurisprudence 2d (Part 1) 749. A board of education has but limited corporate powers. *Robertson v. Bd. of Edn.* (1875), 27 Ohio St. 96, 103.

Unlike private corporations, created for business purposes, or municipal corporations, more fully endowed with corporate life and functions, boards of education possess but limited corporate functions which are granted to enable them to carry out their public purpose in promoting and administering education.

The operation of a water bottling plant does not enable a board of education of a local school district to provide an education to the students in the district, and so, a board of education may not operate such a plant.⁵ *Cf.* 1999 Op. Att’y Gen. No. 99-007 at 2-50 (“[t]here is no statute that expressly authorizes a vocational school district to acquire necessary hardware and software, contract with bulk providers of communication services, and operate a system for access to the Internet. A vocational school district, however, may acquire and operate such a system as part of its statutory functions if the acquisition and operation of the system is part of its curriculum or is otherwise necessary for the performance of its statutory duties”). Thus, the power to operate a water bottling plant is not conferred by statute upon a board of education or “clearly implied and necessary for the execution of the powers expressly granted” to the board. 1964 Op. Att’y Gen. No. 1285 at 2-301.

⁵ Prior opinions of the Attorney General have determined that a board of education’s duty to provide vocational education under R.C. 3313.90 “vests in the board of education broad discretion to carry out this legislative mandate.” 1978 Op. Att’y Gen. No. 78-040 at 2-94; *see* 1999 Op. Att’y Gen. No. 99-007; 1981 Op. Att’y Gen. No. 81-092; 1976 Op. Att’y Gen. No. 76-065; 1971 Op. Att’y Gen. No. 71-068; 1971 Op. Att’y Gen. No. 71-026. However, in exercising this discretion, a board of education may not “go beyond that which is reasonably necessary to fulfill the requirements of the vocational education curriculum.” 1978 Op. Att’y Gen. No. 78-040 at 2-94; *see* 1999 Op. Att’y Gen. No. 99-007; 1981 Op. Att’y Gen. No. 81-092; 1976 Op. Att’y Gen. No. 76-065; 1971 Op. Att’y Gen. No. 71-068; 1971 Op. Att’y Gen. No. 71-026.

With respect to your particular inquiry, the operation of a water bottling plant as a for-profit business by the board of education of this particular school district is not intended to prepare a student for a particular occupation. *See generally* 1971 Op. Att’y Gen. No. 71-068 at 2-229 and 2-230 (vocational education programs are designed to “enable high school students to develop saleable skills in an industry or trade where employment opportunities are unlimited, motivate students to complete their high school training, and develop attitudes necessary in the work-a-day world”). It also seems unlikely that the operation of the plant will provide any hands-on opportunities for a student to learn a marketable skill. Moreover, any vocational training or other educational benefit provided by the operation of the plant would be incidental to its primary purpose—earning a profit. For these reasons, we believe that the operation of a water bottling plant by a board of education as a for-profit business exceeds that which is reasonably necessary to fulfill the requirements of a vocational education curriculum.

Moreover, as the operation of a water bottling plant by a board of education is not “necessary for the general welfare of the schools under [its] jurisdiction,” a board may not expend moneys to operate such a plant. 1922 Op. Att’y Gen. No. 3885, vol. II, p. 1127, at 1128. *See generally* 2003 Op. Att’y Gen. No. 2003-019 at 2-146 (“[t]he authority granted to a board of education under R.C. 3313.37(A) permits the board to expend public funds for purposes that are ‘essential to the proper conduct of the schools under its control’” (quoting 1940 Op. Att’y Gen. No. 1698, vol. I, p. 39 (syllabus, paragraph 3))); 1921 Op. Att’y Gen. No. 2753, vol. II, p. 1191 (syllabus, paragraph 1) (finding authority for a board of education to pay mileage to officers and employees using private automobiles in the performance of their duties when “deemed necessary for the best interests of the schools” under its jurisdiction). It is a well-settled legal principle that “[t]he authority of a board of education to act in financial transactions must be clearly and distinctly granted, and any doubt regarding the authority to expend funds must be resolved against the expenditure.” 2003 Op. Att’y Gen. No. 2003-019 at 2-146; *accord State ex rel. Clarke v. Cook*, 103 Ohio St. 465, 467, 134 N.E. 655 (1921); 1981 Op. Att’y Gen. No. 81-002 at 2-5. A board of education of a local school district, therefore, may not operate a water bottling plant as a for-profit business.

Authority of a Board of Education to Have a Private Entity Operate a Water Bottling Plant as a For-profit Business

Your third question asks whether a board of education of a local school district may enter into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business. A board of education of a local school district may not enter into a contract that exceeds its statutorily created rights. *See Wolf v. Cuyahoga Falls City Sch. Dist. Bd. of Educ.*; *Thaxton v. Medina City Bd. of Educ.*, 21 Ohio St. 3d 56, 57, 488 N.E.2d 136 (1986); *Empire Gas Corp. v. Westerville Bd. of Educ.*, 102 Ohio App. 3d 613, 618-19, 657 N.E.2d 790 (Franklin County 1995). In addition, a board of education must exercise its powers within the limitations set forth in the Ohio Constitution. *See* 1999 Op. Att’y Gen. No. 99-007 at 2-54; 1978 Op. Att’y Gen. No. 78-040 at 2-95.

No statute authorizes a board of education of a local school district to enter into a contract with a private entity to have the entity operate a water bottling plant as a for-profit business. However, R.C. 3313.17, which authorizes a board of education to acquire and hold real property, has been interpreted as authorizing a board of education to lease real property “which it determines is not presently needed for school purposes and which cannot be advantageously sold.” 1992 Op. Att’y Gen. No. 92-016 (syllabus, paragraph 2); *see* 1963 Op. Att’y Gen. No. 622, p. 624, at 627; 1959 Op. Att’y Gen. No. 922, p. 619, at 621-22; 1956 Op. Att’y Gen. No. 7225, p. 738 (syllabus, paragraph 2); 1953 Op. Att’y Gen. No. 2534, p. 158 (syllabus, paragraph 1); 1932 Op. Att’y Gen. No. 4588, vol. II, p. 1006 (syllabus, paragraph 2). As explained in 1992 Op. Att’y Gen. No. 92-016 at 2-55:

Although there are not provisions of the Revised Code that expressly authorize a board of education to lease real property which is not presently needed for school purposes, prior opinions of the Attorney General have inferred such authority.

The basis of these opinions is the authority of the board of education to acquire and hold property. R.C. 3313.17 provides that a board of education is “capable of . . . acquiring, holding, possessing, and disposing of real and personal property.”

Although R.C. 3313.17 does not generally authorize a board of education to acquire land for the purpose of leasing for profit, there are circumstances that justify a board of education in leasing property which it had acquired for school purposes. . . .

Thus, the authority of the board of education to lease property is limited by the duty of the board to preserve the availability of property to which it holds title for school purposes “where a present or probable future need therefor exists or is likely to arise.” *State ex rel. Baciak v. Board of Educ.*, 55 Ohio Law Abs. 185, 189, 88 N.E.2d 808, 810 (Ct. App. Cuyahoga County 1949). Although a board of education may lease real property which it determines is not presently needed for school purposes and which cannot advantageously be sold, the board is required to preserve the availability of the real property for future need. As noted in the discussion of your third question below, the lease must, therefore, provide for termination by the board of education if it is determined that the property is needed for school purposes in the future. (Citations omitted.)

Accordingly, on the basis of 1992 Op. Att’y Gen. No. 92-016, a board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes.

A lease between a board of education and a private entity for the use of real property titled to the board must not, however, violate the lending credit or joint ownership prohibitions of Article VIII, § 4 of the Ohio Constitution. *See* 1999 Op. Att’y Gen. No. 99-007; 1996 Op. Att’y Gen. No. 96-051; 1992 Op. Att’y Gen. No. 92-016; 1978 Op. Att’y Gen. No. 78-040. This constitutional provision mandates that “[t]he credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.”

Article VIII, § 4 of the Ohio Constitution has been construed to apply to agencies or instrumentalities of the state, including boards of education. 2010 Op. Att’y Gen. No. 2010-012 at 2-81 n.3; 1996 Op. Att’y Gen. No. 96-051 at 2-194 and 2-195; 1992 Op. Att’y Gen. No. 92-016 at 2-53 and 2-54; 1978 Op. Att’y Gen. No. 78-040 at 2-95. And, the provision prohibits a board of education from leasing real property to a private entity where the lease arrangement creates a union of public and private property:

Courts have held that Ohio Const. art. VIII, §§ 4 and 6 were aimed at preventing situations in which there is a “business partnership” between a political subdivision and a private party or a “union of public and private capital or credit in any enterprise whatever.” *Walker v. City of Cincinnati*, 21 Ohio St. 14, 54 (1871). Arrangements in which public and private property are intermingled have been found to be prohibited by these constitutional provisions. In contrast, a variety of leases and

other contractual arrangements have been found constitutional on the grounds that they preserve the separate property interests of the governmental and private bodies.

In 1992 Op. Att'y Gen. No. 92-016, my predecessor concluded that the Ohio Constitution permitted a board of education to agree with a private cellular telephone company on a contract under which the school board would lease to the company real property located at its high school football stadium, the company would erect a monopole communications tower and a building to house the company's equipment, and the company would lease to the school board a portion of the tower for the installation of lights and loudspeakers. Under the contract, the company would allow the school district to use a portion of the company's building as a ticket booth for athletic events. The opinion concluded that such an arrangement would be permissible, where the arrangement did not effect a union of private and public property. In that case, the ownership of each item of property was clearly defined and there was no sharing of risks or profits.

In contrast, 1978 Op. Att'y Gen. No. 78-040 concluded that the constitutional prohibition against joint ventures prohibited an arrangement under which an oil and gas company would have constructed a gas station on the property of a joint vocational school district. The proposal was that the gas station be operated by students, with supervision by the vocational staff and periodic consultation with the company's management team, and that the profits be shared between the company and the school district. In that case, the interests of the school board and the private company were not separable, but were joined in a common enterprise. (Citations omitted.)

1996 Op. Att'y Gen. No. 96-051 at 2-195; *accord* 1992 Op. Att'y Gen. No. 92-016 at 2-53 and 2-54; 1978 Op. Att'y Gen. No. 78-040 at 2-95 and 2-96; *see* 1999 Op. Att'y Gen. No. 99-007 at 2-54.

Therefore, in response to your third question, a board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes.⁶

⁶ To avoid the unlawful commingling of public and private property, the board of education may not own the water that is to be bottled at the plant. In other words, if the water to be bottled at the plant is to come from an aquifer located beneath real property owned by the local school district, the board of education of the district must sell it before it may be bottled.

Applicability of a Municipal Ordinance to Real Property Owned by a Board of Education

Your final question asks whether a board of education of a local school district is exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. A municipality is granted the authority to establish and operate public utilities, including a public water system. 1991 Op. Att’y Gen. No. 91-070 at 2-330; 1946 Op. Att’y Gen. No. 1153, p. 602, at 607; *see* Ohio Const. art. XVIII, § 4 (“[a]ny municipality may acquire, construct, own, lease and operate within or without its corporate limits, any public utility the product or service of which is or is to be supplied to the municipality or its inhabitants”); Ohio Const. art. XVIII, § 5 (“[a]ny municipality proceeding to acquire, construct, own, lease or operate a public utility, or to contract with any person or company therefor, shall act by ordinance”); Ohio Const. art. XVIII, § 6 (expressly including the sale of water as a public utility); R.C. Chapter 743 (setting forth provisions of law governing the authority of a municipality to provide a public water system); *see also* Ohio Const. art. XVIII, §§ 3 and 7 (municipal powers of local self-government). This authority includes, among other things, establishing regulations regarding the use and protection of the municipality’s water system. *See* Ohio Const. art. XVIII, § 3; Ohio Const. art. XVIII, § 7; R.C. 743.02; *see also* *City of Mansfield v. Humphreys Mfg. Co.*, 82 Ohio St. 216, 92 N.E. 233 (1910); *Rogers v. City of Cincinnati*, 13 Ohio App. 472 (Hamilton County 1920).

In your particular situation, a municipality has enacted an ordinance that requires the board of education of a local school district to purchase water from the municipality’s water system when the board constructs a new building that will have running water. Information provided to us indicates that the municipal ordinance does not exempt the board of education from this requirement. Consequently, the board of education is required to comply with the municipal ordinance unless state law provides immunity from the municipal ordinance or a court determines otherwise.⁷ *See generally* 1920 Op. Att’y Gen. No. 1756, vol. II, p. 1234, at 1237 (a board of education “may drive a well on its own property and construct a water system for use in its new building if no sanitary or other regulation forbids or may forbid should the water supply become bad or unfit for use”).

⁷ In Ohio, a board of education of a local school district must make a reasonable attempt to comply with an applicable municipal ordinance unless the board possesses a direct statutory grant of immunity. *See* 2002 Op. Att’y Gen. No. 2002-007; 1985 Op. Att’y Gen. No. 85-098; *see also* *Taylor v. Ohio Dep’t of Rehab. and Corr.*, 43 Ohio App. 3d 205, 540 N.E.2d 310 (Franklin County 1988); 2001 Op. Att’y Gen. No. 2001-002; 1991 Op. Att’y Gen. No. 91-070; 1986 Op. Att’y Gen. No. 86-026. If, after making a reasonable effort, the board of education determines that compliance with the ordinance would frustrate or significantly hinder its use of the property for school purposes, then the board may have a court weigh and balance the interest of the school district and municipality to determine the extent to which the board of education is required to comply with the ordinance. *See* 1985 Op. Att’y Gen. No. 85-098; *see also* *Taylor v. Ohio Dep’t of Rehab. and Corr.*; 2001 Op. Att’y Gen. No. 2001-002; 1991 Op. Att’y Gen. No. 91-070; 1986 Op. Att’y Gen. No. 86-026.

No provision in the Revised Code exempts a board of education of a local school district from complying with a municipal ordinance requiring the board to purchase water from the municipality's water system when the board constructs a new building that will have running water. R.C. 743.09 does, however, provide certain instances in which a municipality must provide free water service:⁸

No charge shall be made by a municipal corporation or the water-works department thereof for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, for the cleaning of market houses, or the use of any public building belonging to the municipal corporation.

In any case in which a school district includes territory not within the boundaries of the municipal corporation, a proportionate charge for water service shall be made in the ratio which the tax valuation of the property outside the municipal corporation bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the water-works department of the municipal corporation governing, controlling, and regulating the use of water consumed.

While R.C. 743.09 does not grant a board of education of a local school district statutory immunity from the operation of a municipal ordinance requiring the board to purchase water from the municipality's water system when the board constructs a new building that will have running water, it may affect the amount the board has to pay for water furnished by the municipality.⁹ *See generally*

⁸ R.C. 743.27 states that “[t]he legislative authority of any municipal corporation owning and operating municipal water ... plants, may provide by ordinance that the products of such plants, when used for municipal or public purposes, shall be furnished free of charge.” *See generally* 1946 Op. Att’y Gen. No. 1153, p. 602 (syllabus, paragraph 2) (“[a] municipality owning a system of waterworks ... may furnish free water ... to a public school district located wholly or partly within the municipal limits”).

⁹ On page 435 of the 1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), it was concluded that G.C. 3963 (now R.C. 743.09) requires a municipality that provides water service to “furnish water free of charge for the use of public school buildings.” At the time this opinion was issued, G.C. 3963, as set forth in the 1910 General Code, prohibited a municipality from charging “for supplying water for ... the use of public school buildings.” *See* S.B. 2, 78th Gen. A. (1910) (approved Feb. 15, 1910 and published in the General Code of the State of Ohio, Commissioners of Public Printing of Ohio 1910) (setting forth the statutes of the General Code). *See generally* 1910 Ohio Laws 39 (H.B. 348, approved Mar. 29, 1910) (the statutes of Ohio shall be published by the state and officially designated as “The General Code”); 1906 Ohio Laws 221 (S.B. 31, filed Apr. 16, 1906) (title) (“[t]o provide for the revision and consolidation of the statute laws of Ohio”).

When the language of the General Code was recodified as the Revised Code, the language prohibiting a municipality from charging for supplying water for the use of public school buildings was not included in R.C. 743.09 or elsewhere in the Revised Code. *See* 1953-1954 Ohio Laws 7 (Am.

1946 Op. Att’y Gen. No. 1153, p. 602 (syllabus, paragraph 1) (“[n]otwithstanding the provisions of [G.C. 3963 (now R.C. 743.09)], there is no mandatory duty resting upon municipalities to furnish free water ... to public school buildings”);¹⁰ 1920 Op. Att’y Gen. No. 1756, vol. II, p. 1234, at 1240 (a “board of education as a consumer” of water supplied by a municipality “is required to observe the regulations provided in the last part of [G.C. 3963 (now R.C. 743.09)]”). As no statute provides a board of education of a local school district immunity from a municipal ordinance requiring the board to purchase water from the municipality when the board constructs a new building that will have running water, the board is not exempt from complying with the ordinance. Therefore, a board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water.

Conclusions

On the basis of the foregoing, it is my opinion, and you are hereby advised as follows:

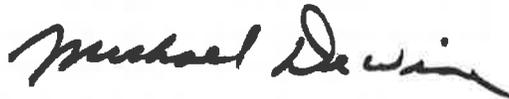
1. R.C. 3313.17 authorizes a board of education of a local school district to sell water from an aquifer located beneath real property owned by the district.
2. A board of education of a local school district may not operate a water bottling plant as a for-profit business.
3. A board of education of a local school district has the authority to lease real property, which is not presently needed for school purposes and which cannot be advantageously sold, for the operation of a water bottling plant as a for-profit business, provided (1) the lease arrangement does not create a union of private and public property and (2) the lease includes a provision permitting the board of education to terminate the lease upon a determination by the board that the real property is needed for school purposes. (1992 Op. Att’y Gen. No. 92-016, approved and followed.)

H.B. 1, eff. Oct. 1, 1953) (to recodify the entire General Code as the Revised Code). In light of this legislative change we overrule 1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910).

¹⁰ When 1946 Op. Att’y Gen. No. 1153, p. 602 was issued, R.C. 743.09’s predecessor, G.C. 3963, prohibited a municipality from charging for supplying water “for the use of the public school buildings in such [municipality].” 1919 Ohio Laws, Part II, 1160 (filed Feb. 11, 1920); *see also City of Cincinnati v. Bd. of Educ. of the City of Cincinnati*, 30 Ohio N.P. (n.s.) 595 (C.P. Hamilton County 1933) (a city director of public service is prohibited from assessing and collecting water rents from boards of education). As stated in note 9, *supra*, the language prohibiting a municipality from charging for supplying water for the use of public school buildings was not included in R.C. 743.09 or elsewhere in the Revised Code when the General Code was recodified as the Revised Code.

4. A board of education of a local school district is not exempt from a municipal ordinance that requires the board to purchase water from the municipality when the board constructs a new building that will have running water. (1910-1911 Annual Report of the Attorney General, p. 433 (May 7, 1910), overruled.)

Very respectfully yours,

A handwritten signature in black ink that reads "Michael Dewine". The signature is written in a cursive style with a prominent flourish at the end.

MICHAEL DEWINE
Ohio Attorney General

74 N.E.2d 376
Court of Appeals of Ohio, Eighth
District, Cuyahoga County.

DELMOND
v.
BOARD INVESTORS CO. et al.

May 7, 1947.

West Headnotes (7)

[1] **Evidence**

↔ Matters Relating to Government and Its Administration in General

It is a matter of common knowledge that the situation with respect to tax sales made after forfeiture of land to state has been causing great concern.

Cases that cite this headnote

[2] **Taxation**

↔ Sale or Other Disposition of Lands Forfeited

Where land was forfeited for nonpayment of taxes in June 1945, and county auditor proceeded to advertise and sell forfeited land, statutory provisions as to notice and sale were sufficiently complied with, even though a 15th day of January did not intervene between time of forfeiture and sale. Gen.Code, §§ 5750 to 5752.

Cases that cite this headnote

[3] **Taxation**

↔ Sale or Other Disposition of Lands Forfeited

Statutory provision as to period of time within which county auditor is directed to list forfeited lands and provision directing advertisement for sale in absence of payment by January 15 of each year are directory only. Gen.Code, §§ 5750, 5751.

Cases that cite this headnote

[4] **Courts**

↔ Previous Decisions as Controlling or as Precedents

Courts are not bound by the opinions of the Attorney General, but, in absence of judicial determination or other authority, a county administrative officer such as county auditor may properly consider opinion of Attorney General as respectable authority to follow.

Cases that cite this headnote

[5] **Taxation**

↔ Sale of Land for Nonpayment of Tax

Purpose of statute providing for sale of delinquent land is to expedite collection of delinquent taxes and assessments and to provide due process of law whereby delinquent taxpayer, who has not redeemed or does not intend to redeem, loses his title in lands to state. Gen.Code, §§ 5704 to 5773.

Cases that cite this headnote

[6] **Taxation**

↔ Sale or Other Disposition of Lands Forfeited

Where city's cross-petition asserting lien of special assessments on property which plaintiff had purchased from county auditor at forfeited land sale was not filed until more than one year after filing of plaintiff's deeds for record, omission or irregularity by county auditor in sale could not be successfully attacked by city. Gen.Code, § 5762-1.

Cases that cite this headnote

[7] **Taxation**

↔ Record of Deed and Possession of Land

Taxation

↔ Sale or Other Disposition of Lands Forfeited

Statute providing that no action shall be commenced nor shall any defense be set up to question validity of title of tax sale purchaser unless action be commenced or defense set up within one year after deed to such property is filed for record is a statute of limitation to make auditor's deed conclusive in respect to any questions of irregularity, informality or omission in proceedings covering sale of land under foreclosure and forfeiture statutes. Gen.Code, § 5762-1.

Cases that cite this headnote

Action to quiet title by Joseph Delmond against the Board Investors Company, the City of South Euclid, and others, wherein the last-named defendant filed a cross-petition asserting the lien of special assessments. Judgment for plaintiff, and defendants appeal.-[Editorial Statement.]

Decree for plaintiff, cross-petition dismissed, and case certified to the Supreme Court.

Judgment affirmed in 74 N.E.2d 373.

Attorneys and Law Firms

***376 **294** E. A. Plazcr, of Cleveland, for plaintiff appellee.

R. A. Baskin, Frank T. Cullitan, Co. Pros., and F. W. Frey, all of Cleveland, for defendants appellants.

Opinion

HURD, Presiding Judge.

This is an appeal on questions of law and fact by the defendant appellant, The City of South Euclid, from a judgment of the Court of Common Pleas of Cuyahoga County dismissing the answer and cross-petition of said defendant appellant, and quieting title of the plaintiff against all claims of the defendants including the special assessment liens of said City.

The action was commenced July 25, 1946, and was instituted by the plaintiff to quiet title as to any and all claims of the defendants upon certain real estate purchased by the plaintiff

****295** from the Auditor of Cuyahoga County at a forfeited land sale.

By an amended petition the defendant, City of South Euclid, was made a new ***377** party defendant and by its answer, which is also in the nature of a cross-petition, asserted the lien of special assessments on said property, claiming said sale to be void.

The defendant, The Board Investors Company, the former property owner whose lands were sold at the forfeited land sale, was in default of answer and appearances and at no time in these proceedings has made any claim in respect of any interest in the forfeited lands.

The primary question to be decided is whether or not the said sale conducted by the County Auditor was valid.

The Common Pleas Court upon hearing found in substance by journal entry filed January 20, 1947, that all the proceedings resulting in the forfeiture of said land to the State of Ohio on June 13, 1945, were in all respects in compliance with the statutes and particularly in compliance with the provisions of Sections 5705, 5718, 5718-1, 5718-1a, 5718-1b, 5718-1c, 5718-4, General Code, and found further that the provisions of the General Code relating to the sale of forfeited lands are *directory* and *not* mandatory and that all of the provisions of the General Code relating to the sale of forfeited lands had been substantially complied with by the Auditor, whereby the plaintiff had become vested of a good and indefeasible title in fee simple in and to the lands described and that the defendant, The Board of Investors Company, and the defendant, City of South Euclid, by virtue of said forfeiture sale aforesaid had become divested of any interest in said lands and that the defendant, City of South Euclid, has no valid claim against the land for past due taxes and assessments or for future assessments, reassessed against said lands on January 16, 1940, and that the assessments for street lighting are still a valid claim charged against said lots from and after July 27, 1945.

During the course of the argument it was stated in open court by counsel that at the sale described in the pleadings the Auditor sold 3050 parcels of land covered by judgment of forfeiture previously made in the Common Pleas Court in Cuyahoga County. The total returns from said sales amounted to \$1,391,490 and costs of advertising and other expenses amounted to \$9148. The record does not show the number of years of delinquency, except that all parties had agreed that the delinquencies had existed for many years.

The case was tried in this court upon stipulations of facts of which the following are particularly pertinent:

****296** '4. That the defendant, the City of South Euclid, prior to the year 1940, levied against the property described in the petition special assessments to finance the cost of street, sewer district and other improvements, and bonds were issued in anticipation of the collection of said assessments; that said special assessments were made payable in annual installments and were certified to the County Auditor for collection on the tax duplicate as other taxes are collected; that certain installments of said assessments were not paid; that on January 16, 1940, under and pursuant to Sections 2293-5p to 2293-5u, General Code, inclusive, the City of South Euclid reassessed the unpaid portion of all the special assessments theretofore levied by it against the property described in the petition; that said reassessments were made payable in twenty-eight annual installments and were certified to the County Auditor for collection on the tax duplicate as other taxes are collected, beginning with the year 1939 tax duplicate.'

'5. That the property described in the petition which comprises various sublots, became delinquent because of the non-payment of taxes, assessments and reassessments which had been levied against it, and was forfeited to the State of Ohio on June 13, 1945 after proceedings were had by the Common Pleas Court under Sections 5705, 5718-1, 5718-1a, 5718-1b, and 5718-1c, 5718-4 of the General Code, and also after said property had been omitted from foreclosure proceedings by the County Board of Revision.'

'6. That after the forfeiture of the property described in the petition on June 13, 1945, the County Auditor caused to be published in English in 'The South Euclid Citizen' and the 'Berea News' two newspapers of general circulation in the county, on the 15th and 22nd days of June, 1945, ***378** a notice that said described property and other forfeited lands would be sold at public auction if the due and unpaid taxes, assessments, penalties, interest and costs charged against said forfeited property were not paid before the date fixed in said notice for the tax sale of said forfeited property; that a copy of said notice of sale is hereto attached, marked 'Exhibit A' and made a part hereof;'

'7. That the taxes, assessments, penalties, interests and costs charged against the property described in the petition not having been paid, the said described property was offered for sale to the public at public auction by the County Auditor, pursuant to the aforesaid tax sale notice * * * and was

sold to the plaintiff on the 27th day of July, 1945, by the County Auditor; that the plaintiff paid to the County Auditor the ****297** full amount of his bid, in cash, plus \$1.25 for each parcel purchased and received from said county auditor the required statutory certificates for each parcel so purchased; that deeds for the sublots comprising the said described property were subsequently issued and delivered to the plaintiff by the county auditor; and that said deeds were recorded on September 6, 1945 in the Deed Records of Cuyahoga County Ohio;'

'8. That the County Auditor did not between the first Monday of November, 1945 and the first day of January, 1946, for the purpose of public sale, make any list of the forfeited lands and lots in the county which included the forfeited property described in the petition, nor did he make any list whatsoever of the forfeited lots and lands of the county between said dates for the purpose of public sale;'

'9. That the county auditor, having sold the property described in the petition at the tax sale as aforesaid, did not subsequent to January 15, 1946, cause notice of the tax sale of said property to be advertised once a week for two consecutive weeks prior to the first day of July, 1946, in two newspapers as provided in Section 5704, G.C., nor did he sell the said described property to the plaintiff or other persons subsequent to January 15, 1946.'

The parties are in accord on the proposition that the forfeiture of the lands described in plaintiff's petition was, in all respects, valid by reason of proper proceedings in common pleas court, all parties agreeing that there was strict compliance with all statutes relating to forfeiture.

The questions before the court arise under Sections 5750, 5751, 5752, G.C., and relate solely to whether or not the advertisement and sale of the lands followed the procedure outlined in these respective sections. If it be held that the statutory procedure was not followed then a further question arises as to whether the provisions of these three sections are mandatory and gives rise to a jurisdictional question of whether or not they are merely directory.

Another question is presented by reason of the provisions of Sec. 5762-1, G.C., which in substance provides that in all cases wherein real property has been sold under and by virtue of the provisions of Chapter 14 or 15, G.C., Secs. 5704 to 5773, no action shall be commenced nor shall any defense be set up for any irregularity, informality or omission in the proceedings relative to foreclosure or forfeiture unless such action be commenced or set up within one year after the

deed is filed for record. This issue was raised because in the instant case the answer **298 and cross-petition of the City of South Euclid was filed more than one year after the filing of plaintiff's deeds for record.

The City of South Euclid defends against plaintiff's suit to quiet title against certain special assessments levied by the City, on the ground that the Auditor's sale of this forfeited land was void and therefore the liens of such special assessments were unaffected by such attempted sale.

The City of South Euclid contends that the sale was void for the reason that it was held before the time provided by law. It is claimed that the statute intends and provides that a 15th day of January must intervene between the time of the forfeiture of such land and the sale thereof. It is urged that the law intends that the owner shall have the intervening period between forfeiture and the next 15th day of January *379 in which to redeem his land and that this sale invaded that right. Specifically, it is maintained that land having been forfeited in June, 1945, no sale thereof could be made until prior to July 1, 1946, after due advertisement made subsequent to January 15, 1946.

It is the contention of the county prosecutor representing the county officers who are defendants, that the provisions of Sec. 5751, G.C., do not concern the owner's right of redemption and that it was not intended by the legislature to have the effect of extending in point of time his right to redeem, but that because of the changed procedure by the Act of 1943 amending the applicable sections, the legislature provided for an annual sale to be held between January 15, and July 1st of each year of any forfeited lands, whether they be such as appear on the Auditor's list thereof prepared in accordance with Sec. 5750, G.C., or whether they be such as were judicially forfeited after the preparation of such list.

It is also the contention of plaintiffs that the statutes in question, after forfeiture, are directory only, particularly as to time and that in any event the action of the City of South Euclid is barred by the statute of limitations of one year provided in Sec. 5762-1, G.C.

[1] It is a matter of common knowledge that the situation with respect to tax sales made after forfeiture of the land to the state has been causing great concern. However, generally speaking, tax sales have been upheld by the courts.

The holdings of the supreme court of Ohio, down through the years, have been generally to the effect that an auditor's deed, either under delinquent tax sales procedure, or under forfeited

land sales procedure, ipso facto and by administrative process within the power of taxing authorities operated **299 upon the land only and not by way of sale of the interests of the claimants, cutting off all possible interest and claims to the land sold, and originating a new and independent title, valid in the receiver of the deed against all possible claims to or in the land. See *Gwynne v. Niswanger*, 20 Ohio 556; *Jones v. Devore*, 8 Ohio St. 430; *State ex rel. v. Godfrey*, 62 Ohio St. 18, 56 N.E. 582; *Kahle v. Nisley*, 74 Ohio St. 328, 78 N.E. 526; *Cech v. Schultz*, 132 Ohio St. 350, 7 N.E.2d 557. The Supreme Court of the United States has adopted the same logic and conclusions in the case of *Hefner v. Northwestern Life Ins. Co.*, 123 U.S. 747, 8 S.Ct. 337, 31 L.Ed. 309. See also, *State ex rel. City of South Euclid v. Zangerle*, 145 Ohio St. 433, 62 N.E.2d 160, decided June 25, 1945; *Dubin, Appellant, v. Greenwood et al.*, 139 Ohio St. 546, 547, 41 N.E.2d 240, approving *Kahle v. Nisley*, 74 Ohio St. 328, 78 N.E. 526, and *Cech v. Schultz*, 132 Ohio St. 353, 7 N.E.2d 557; *Peoples Loan, etc., Co. v. Bingham Land Co. et al.*, Com.Pl., 6 Ohio Supp. 114. See also 'The Title Problems of Tax Sales' by John Smith of the Cleveland Bar, 19 O.O. 537.

After a careful examination of the sections of the statutes applicable in this case, we are of the opinion that the difficulties of construction and interpretation arise by reason of a failure to consider the history of the statutes and particularly the fact that the procedure for the forfeiture and sale of delinquent lands was amended August 11, 1943, in such a manner as to take from the county auditor the responsibility of declaring forfeited lands. After the enactment of the Act of 1943, the proceedings of the sale of delinquent lands remain the same up to and including that portion of the provision which requires the Board of Revision to prepare a list of lands to be omitted from foreclosure. From that point on, the proceedings were entirely changed. Instead of providing that forfeiture should occur upon publication by the auditor, it is provided that upon preparation of such list of lands to be omitted from foreclosure the prosecuting attorney shall file an application on behalf of the Board of Revision with the Common Pleas Court for the forfeiture of such lands setting forth in such application a statement of all the previous procedure with reference thereto. See Sec. 5718, G.C.

The court is then required to fix a date for the hearing of objections to the action of the Board of Revision, including lands in such omitted list and is required to order its clerk to give notice by publication of the time and place of hearing of such objections, *380 which notice is to include a list of such omitted lands and the names of the owners thereof, as appearing on the auditor's duplicate together with the amount

of taxes, etc. See Sec. 5718-1b, G.C. A hearing is then had at such time **300 and objections to the inclusion of such lands in the forfeiture proceedings are required to be heard and upon the court making a finding that the proceedings were regular it confirms the action of the Board of Revision and declares such lands forfeited to the State of Ohio.

It is provided further that witnesses may be called, testimony introduced, a hearing had and adjourned from day to day and that any person against whom a decision is rendered shall have the same right of appeal as in other civil actions. See Sec. 5718-1c, G.C.

The changed proceedings provide that upon the court ordering such lands forfeited to the state, a list of such lands 'shall be certified by the clerk of courts to the county auditor.' See Sec. 5718-1c, G.C. Thus the County Auditor would have in his hands the means of carrying out the remaining statutory provisions requiring him to advertise and sell such lands.

It should also be noted that the old section of the Code provided a rigid schedule fixing the time for the doing of each step in the course of forfeiture and sale. Because the County Auditor, under the old section, an administrative officer, was then clothed with the power of declaring lands forfeited for non-payment of taxes and assessments, it was essential that such rigid schedule fixing the time of doing each step be adhered to in all respects. It should also be noted that old Sec. 5750, G.C., provided a different procedure than the existing Sec. 5750, G.C.

New Section 5750 omits entirely the provisions that the Auditor of State 'annually, shall enter in the book provided for in the next preceding section, all lands forfeited to the state for non-payment of taxes' and also omits the provision that 'the several county auditors, annually, between the first Monday of November and the first day of January shall make a list of all forfeited lands * * * and forward it to the auditor of state, who, after comparing it with the record of forfeited lands in his office, and correcting any errors or omissions thereon, shall return it to the several county auditors.' It merely provides in substance that the several county auditors 'annually between the first Monday of November and the first day of January, shall make a list of all forfeited lands and lots in the county * * *.'

It is only necessary to compare old Section 5751 with new Section 5751 and the intention of the legislature becomes clear. The old Section 5751 in describing the duties of the county auditor relative to the publication and sale of forfeited lands, states:

****301** 'The auditor of each county on receiving from the auditor of state such list of lands within his county, if the taxes, assessments, penalties, and interest due thereon *have not been paid on or before the fifteenth day of January next ensuing, shall cause notice thereof* to be advertised once a week for two consecutive weeks prior to the second Monday of March in two newspapers in the English language of opposite politics and of general circulation printed in his county. Such notice shall state * * *.'

It will be noted that according to the provisions of new Sec. 5751, G.C., this advertising is *not required* to occur after the 15th day of January '*next ensuing,*' that is to say, the 15th of January of the year following the forfeiture. It could occur in the period fixed by the statute in any year. It is quite possible that the forfeiture proceedings begun in the common pleas court followed by a hearing and decree therein, with a possible appeal to the appellate courts, might not be terminated until after the second Monday of March (the date set in the old statute) so that the statute allowing for this contingency makes it possible that if the forfeiture proceedings in the courts are finally completed after the 15th day of January in any year, the auditor can proceed to advertise and sell such lands provided there is sufficient time to give the required two weeks notice of such sale before the first day of July following.

An examination of the applicable provisions of the Code as amended, and the ***381** record in this case, discloses that the sale of the forfeited lands was conducted precisely and exactly in the manner provided for in new Sec. 5751 and new Sec. 5752, G.C.

In the fall of 1944 the Board of Revision prepared the so-called 'omitted list' and thereupon certified it to the county auditor who caused the prosecuting attorney to file an application to the court of common pleas for the forfeiture of such lands, which was order of the court and numerous hearings was given by publication upon the order of the court and numerous hearings were had upon objections so that proceedings done on April 3, 1945. Thereupon due notice declared until June, 1945. Thereupon the auditor proceeded to advertise the sale of the lands. Such advertisement of sale was held at the time provided by Section 5751, G.C., that is to say on a day prior to July 1, upon two weeks notice given subsequent to January 15th.

In the instant case the taxes, assessments, penalties and interest of the forfeited lands had 'not been paid on or before the fifteenth day of January of each year'; in fact had not been paid before the 'fifteenth day of January' of each year

for many previous **302 years, which resulted in their forfeiture to the state by judicial proceedings in the common pleas court according to law.

[2] Upon a careful perusal of the record and comparison with Sec. 5751 and Sec. 5752, G.C., as amended in August, 1943, it is our conclusion that there was full compliance with the provisions thereof.

The original sections 5750 and 5751, G.C., when read in connection with the forfeiture process by an administrative officer alone, meant one thing. These same sections as amended providing for forfeiture by judicial decree have an entirely different connotation. By the completion of judicial proceedings, title vested in the state and no longer resided in the original owner who had adequate and ample notice and every opportunity to protect his interest at every step in the proceedings prior to forfeiture. It is not the purpose of Sections 5750 and 5751, G.C., as amended, to place a limitation on the authority of the county auditor to sell forfeited lands in order to give the former owner additional time to redeem.

The language of the old sections is generally so similar to the language of the new sections that ambiguity is a natural result. However, when this language is analyzed in the light of the new procedure, the ambiguity is resolved. The list required by the old section 5750 served a dual purpose, namely, a useful and necessary public record prepared annually showing all forfeited lands in the county and a list of lands to be sold by the auditor *after the 15th day of January next* ensuing. The list prepared in accordance with the new section 5750 takes the place of such list but inasmuch as the requirement of forwarding to the state auditor for checking and returning the same by him was omitted, it must have been intended by the legislature to serve only one of the purposes of the former list, namely, an annual public record of all forfeited lands in the county. The provision that the list returned by the auditor of state shall be the list of lands to be sold by the county auditor was stricken from new section 5750 and section 5751.

[3] While it is our opinion that the provisions of section 5750 and section 5751 as amended were complied with, it is also our view that the common pleas court was correct in holding that these provisions are directory only.

The county auditor did not act entirely without responsible opinion in this matter, for in 1944 Opinions of the Attorney General of Ohio, Opinion No. 6988 at page 347, we find the following:

'I have no hesitancy in applying that conclusion (it is not necessary to wait until the following year to advertise and conduct **303 such sale) to the present situation. In fact it is more obvious as the law now stands than it was then. There is nothing left of section 5750 except the provision that the auditor shall, between the dates mentioned, make a list of all forfeited lands in the county, and sell the same pursuant to the provisions of this chapter. As a matter of fact, the previous steps required would seem to leave little for the auditor to do at this time except to proceed *382 with the sale. There could be no invasion of any rights of delinquent property owners inasmuch as they have already had repeated notices of the delinquency and the proceedings leading to forfeiture of these lands. Accordingly, it is my opinion that the provision of Sec. 5750 is only directory as to time.

'Therefore * * * it is my opinion that when delinquent lands have been omitted from foreclosure by action of the board of revision * * * and the common pleas court has confirmed such action and ordered such delinquent lands forfeited * * * the county auditor may at any time thereafter, up to the first day of July next following, upon giving the published notice required by Sec. 5751 General Code, proceed to sell such forfeited lands.'

[4] While the courts are not bound by the opinions of the attorney general, in the absence of judicial determination or other authority, a county administrative officer such as the county auditor, may properly consider the opinion of the attorney general as respectable authority to follow. We think this is particularly true when the opinion of the attorney general is as persuasive in reason and logic as this opinion appears to be.

On the question of provisions in statutes as to time, 50 American Jurisprudence page 46, Sec. 23, states:

'In many cases, statutory provisions as to the precise time when a thing is to be done, are not regarded as of the essence, but are regarded as directory merely. This rule applies to statutes which direct the doing of a thing within a certain time without any negative words restraining the doing of it afterwards. Thus, where a statute prescribes a time within which a public officer is to perform official acts affecting the rights of others, the general rule is that it is directory as to time, unless from the nature of the act the designation of time must be considered a limitation of the power of the officer.'

[5] According to many authorities, the question of whether a statute is mandatory or directory is regarded as depending

****304** largely upon the purpose of the statute. The purpose of Chapters 14 and 15, Sections 5704 to 5773 inclusive, G.C., undoubtedly is to expedite the collection of delinquent taxes and assessments for without the payment of such taxes, neither the state nor its political subdivisions could long exist. The further purpose of these chapters is to provide due process of law whereby the delinquent taxpayer who has not redeemed or does not intend to redeem, forfeits his title in the lands to the State. Once the forfeiture is an accomplished fact and title has vested in the State, the State is charged only with the duty to sell to the highest bidder, the lands which the former owner permitted to become burdened with taxes and assessments in excess of their value.

In 51 American Jurisprudence page 913, is the following:

‘It is to be noted that the attitude of the courts and legislatures toward tax sales and the necessity of strict compliance with all statutory provisions governing such sales, has changed considerably of recent years. Under the early common law every presumption was against the validity of a tax sale, and it was necessary for one claiming under such a sale to prove to the uttermost detail a compliance with the provisions of the statute. The effect of this was to make tax titles difficult to establish and as a result the state was seriously hampered in the collection of the taxes. Many states have, therefore, passed statutes relaxing the strict requirements of the common law in regard to proof of the validity of tax sales, and the modern tendency of the courts is to regard many provisions theretofore considered to be jurisdictional as merely directory. The only necessary limitations in the absence of specific constitutional provisions is that those in like circumstances shall bear like burdens and that a reasonable opportunity shall be given to the citizen to be heard at every step, imposing the tax burden upon him or his property. The modern tendency seems to apply to the general rule of evidence that a public officer is presumed to do his duty in regard to the details in tax proceedings in the same manner as to any other public act.’

There are other authorities to the same effect. 59 Corpus Juris, under the heading ***383** of ‘Statutes,’ at page 1072, § 631, is as follows:

‘There is no universal rule or absolute test by which directory provisions in a statute may in all circumstances be distinguished from those which are mandatory, but in the determination ****305** of this question as of every other question of statutory construction, the prime object is to

ascertain the legislative intent from the consideration of the entire statute, its nature, its objects and the consequences which would result from construing it one way or the other, or from such statutes in connection with other related statutes and the determination does not depend on the form of the statute.’

32 Ohio Jurisprudence, under heading of ‘Public Officers,’ page 938, Sec. 76, reads:

‘* * * and therefore the rule has been laid down that when no rights will be impaired, statutory provisions containing no negative words or implications concerning the time and manner in which public officials shall perform designated acts are directory. Also statutes which relate to the manner and time in which power and jurisdiction vested in a public officer is to be exercised and not the limitation of the power or jurisdiction itself, may be construed to be directory unless accompanied by negative words importing that the act required shall not be performed in any other manner or time than that designated.’ (Citing numerous cases.)

See also: Schick v. Cincinnati, 116 Ohio St. 16, 155 N.E. 555; State ex rel. Smith v. Barnell, 109 Ohio St. 246, 142 N.E. 611; Richter v. Anderson, 56 Ohio App. 291, 385, 10 N.E.2d 789; State ex rel. v. Board of Education, 127 Ohio St. 336, 188 N.E. 566; 37 Ohio Jurisprudence 330, Sec. 33; Ewing, Treas., v. Rheinfrank et al., Com.Pl., 3 Ohio Supp. 306.

We have another consideration which we believe is conclusive of the issue in this case and in this respect the instant case can be distinguished from the case recently decided by the Court of Appeals of Hamilton County, entitled Bauman v. Guckenberger, Auditor, 72 N.E.2d 494.

[6] The answer of the City of South Euclid being in the nature of a cross-petition praying for affirmative relief was filed in the common pleas court more than one year after the filing of plaintiff’s deeds for record. It is therefore our opinion that Sec. 5762-1, G.C., is decisive of the question herein presented. This section is as follows:

‘*Action on validity of title.* In all cases wherein real property in this state is or has been sold under and by virtue of the provisions of Chapter 14 or 15 (G.C. §§ 5704 to 5773) of this title, *no action shall be commenced nor shall any defense be set up to question the validity of the title* of the purchasers at such sale *for any irregularity, informality or omission* in the proceedings relative to the foreclosure or forfeiture unless such action be commenced or defense ****306** set up within one year after the deed to such property is filed for record

or one year after the effective date of this act, whichever is longer.' (Emphasis ours.)

[7] This is a statute of limitations to make the auditor's deed conclusive in respect to any questions of irregularity, informality or omission in proceedings covering the sale of lands under the foreclosure and forfeiture laws of Ohio. The Attorney General's Opinion No. 7118 (1944, A.G.O.) is, we believe, very sound, as follows:

'This is a statute of limitations, the purpose of which is to put at rest questions of irregularity, informality or omission in proceedings covering the sale of lands under the foreclosure and forfeiture laws of Ohio. Over a long period of time, much doubt has been felt and expressed concerning the validity of titles passed by and through these sales. Through House Bill 260 (120 O.L.) the legislature made certain well justified changes in this field of law, with special emphasis on land forfeiture, and its sale as forfeited land and as part of this enactment sought to repose such sales of former times.'

The following from 51 American Jurisprudence page 952, Sec. 1096, under heading of 'Taxation,' is in point:

'The legislature may make a tax deed conclusive evidence of the regularity of proceedings rendered up to the execution of the deed in respect to matters not essential to the taxing power and which are *384 not jurisdictional but merely directory, and it may, by way of a statute of limitations, make a tax deed at least when it is not void on its face, conclusive evidence of the legality of the proceedings after the lapse of a certain period of time.'

Applying the principle of the statute to the instant case, it seems to us that the omission or irregularity by the county auditor complained of herein by the City of South Euclid, if it is an irregularity or omission, cannot be attacked successfully by an action commenced more than one year after the deed to such property is filed for record. We think the obvious purpose of this statute of limitations is to bar claims **307 such as are here presented. Consequently the action brought by way of cross-petition by the City of South Euclid is barred and all other claims of other defendants are likewise barred for the same reason.

This opinion would not be complete without some further reference to the opinion of the Court of Appeals of Hamilton County, Ohio, in the case of Bauman v. Guckenberger, Auditor, supra. In that case the court was considering an appeal upon questions of law from the common pleas court of Hamilton County, wherein an action was instituted to obtain a declaratory judgment upon the status of certain real estate sold by the auditor of Hamilton County as forfeited land. A deed had not been delivered in that case. In fact the purpose of the petition was to obtain a declaratory judgment upon the status of the real estate and as to whether or not the auditor, under the circumstances, could deliver a deed conveying good title. The court there did not have a situation such as is here presented where the statute of limitations, Sec. 5762-1, G.C., is invoked as a defense, and which we hold is decisive of the issues herein involved. However, the court there held that the failure of the auditor to comply with the provisions of Sec. 5750, G.C., to make a list was fatal to the validity of the sale. As will be noted the view expressed by this court in this respect is contrary to the decision of the Court of Appeals of Hamilton County. It is for this reason alone that this court has certified the case to the Supreme Court on the ground of conflict.

Holding the views above set forth, the entry in this case is as follows:

'Decree for plaintiff quieting title as prayed for in plaintiff's petition. Relief prayed for by defendant appellant, City of South Euclid, denied and cross-petition dismissed at defendant's costs. Order See Journal. Exceptions.'

This case is certified to the Supreme Court on the ground of conflict with the decision of the Court of Appeals of Hamilton County in case No. 6758 on the docket of said court, entitled, Oscar E. Baumann, plaintiff appellant, vs George Guckenberger, Auditor of Hamilton County, defendant appellee, decided February 17, 1947.'

MORGAN and SKEEL, JJ., concur.

Parallel Citations

48 Ohio Law Abs. 293, 35 O.O. 419



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May 1, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Board of Tax Appeals of Ohio
30 East Broad Street, 24th Floor
State Office Tower
Columbus, Ohio 43266-0422



Re: *Board of Education of the Talawanda City School District
v. Ohio Department of Taxation, et al.
ODT Case. No. SE 0445*

Dear Sir/Madam:

Enclosed please find an original and two (2) copies of a Notice of Appellant, Board of Education of the Talawanda City School District in the above-captioned matter. Please file this in accordance with your normal procedures and return a file-stamped copy to my office in the enclosed, self-addressed stamped envelope.

I appreciate your assistance with this matter. If you have any questions, please do not hesitate to contact me at 513-421-2540.

Very truly yours,

ENNIS, ROBERTS & FISCHER

Gary T. Stedronsky/bab
Gary T. Stedronsky

GTS:bab
Enclosures
Cc: Joseph W. Testa, Tax Commissioner (w/encl.)
Mike Davis, Treasurer (w/encl.)

**BOARD OF TAX APPEALS
STATE OF OHIO**

BOARD OF EDUCATION OF THE TALAWANDA CITY SCHOOL DISTRICT	:	CASE NO. _____
	:	OHIO DEPARTMENT OF TAXATION CASE NO. SE 0445
Appellant,	:	
vs.	:	HEARING EXAMINER: _____
OHIO DEPARTMENT OF TAXATION	:	
and	:	
JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO	:	
Appellees.	:	

**NOTICE OF APPEAL OF APPELLANT,
BOARD OF EDUCATION OF THE TALAWANDA CITY SCHOOL DISTRICT**

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COUNSEL FOR APPELLANT,
The Board of Education of the
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Tax Commissioner of Ohio
30 East Broad Street
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TAX COMMISSIONER OF OHIO

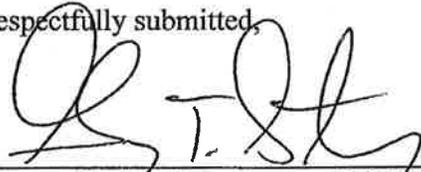
Appellant, the Board of Education of the Talawanda City School District (the "Board of Education"), by and through counsel, hereby gives notice of its right to appeal, pursuant to Ohio Revised Code Section 5717.02, to the Ohio Board of Tax Appeals, from a Final Determination of the Ohio Department of Taxation Tax Commissioner, journalized by the Ohio Department of Taxation as Case No. SE 0445 issued on March 14, 2012. A true copy of the Final Determination of the Ohio Department of Taxation Tax Commissioner is attached hereto and incorporated herein as Exhibit A.

Appellant complains of the following errors in the aforementioned Final Determination:

1. The Ohio Department of Taxation Tax Commissioner erred and abused its discretion when it concluded that Section 3313.44 of the Revised Code did not exempt the 34 acres of parcel number H3410-038-000-012 that is leased for farming purposes.

2. The Ohio Department of Taxation Tax Commissioner erred and abused its discretion when it concluded that in order to qualify for real property tax exemption, Section 3313.44 of the Revised Code requires that the property must be vested in a school board and the property must be used for school purposes. Section 3313.44 of the Revised Code exempts real property vested in a board of education regardless of its use.

Respectfully submitted,

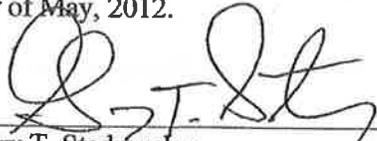


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*Attorney for the Board of Education of the
Talawanda City School District*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon **Joseph W. Testa**, Tax Commissioner, Rhodes State Office Tower, 30 East Broad Street, 22nd Floor, Columbus, OH 43215 by certified mail this 1st day of May, 2012.



Gary T. Stedronsky



FINAL DETERMINATION

Date: MAR 14 2012

Talawanda CSD Board of Education
c/o Mike Davis, Treasurer
131 West Chestnut Street
Oxford, OH 45056

Case No.: SE 0445
Auditor's No.: 10-001
County: Butler
Parcel No(s): H3510-038-000-013, H3510-038-000-012, H3510-038-000-009,
H3510-038-000-015, H3610-038-000-037

This is the final determination of the Tax Commissioner on an application for exemption of real property from taxation filed on January 26, 2010.

I. Factual Background

The applicant, Talawanda CSD Board of Education, is requesting exemption from taxation for property owned by a Board of Education for tax year 2010 and remission for tax years 2008 and 2009. The subject property consists of approximately 154.0487 acres of land. A portion of the subject property will be used for a school. Approximately 34 acres of parcel number H3510-038-000-012 is being leased to Leo Erik for farming purposes from April 15, 2009 through April 15, 2012 for \$65.00 per acre or \$2,210.00 annually. Mr. Erik resided on property located on parcel number H3510-038-000-012 until September 26, 2009.

II. Ohio Revised Code Section 3313.44

Ohio Revised Code 3313.44 exempts property vested in a board of education. There are, however, limitations on the availability of this exemption, as noted in *Gallipolis City Schools v. Kinney* (Apr. 5, 1983), B.T.A. No. 81-D-397. That case involved school-owned property that was being used as a private residence. Following *State, ex rel. Boss v. Hess* (1925), 113 Ohio St. 52, the Board of Tax Appeals stated that "the subject property must be used exclusively for a public schoolhouse or other exclusively public school purpose before public-owned property is entitled to real property exemption." (Emphasis theirs.)

Another such limitation is noted in *London City Schools Bd. of Educ. v. Zaino* (January 12, 2001), B.T.A. No. 2000-B-1478. The London case involved school-owned property that was rented as farmland. The Board held that in order to qualify for real property tax exemption, R.C. 3313.44 requires that (1) title to the property must be vested in a school board; and (2) the property must be used for school purposes. The Board further held that

MAR 14 2012

R.C. 5709.07, which provides exemption for school houses, "clearly provides that property leased or used with a view to profit is excluded from exempt status." In the instant case, the applicant uses the subject property for farming. Even if applicant did not charge any money to the farmer, the farmer reaped a pecuniary benefit, and as such, the property was not used for school purposes.

In this case, a portion of the subject will be used exclusively for school purposes, and therefore satisfies the statutory requirements and is eligible for exemption. However, a portion of the subject property is being used for farming purposes and, therefore does not satisfy the statutory requirements and is not eligible for exemption.

III. Conclusion

R.C. 5713.04 provides that portions of property used exclusively for exempt purposes shall be regarded as separate entities and listed as exempt while the balance thereof used for a non-exempt purpose shall be listed at its taxable value. Accordingly, the agent examiner in this matter recommends split-listing the applicant's property as follows:

Property to be exempted from taxation:

The balance of the property not listed as taxable below to be used as school and grounds.

The agent examiner recommends that the portion of real property described above be entered upon the list of property in the county, which is exempt from taxation for tax year 2010. The agent examiner further recommends that taxes, penalties and interest for tax years 2008 and 2009 be remitted in the manner provided by R.C. 5712.22. The subject property shall remain on the exempt list until either the county auditor or the Tax Commissioner restores the property to the tax list.

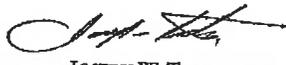
Property to remain on tax list:

The 34 acres of parcel number H3510-038-000-012, being leased to Leo Erik for farming purposes.

The agent examiner recommends that penalties charged against this part of the property for these tax years be remitted.

THIS IS THE TAX COMMISSIONER'S FINAL DETERMINATION WITH REGARD TO THIS MATTER. NOTICE WILL BE SENT PURSUANT TO R.C. 5715.27 TO THE COUNTY AUDITOR. UPON EXPIRATION OF THE SIXTY-DAY APPEAL PERIOD PRESCRIBED BY R.C. 5717.02, THIS MATTER WILL BE CONCLUDED AND THE FILE APPROPRIATELY CLOSED.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE COPY OF THE FINAL DETERMINATION RECORDED IN THE TAX COMMISSIONER'S JOURNAL


JOSEPH W. TESTA
TAX COMMISSIONER

/s/ Joseph W. Testa

Joseph W. Testa
Tax Commissioner



Dear Taxpayer:

Enclosed is the Tax Commissioner's final determination regarding your case. The title is captioned either "Journal Entry" or "Final Determination."

You have the right to appeal this decision to the Board of Tax Appeals. Unlike appeals to the Tax Commissioner, proceedings before the Board of Tax Appeals are very formal, and the Board's procedures must be carefully followed. An appeal to the Board may be done in the following way:

- You have only **60 days** from the date you received this final determination to appeal.
- If you choose to appeal, you must send the Board of Tax Appeals your original notice of appeal and two copies. A copy of the enclosed final determination should also be attached to each notice of appeal. Your notice of appeal must **clearly** state why you are appealing. The law requires you to describe carefully each error which you believe the Tax Commissioner made.
- You must also send the Tax Commissioner a copy of your notice of appeal and a copy of the enclosed final determination.
- The Board of Tax Appeals and the Tax Commissioner **must each receive** the notice of appeal and the copy of the final determination within 60 days of your receipt of this final determination. In order to file your appeal on time, you must mail the notices by certified mail, express mail, or authorized delivery service and make sure that the recorded date is within 60 days of your receipt of the enclosed final determination. Ordinary mail delivery is not considered received until each agency actually receives your notice of appeal. Alternatively, you may personally deliver the notices before the 60 days are up to be sure both agencies receive it within the 60-day time limit. Appeals which are received late do not meet the requirements of the law and cannot be considered.

For your information, Ohio Revised Code Section 5717.02 appears on the back of this letter. This is the section of the Code stating the requirements for a proper appeal to the Board of Tax Appeals. You **must** follow all of these **mandatory** requirements in order to appeal. If you don't, you may lose your right to appeal. If you have questions regarding this determination, you may reach our office at 614-466-5744.

The mailing address of the Board of Tax Appeals is:

Rhodes State Office Tower
30 East Broad Street, 24th Floor
Columbus, OH 43215

The Tax Commissioner's mailing address is:

Rhodes State Office Tower
30 East Broad Street, 22nd Floor
Columbus, OH 43215

5717.02 Appeals from final determination of the tax commissioner; notice; procedure; hearing.

Except as otherwise provided by law, appeals from final determinations by the tax commissioner of any preliminary, amended, or final tax assessments, reassessments, valuations, determinations, findings, computations, or orders made by the commissioner may be taken to the board of tax appeals by the taxpayer, by the person to whom notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner is required by law to be given, by the director of budget and management if the revenues affected by such decision would accrue primarily to the state treasury, or by the county auditors of the counties to the undivided general tax funds of which the revenues affected by such decision would primarily accrue. Appeals from the redetermination by the director of development under division (B) of section 5709.64 or division (A) of section 5709.66 of the Revised Code may be taken to the board of tax appeals by the enterprise to which notice of the redetermination is required by law to be given. Appeals from a decision of the tax commissioner concerning an application for a property tax exemption may be taken to the board of tax appeals by a school district that filed a statement concerning such application under division (C) of section 5715.27 of the Revised Code.

Such appeals shall be taken by the filing of a notice of appeal with the board, and with the tax commissioner if the tax commissioner's action is the subject of the appeal or with the director of development if the director's action is the subject of the appeal, within sixty days after service of the notice of the tax assessment, reassessment, valuation, determination, finding, computation, or order by the commissioner or redetermination by the director has been given as provided in section 5703.37 of the Revised Code. The notice of such appeal may be filed in person or by certified mail, express mail, or authorized delivery service. If the notice of such appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing. The notice of appeal shall have attached thereto and incorporated therein by reference a true copy of the notice sent by the commissioner or director to the taxpayer or enterprise of the final determination or redetermination complained of, and shall also specify the errors therein complained of, but failure to attach a copy of such notice and incorporate it by reference in the notice of appeal does not invalidate the appeal.

Upon the filing of a notice of appeal, the tax commissioner or the director, as appropriate, shall certify to the board a transcript of the record of the proceedings before the commissioner or director, together with all evidence considered by the commissioner or director in connection therewith. Such appeals or applications may be heard by the board at its office in Columbus or in the county where the appellant resides, or it may cause its examiners to conduct such hearings and to report to it their findings for affirmation or rejection. The board may order the appeal to be heard upon the record and the evidence certified to it by the commissioner or director, but upon the application of any interested party the board shall order the hearing of additional evidence, and it may make such investigation concerning the appeal as it considers proper.

As amended by H.B. 612, 123rd G.A.