

September 16, 1998

OPINION NO. 98-034

Joseph C. Robertson, Director  
Department of Development  
77 S. High Street  
P.O. Box 1001  
Columbus, Ohio 43216-1001

Dear Director Robertson:

We have received, from your predecessor, a request for an opinion on a funding issue that concerns the Defense Conversion Assistance Program ("DCAP"), governed by R.C. 122.12 and operated by the Technological Innovation Division of the Ohio Department of Development. The specific questions are these:

1. May the Ohio Department of Development grant DCAP moneys to an Ohio nonprofit corporation when it is known that the purpose of providing such funding is to provide loans to private, for-profit enterprises to be used by the private, for-profit enterprises for the acquisition of property for industry, commerce, distribution, or research in order to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the state when the Ohio nonprofit corporation receives in return equity interests in the private, for-profit enterprises, in light of the constitutional limitations on the provision of state credit expressed in Ohio Const. art. VIII, §4 and the exemption therefrom expressed in Ohio Const. art. VIII, §13?
2. May the "property" referred to in Ohio Const. art. VIII, §13 include intellectual property such as patents, copyrights and other intangible property resulting from the "research" referred to in Ohio Const. art. VIII, §13?

3. Under what conditions, if any, may a nonprofit recipient of DCAP assistance use DCAP money to provide funding for private, for-profit companies, in exchange for equity interests in such companies?

We have been informed that the funding proposal at issue involves the National Center for Industrial Competitiveness (“NCIC”), which is an Ohio nonprofit corporation located in Dayton.<sup>1</sup> As the request letter states, NCIC has established a business assistance loan program that is designed “to encourage and stimulate the development of new products, processes and other commercial applications of scientific or technological advancements which are intended to lead to significant public benefit within Ohio.” A basic principle of NCIC’s program is the “recycling” of funds to provide itself with ongoing revenue by making financing available to private, for-profit enterprises in exchange for repayment through various mechanisms, including principle and interest, royalties on sales, warrants, or preferred shares with cumulative preferential dividends. Thus, NCIC may receive an equity interest in a private, for-profit enterprise in exchange for providing financing. NCIC seeks to use DCAP grant moneys to provide that financing.

Materials provided to us disclose that NCIC was created by the federal government, with matching funds from the State of Ohio, to be an evaluation and assessment center, assisting the start up and growth of technology-based companies. It was established in response to defense closures for the purpose of creating new businesses. It has been described as working in partnership with the Department of Development and the community of Dayton. A representative of the Department sits on NCIC’s board of directors.

To understand the nature and purpose of NCIC, it is helpful to look at the provisions under which it was formed. The budget bill for fiscal years 1994 and 1995 contains the following uncodified language relating to NCIC:

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<sup>1</sup> The Department’s questions are phrased generally in terms of a nonprofit corporation, and we consider the questions in those general terms. However, because we have been informed that the questions relate specifically to NCIC, we also discuss that particular entity.

Defense Conversion Project

The Director of Development *may use appropriations, in accordance with existing program guidelines, and other resources as appropriate to match federal dollars* for one or more Ohio-based defense conversion projects. Such projects shall be submitted by and shall work with key state resources including the Dayton Area Chamber of Commerce, Cleveland Tomorrow, or the Great Lakes Manufacturing Technology Center, in cooperation with Wright-Patterson Air Force Base and cooperating communities within Ohio *to establish a National Center for Industrial Competitiveness.*

To ensure the most efficient and effective use of state dollars, the Director of Development shall select projects which make maximum use of existing technology development and deployment programs funded in whole or in part by the State of Ohio.

1993-1994 Ohio Laws, Part III, 4399 (Am. Sub. H.B. 152, eff. July 1, 1993) (sec. 33.10, uncodified) (emphasis added).

An appropriations bill passed the following year added appropriation item GRF 195-410 for the Defense Conversion Assistance Program. 1993-1994 Ohio Laws, Part IV, 7510 (Sub. H.B. 715, eff. Apr. 22, 1994) (sec. 33, uncodified). It changed the topic heading "Defense Conversion Project" to "Defense Conversion Assistance Program," retaining the language about NCIC, and adding the following:

The foregoing appropriation item 195-410, Defense Conversion Assistance Program, shall be used to provide technical, financial and educational assistance to communities and regions, and to provide matching funds for soliciting federal or private assistance in response to adverse economic and employment conditions in the state attributed to a reduction of federal defense spending.

*Id.* at 7516 (sec. 33.10, uncodified).

The language governing the establishment of NCIC is confusing and its precise meaning is not clear. It is evident from the language quoted above, however, that the General Assembly supported the establishment of NCIC and its involvement in DCAP. Thus, the uncodified language provided authority for the Director of Development to provide matching funds in fiscal years 1994 and 1995 for the start up of NCIC.

NCIC's original *Business Plan*, dated April 8, 1994, describes the initial funding with state and federal money. It contains the following plan for future funding:

As the NCIC becomes self-sufficient, operating funds for future operations will be available from businesses with whom NCIC has established

cooperative agreements and other contractual instruments which include payback mechanisms. NCIC and its management agent will continue to look for other sources of funds, including federal programs, state programs in Ohio and other states in the NCIC service region, local government and community development agencies, venture organizations, and investment institutions. *A guiding principle for funding future operations will be "recycling" funds to provide ongoing revenue for the NCIC. This could include the use of contingent loans, equity investments, royalties, and profit offsets when providing support for entrepreneurs and their projects or businesses. NCIC investments in projects or businesses will require payback. The NCIC will undertake projects and guarantee funds to businesses when the payback risk is moderate to low.*

National Center for Industrial Competitiveness, *Business Plan 23* (Apr. 8, 1994) (emphasis added).<sup>2</sup>

The same language appears in NCIC's *Operating Plan and Budget* of December 1994. National Center for Industrial Competitiveness, *Operating Plan and Budget 36* (Dec. 1, 1994). The *Operating Plan and Budget* also states that NCIC will support economic development by helping defense-dependent companies diversify into commercial markets, by launching new technology-based industries, and by enhancing the competitiveness of existing commercial enterprises.

From the fact that the General Assembly provided for the establishment of NCIC as part of its creation of DCAP, it is evident that the General Assembly intended that NCIC would participate in the operation of DCAP. NCIC received state funds in fiscal years 1994 and 1995 when it was created. Since then, it has continued to receive DCAP moneys in addition to moneys it receives from other sources. NCIC is scheduled to continue receiving moneys from the Department through the end of the fiscal year 1999. The portion of the uncodified language quoted above that specifically mentions NCIC does not appear in legislation subsequent to fiscal years 1994 and 1995. In those years, state funds have been provided from DCAP moneys in accordance with R.C. 122.12.

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<sup>2</sup> A similar arrangement for making loans and using loan proceeds for additional loans is described in 1994 Op. Att'y Gen. No. 94-071 in connection with the Ohio Water Development Authority. That opinion finds the arrangement to be permissible under Ohio Const. art. VIII, §13, even when money is provided to private entities. See also 1989 Op. Att'y Gen. No. 89-045 (Ohio Air Quality Development Authority). In connection with Ohio coal research, Ohio Const. art. VIII, §15 expressly permits the enactment of laws to allow the state to share in royalties, profits, or other financial gain resulting from research and development financed pursuant to that provision.

R.C. 122.12 governs the Defense Conversion Assistance Program, which was created “to minimize the adverse economic and employment effects in [Ohio] of the reduction of federal defense spending.” R.C. 122.12; see 1993-1994 Ohio Laws, Part II, 2431 (Am. S.B. 268, eff. July 22, 1994). Under DCAP, the Director of Development is authorized to enhance the competitiveness of businesses by coordinating and promoting nondefense uses of defense technology and also to provide employment-related assistance or training to workers who have lost jobs in the military or in defense-related industries. R.C. 122.12(A)(2), (4).

With respect to the provision of financial assistance under DCAP, the Director of Development is authorized to:

(1) *Provide educational, technical, or financial assistance to defense-related businesses* that are exploring or establishing nondefense-related business ventures; [and to]

...

(3) *Provide educational, technical, or financial assistance to local communities* that are experiencing job losses due to the closure or scaling-down of military bases in the communities....

R.C. 122.12(A)(1), (3) (emphasis added). The Director may also solicit and administer federal or private funds that are available for these purposes. R.C. 122.12(A)(5).

Rules governing DCAP appear in 2 Ohio Admin. Code Chapter 122:8-1. They permit any individual, business, or political subdivision to apply to the Department for educational, technical, or financial assistance offered under R.C. 122.12. 2 Ohio Admin. Code 122:8-1-01(A).

Let us now consider whether the Department may grant DCAP moneys to an Ohio nonprofit corporation if the nonprofit corporation intends to use those moneys to provide loans to private enterprises and to accept in return equity interests in the private enterprises. The word “grant,” as used in your questions, means to give, bestow, or confer. See *Webster’s Third New International Dictionary* 989 (unabridged ed. 1993). It connotes a transfer of money to the recipient, and it does not suggest the creation of an agency relationship. See *Black’s Law Dictionary* 699 (6th ed. 1990). The terms of a grant arrangement are set out in an agreement, and the recipient of a grant is obligated to comply with the terms under which it accepts the grant. In making grants under the program at issue, the Department makes payments of specified amounts. It does not issue bonds or other obligations, make guarantees, or otherwise incur debt or assume liability.

The Department of Development is a creature of statute and may take actions only as authorized by the General Assembly. See, e.g., 1987 Op. Att’y Gen. No. 87-095, at 2-

619. R.C. 122.12 does not expressly authorize the type of arrangement in question — that is, the grant of money to a nonprofit corporation for that nonprofit corporation to make loans to particular types of businesses. R.C. 122.12 does, however, authorize the Director of Development to “provide” financial assistance to “defense-related businesses that are exploring or establishing nondefense-related business ventures” and to “local communities that are experiencing job losses due to the closure or scaling-down of military bases in the communities.” R.C. 122.12(A)(1), (3).

Use of the general word “provide” suggests that financial assistance may be supplied in any reasonable manner, including through grants to nonprofit corporations. See generally, e.g., *CB Transportation, Inc. v. Butler County Bd. of Mental Retardation*, 60 Ohio Misc. 71, 77-81, 397 N.E.2d 781, 785-87 (C.P. Butler County 1979); 1983 Op. Att’y Gen. No. 83-069, at 2-285. Further, the General Assembly’s explicit reference to NCIC in conjunction with the establishment of DCAP indicates that functions of the sort performed by NCIC were intended to be part of the program. The facts presented to us demonstrate that NCIC’s activities provide financial assistance to defense-related businesses that are exploring or establishing nondefense-related business ventures and that they assist the Dayton community, which has experienced job losses due to a decrease of military and defense-related operations. Hence, even though NCIC is not itself a defense-related business or a local community, R.C. 122.12 appears to permit the Department to provide NCIC with funds to be allocated in accordance with its provisions.

R.C. 122.12 does not speak specifically to the procurement of equity interests. However, nothing in the statute would prohibit an entity that receives a grant under R.C. 122.12 from loaning the money in exchange for an equity interest in the loan recipient, if that action is permitted by the agreement under which the entity receives its grant.

Let us consider now whether any provision of the Ohio Constitution would prohibit the grant of moneys by the Department to NCIC for the purposes at issue. We begin with an examination of Ohio Const. art. VIII, §4, which states:

The 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.*

Ohio Const. art. VIII, §4 (emphasis added).<sup>3</sup> This language clearly prohibits the state from being a stockholder in any company. It has also been read as prohibiting the state from

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<sup>3</sup> Ohio Const. art. VIII, §6 contains similar language governing counties, cities, towns, and townships. Cases construing that language are relevant to the interpretation of Ohio Const. art. VIII, §4, and are considered as authorities on both provisions. See *State ex rel. Eichenberger v. Neff*, 42 Ohio App. 2d 69, 330 N.E.2d 454 (Franklin County 1974); 1985 Op. Att’y Gen. No. 85-011, at 2-42 n.3.

making grants or gifts to private, for-profit enterprises. See *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955); *Markley v. Village of Mineral City*, 58 Ohio St. 430, 51 N.E. 28 (1898).

The courts have found, however, that the credit of the state may constitutionally be given or loaned to, or in aid of, nonprofit entities, when the funds are used for a public purpose. See, e.g., *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864, *appeal dismissed*, 391 U.S. 601 (1968); *State ex rel. Dickman v. Defenbacher*, 1996 Op. Att'y Gen. No. 96-060, at 2-242; 1985 Op. Att'y Gen. No. 85-011, at 2-42 to 2-43. The granting of aid and credit to a nonprofit entity is not permissible when the purpose is to benefit a private, for-profit enterprise. See, e.g., *State ex rel. v. Saxbe v. Brand*, 176 Ohio St. 44, 197 N.E.2d 328 (1964).

In light of this case law, a former Attorney General concluded that grants made to private, for-profit corporations and grants made to public entities or nonprofit corporations for the purpose of assisting private, for-profit corporations were prohibited by Ohio Const. art. VIII, §4. 1985 Op. Att'y Gen. No. 85-011. The provision of funds from the Department of Development to a nonprofit corporation in the situation you have described appears to come within this prohibition.

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Even if it is determined that the grant in question would violate Ohio Const. art. VIII, §4, it appears that the grant would be permitted under Ohio Const. art. VIII, §13. Ohio Const. art. VIII, §13 creates an exception to Ohio Const. art. VIII, §4 for certain public purposes.<sup>4</sup> Under Ohio Const. art. VIII, §13, when the purpose is to create or preserve

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<sup>4</sup> The complete text of the constitutional provision is as follows:

*To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research, to make or guarantee loans and to borrow money and issue bonds or other obligations to provide moneys for the acquisition, construction, enlargement, improvement, or equipment, of such property, structures, equipment and facilities. Laws may be passed to carry into effect such purposes and to authorize for such purposes the borrowing of money by, and the issuance of bonds or other obligations of, the state, or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, and to authorize the making of guarantees and loans and the lending of aid and credit, which laws, bonds, obligations, loans, guarantees, and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.*

Except for facilities for pollution control or solid waste disposal, as determined by law, no guarantees or loans and no lending of aid or credit shall be made under the laws enacted pursuant to this section of the Constitution for facilities to be constructed for the purpose of providing electric or gas utility service to the public.

The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities.

Any corporation organized under the laws of Ohio is hereby authorized to lend or contribute moneys to the state or its political subdivisions or agencies or instrumentalities thereof on such terms as may be agreed upon

jobs and employment opportunities or to improve the economic welfare of the people of Ohio, the state or nonprofit corporations designated as agencies of the state may make or guarantee loans or lend aid and credit to provide money for the acquisition, construction, enlargement, improvement, or equipment of property, structures, equipment and facilities within Ohio for industry, commerce, distribution, and research.<sup>5</sup> See, e.g., 1997 Op. Att’y Gen. No. 97-021; 1994 Op. Att’y Gen. No. 94-071. Laws that authorize the making of such guarantees and loans and lending of aid and credit are not subject to the requirements, limitations, or prohibitions of Ohio Const. art. VIII, §4. See *State ex rel. Eichenberger v. Neff*, 42 Ohio App. 2d 69, 78, 330 N.E.2d 454, 460 (Franklin County 1974) (“[a]cts passed pursuant to Article VIII, Section 13, are specifically not subject to the requirements and limitations of other sections of Article VIII”). See generally *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 446 (1966).

The opinion request phrases the first question in terms that parallel Ohio Const. art. VIII, §13, indicating that the money in question is to be used for the purposes prescribed by that provision of the constitution. If the grant is to be used for the proper purposes, then it may be made under Ohio Const. art. VIII, §13 regardless of whether it would be prohibited under Ohio Const. art. VIII, §4. See, e.g., 1985 Op. Att’y Gen. No. 85-011.

Ohio Const. art. VIII, §13 does impose the restriction that “moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.” This provision prohibits a

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in furtherance of laws enacted pursuant to this section.

Ohio Const. art. VIII, §13 (emphasis added).

<sup>5</sup> In adopting Ohio Const. art. VIII, §13, the citizens of Ohio have determined that matters described therein constitute a public purpose. See *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 446 (1966). The fact that private entities may benefit from action taken pursuant to that provision of the constitution does not negate the public purpose determination. See generally 1986 Op. Att’y Gen. No. 86-088.

public entity that issues bonds or makes guarantees pursuant to laws enacted under Ohio Const. art. VIII, §13 from pledging tax moneys to pay those bonds or guarantees. See, e.g., *State ex rel. Petroleum Underground Storage Tank Release Compensation Bd. v. Withrow*, 62 Ohio St. 3d 111, 579 N.E.2d 705 (1991); *State ex rel. Ryan v. City Council of Gahanna*, 9 Ohio St. 3d 126, 459 N.E.2d 208 (1984); 1994 Op. Att'y Gen. No. 94-071. The restriction on pledging tax money however, does not prevent a public entity from making grants of tax money for purposes contemplated by Ohio Const. art. VIII, §13 when there is no issuance of bonds or making of guarantees. See 1985 Op. Att'y Gen. No. 85-011. The instant situation involves grants made by the Department of Development. The Department is not issuing bonds or other obligations, making guarantees, or otherwise incurring debt or assuming liability. Therefore, regardless of the source of the grant money, the arrangement does not constitute an obligation or pledge of tax money in violation of Ohio Const. art. VIII, §13.

One concern that has been raised in this matter is that the Department might be violating the stockholding prohibition of Ohio Const. art. VIII, §4 by granting funds to NCIC. The argument is that the Department is investing in the nonprofit corporation and thereby becoming a joint owner or stockholder. This concern does not appear to be well founded, however, because the relationship between the Department and NCIC shows no indication of a joinder of financial interests. Under the grant arrangement, the Department transfers money to the nonprofit corporation for the nonprofit corporation to use in making loans to various business entities. The Department may enforce its contract to make certain that money is expended only for proper purposes, but it is not authorized to select the enterprises that receive particular funds. In granting the money to NCIC, the Department defines and limits its risk. The Department stands to be liable for no more than the money it chooses to grant. Regardless of whether NCIC's investments are successful, the Department will not gain or lose money. Hence, the grant cannot reasonably be characterized as a joint enterprise, ownership interest, or stockholding relationship. Therefore, there is no violation of Ohio Const. art. VIII, §4.

Another concern that has been raised in this matter is that NCIC might be violating the stockholding prohibition of Ohio Const. art. VIII, §4 by accepting equity interests in exchange for making loans. The prohibition of Ohio Const. art. VIII, §4 against becoming a joint owner or stockholder applies to "the state." "[T]he state" clearly includes the Department of Development, and it might also include a private entity, if that entity acts as the agent of the Department. See, e.g., *State ex rel. Saxbe v. Brand*; *State ex rel. Eichenberger v. Neff*. It is clear that the Department cannot do indirectly what it cannot do directly — that is, use a private enterprise to acquire interests in stock for or on behalf of the state.

The facts of the instant situation do not indicate that NCIC is serving as an agent of the Department or that equity interests obtained by NCIC are in any sense acquired or held for or on behalf of the Department. Rather, money is given to NCIC with no ties or conditions except that it be used for the prescribed purposes. NCIC would like to cycle the money around repeatedly, to make the best use of it, and that arrangement is permitted to

the extent that the grant agreement allows. The Department does not retain any interest in the money or control over its use, except to enforce the terms of the grant agreement.

In any event, as discussed above, it is contemplated that the grant will be made for purposes that come within Ohio Const. art. VIII, §13.<sup>6</sup> Under the plain language of Ohio Const. art. VIII, §13, action taken pursuant to that provision is not subject to the requirements, limitations, or prohibitions of any other section of Article VIII. The stockholding prohibitions with which you are concerned appear in Ohio Const. art. VIII, §4, and, thus, are rendered inapplicable to situations governed by Ohio Const. art. VIII, §13. Therefore, a program established pursuant to Ohio Const. art. VIII, §13 is not restricted by art. VIII, §4, and the Department is not prohibited by Ohio Const. art. VIII, §4 from making the grant in question.

In the situation you have described, the Department provides an Ohio nonprofit corporation with a set amount of money to be used by the nonprofit corporation to provide loans to private enterprises. The nonprofit corporation makes the loans and receives in return equity interests in the enterprises. It uses any moneys derived from those equity interests to make additional loans. The nonprofit corporation cannot expend, encumber, or risk any public funds except those that it has been given. The Department is not liable for any loss incurred by the nonprofit corporation. No tax moneys are obligated or pledged for the payment of any obligations or guarantees. Thus, provided that the Department's grant is made for the purposes set forth in Ohio Const. art. VIII, §13, the arrangement comes within the language of Ohio Const. art. VIII, §13 that creates an exception to the provisions of Ohio Const. art. VIII, §4, including the stockholding prohibition. *See generally State ex rel. Burton v. Greater Portsmouth Growth Corp.; City of Norton v. Limbach*, 65 Ohio App. 3d 709, 585 N.E.2d 444 (Summit County 1989).

If a nonprofit corporation receives a grant of DCAP moneys from the Department of Development, the nonprofit corporation is bound by the provisions of the grant agreement. *See generally* 1989 Op. Att'y Gen. No. 89-010. In administering R.C. 122.12, the Department is obligated to make certain that all grant agreements comply both with the provisions of R.C. 122.12 and with the provisions of Ohio Const art. VIII, §13, but it is not

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<sup>6</sup> A number of legislative provisions authorize the Department of Development to act pursuant to Ohio Const. art. VIII, §13. *See, e.g.*, 1988 Op. Att'y Gen. No. 88-079; 1985 Op. Att'y Gen. No. 85-011; 1984 Op. Att'y Gen. No. 84-032.

restricted by the provisions of Ohio Const. art. VIII, §4. Thus, grants may be made only on terms that satisfy R.C. 122.12 and serve the purposes prescribed by Ohio Const. art. VIII, §13. The grant recipient must comply with the terms of the agreement, but is in no way restricted by the stockholding prohibitions of Ohio Const art. VIII, §4.

Therefore, if the agreement under which the Department grants money to a nonprofit corporation complies with R.C. 122.12 and Ohio Const. art. VIII, §13, and if that agreement permits the nonprofit corporation to loan DCAP grant moneys to private nonprofit entities and receive in return equity interests in those private nonprofit entities, then the nonprofit corporation may make such loans and receive such equity interests.<sup>7</sup> Thus, in accordance with Ohio Const. art. VIII, §13, the Ohio Department of Development is permitted to grant to an Ohio nonprofit corporation moneys from the Defense Conversion Assistance Program governed by R.C. 122.12 for that nonprofit corporation to use in making loans to private, for-profit enterprises, when the nonprofit corporation receives in return equity interests in those private, for-profit enterprises, provided that the moneys are used for purposes authorized by Ohio Const. art. VIII, §13 and R.C. 122.12, and provided that the agreement between the Department and the nonprofit corporation permits the receipt of such equity interests.

Let us turn now to the question whether the “property” referred to in Ohio Const. art. VIII, §13 may include intellectual property such as patents, copyrights, and other intangible property resulting from the “research” referred to in that section. The word “property” is not defined for purposes of Ohio Const. art. VIII, §13, and cases considering that provision have ascribed no particular or technical meaning to the word. Therefore, the word “property” should be given its common meaning. See R.C. 1.42; *State ex rel. Bd. of County Comm’rs v. Mong*, 12 Ohio St. 3d 66, 465 N.E.2d 428 (1984).

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<sup>7</sup> Information provided to us indicates that, for certain time periods, the grant agreement between the Department of Development and NCIC provides that none of the funds granted to NCIC by the Department may be invested, loaned, granted, or otherwise provided to third parties in exchange for any equity interest. That contractual provision prevents NCIC from securing an equity interest in exchange for a loan during those time periods, even though such an arrangement would be constitutionally permissible.

“Property” is a general word that can encompass everything that is owned. See *Webster’s Third New International Dictionary* 1818 (unabridged ed. 1993). “The word is...commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal.” *Black’s Law Dictionary* 1216 (6th ed. 1990). When it appears without modification, the word “property” thus includes intellectual property, such as patents, copyrights, and other intangible property. If a more limited meaning were intended, it could be secured by the use of more specific language. See, e.g., Ohio Const. art. VIII, §2i (permitting the General Assembly to authorize the issuance of capital improvement bonds and using such words as “highways,” “buildings,” “structures,” “improvements,” and “real estate”); *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d at 39, 218 N.E.2d at 451 (“[i]f the framers of the amendment [art. VIII, §13] desired to...limit the provision they could well have done so. They did not”).

Under Ohio Const. art. VIII, §13, the state or its agencies, or nonprofit corporations designated as agencies, may, as provided by law, “acquire, construct, enlarge, improve, or equip” and “sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, distribution, and research.” The evident intent of the constitutional language is to permit the acquisition of any sort of property that is used for the stated purposes. Provided that property is used for the required purposes, it can be tangible or intangible. See, e.g., *City of Norton v. Limbach* (approving under Ohio Const. art. VIII, §13 the issuance of industrial revenue bonds for the purpose of investing proceeds in other securities yielding a higher rate of interest and using the profit to secure an option to purchase a closed limestone mine and to pay for feasibility and engineering studies regarding the production of hydroelectric energy at the mine).

The question is phrased in terms of intellectual property, such as patents, copyrights, and other intangible property, “resulting from the ‘research’ referred to” in art. VIII, §13. The “resulting from” relationship is not required by the constitution. The constitutional provision speaks of acquiring property *for* research. Hence, the important factor is not the source of the property, but its use. However, nothing in the provision prevents the inclusion of intellectual property resulting from research undertaken in accordance with Ohio Const. art. VIII, §13, if that property is used for the prescribed purposes. Therefore, for purposes of Ohio Const. art. VIII, §13, “property” may include intellectual property, such as patents, copyrights, and other intangible property, resulting from the “research” referred to in Ohio Const. art. VIII, §13.

Let us now address your third question, which asks under what conditions a nonprofit corporation may use DCAP moneys to provide funding to private, for-profit companies in exchange for equity interests in the companies. As discussed above, for such an arrangement to be permissible, it must satisfy the conditions of Ohio Const. art. VIII, §13, the conditions of R.C. 122.12, and the conditions of the grant agreement between the Department and the nonprofit corporation. Therefore, a nonprofit corporation that

obtains Defense Conversion Assistance Program moneys pursuant to R.C. 122.12 may use those moneys to provide funding to private, for-profit companies, in exchange for equity interests in those companies, in arrangements that satisfy the conditions of Ohio Const. art. VIII, §13, the conditions of R.C. 122.12, and the conditions of the grant agreement between the Department of Development and the nonprofit corporation.

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

1. In accordance with Ohio Const. art. VIII, §13, the Ohio Department of Development is permitted to grant to an Ohio nonprofit corporation moneys from the Defense Conversion Assistance Program governed by R.C. 122.12 for that nonprofit corporation to use in making loans to private, for-profit enterprises, when the nonprofit corporation receives in return equity interests in those private, for-profit enterprises, provided that the moneys are used for purposes authorized by Ohio Const. art. VIII, §13 and R.C. 122.12, and provided that the agreement between the Department and the nonprofit corporation permits the receipt of such equity interests.
2. For purposes of Ohio Const. art. VIII, §13, “property” may include intellectual property, such as patents, copyrights, and other intangible property, resulting from the “research” referred to in Ohio Const. art. VIII, §13.
3. A nonprofit corporation that obtains Defense Conversion Assistance Program moneys pursuant to R.C. 122.12 may use those moneys to provide funding to private, for-profit companies, in exchange for equity interests in those companies, in arrangements that satisfy the conditions of Ohio Const. art. VIII, §13, the conditions of R.C. 122.12, and the conditions of the grant agreement between the Department of Development and the nonprofit corporation.

Respectfully,

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Attorney General

September 16, 1998

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SYLLABUS:

98-034

1. In accordance with Ohio Const. art. VIII, §13, the Ohio Department of Development is permitted to grant to an Ohio nonprofit corporation moneys from the Defense Conversion Assistance Program governed by R.C. 122.12 for that nonprofit corporation to use in making loans to private, for-profit enterprises, when the nonprofit corporation receives in return equity interests in those private, for-profit enterprises, provided that the moneys are used for purposes authorized by Ohio Const. art. VIII, §13 and R.C. 122.12, and provided that the agreement between the Department and the nonprofit corporation permits the receipt of such equity interests.
2. For purposes of Ohio Const. art. VIII, §13, "property" may include intellectual property, such as patents, copyrights, and other intangible property, resulting from the "research" referred to in Ohio Const. art. VIII, §13.
3. A nonprofit corporation that obtains Defense Conversion Assistance Program moneys pursuant to R.C. 122.12 may use those moneys to provide funding to private, for-profit companies, in exchange for equity interests in those companies, in arrangements that satisfy the conditions of Ohio Const. art. VIII, §13, the conditions of R.C. 122.12, and the conditions of the grant agreement between the Department of Development and the nonprofit corporation.