

OPINION NO. 69-037**Syllabus:**

Chapter 3377, Revised Code, confers no specific or implicit authority upon the Ohio Higher Education Facility Commission to repay a loan made by a private insurance company to a college, even though the ultimate purpose of such repayment may be to facilitate the building of a new college library.

To: John D. Millett, Vice Chairman, Ohio Higher Educational Facility Commission, Columbus, Ohio
By: Paul W. Brown, Attorney General, April 18, 1969

I have before me your request for my opinion which asks whether the Ohio Higher Educational Facility Commission may, pursuant to Chapter 3377, Revised Code, in order to facilitate the construction of a new college library, repay a loan made by a private insurance company by acquiring college property.

An answer to your question may be found by examining the substance of the individual sections of recently enacted Chapter 3377, supra. (Amended Senate Bill No. 453 of the 107th Ohio General Assembly).

Section 3377.02, Revised Code, reads:

"There is hereby created the Ohio higher educational facility commission for the purpose of enhancing the educational opportunities of the people of the state, thereby promoting the employment opportunities, economic welfare, public health and general welfare of the people, and for the purpose of alleviating the pressing demands upon tax supported colleges and universities by encouraging the means of instruction through provision for educational facilities at educational institutions in the manner provided in Chapter 3377. of the Revised Code. The Ohio higher educational facility commission is a body both corporate and politic, constituting an agency or instrumentality of the state and performing essential functions of the state." (Emphasis added)

Section 3377.01 (B), Revised Code, specifically mentions "libraries" as being "educational facilities" within the context of Chapter 3377, Revised Code.

Section 3377.04, Revised Code, provides in its entirety:

"The Ohio higher educational facility commission may:

"(A) Acquire by gift or purchase and hold and mortgage real estate and interests therein and personal property to be used as a project or a part thereof;

"(B) Purchase, construct, reconstruct, enlarge, improve, furnish, and equip and lease, sell, exchange, and otherwise dispose of projects or parts thereof for the purposes set forth in division (B) of section 3377.01 of the Revised Code;

"(C) Issue bonds of the state, as provided in Chapter 3377. of the Revised Code, to provide funds for acquiring, constructing, reconstructing, furnishing, or equipping one or more projects or parts thereof;

"(D) Enter into contracts and execute all instruments necessary or appropriate to carry out the purposes of Chapter 3377. of the Revised Code;

"(E) Fix, alter, and collect rentals and other charges for the use and occupancy of a project and lease the project to educational institutions, including a contract with or the granting of an option to the lessee to purchase the project for such price as the commission in its sole discretion determines to be appropriate, after retirement or redemption, or provision therefor, of all the bonds of the issuer issued to provide funds for the project;

"(F) Retain, contract with, or employ and fix the compensation of financial consultants, appraisers, accounting experts, architects, engineers, attorneys at law, or other employees, agents, and independent contractors as are necessary in the judgment of the commission to carry out Chapter 3377. of the Revised Code and collect fees, charges, and accept gifts and appropriations to meet the expenses of employing such persons;

"(G) Pledge, assign, hypothecate, or otherwise encumber as security for the bonds, the rentals, revenues, and other income, charges, and moneys realized from the use, lease, sale, or other disposition of one or more projects or parts thereof as may be designated in the bond proceedings and enter into trust agreements or indentures of mortgage for the benefit of bondholders;

"(H) Enter into appropriate arrangements with any federal or state department or agency, county, township, municipal corporation, or other political subdivision, taxing district, or public body or agency for the planning and installation of streets, roads, alleys, water supply and distribution facilities, storm and sanitary sewage collection and disposal facilities, and other necessary appurtenances to a project;

"(I) Purchase fire and extended coverage and liability insurance for a project, insurance protecting the commission and its officers and employees against liability for damage to property or injury to or death of persons arising from the project, and any other insurance the commission may agree to provide under the bond proceedings;

"(J) Sell, lease, release or otherwise dispose of real and personal property or interests therein, or a combination thereof, acquired by the commission under authority of Chapter 3377. of the Revised Code and no longer needed for the purposes of such chapter or of the commission, and grant such easements and other rights in, over, under, or across a project as will not interfere with its use of such property. Such sale, lease, release, disposition, or grant may be made without competitive bidding and in such manner and for such consideration as the commission in its judgment deems appropriate.

"(K) Sue and be sued, implead and be impleaded;

"(L) Adopt and use an official seal;

"(M) Receive and accept from any public agency loans or grants for or in aid of a project or any portion thereof, and receive and accept loans, grants, aid, or contributions from any source of money, property, labor, or other things of value to be held, used, and applied only for the purposes for which received;

"(N) Do all other acts necessary or appropriate to carry out the purposes of Chapter 3377. of the Revised Code."

It must be noted that in the broad enabling statute, Section 3377.04, supra, no specific authority can be found for the authorization for such an act or one similar on the part of the Ohio Higher Educational Facility Commission. But it is evident that Section 3377.04, supra, gives the Ohio Higher Educational Facility Commission wide latitude in implementing its lawful projects. However, Section 3377.02, supra, presupposes that the projects of the Commission will be "enhancing the educational opportunities" of Ohio's populace.

The word "enhance" is defined in Webster's Third New International Dictionary as:

"advance, * * * to increase the worth or value of, * * *".

Interpreting the above cited definition, I can only conclude that the repayment of a loan, as in the instant situation, would not "enhance" educational opportunities. Permitting the Commission to repay this outstanding debt would not, in my opinion, be a direct enhancement of educational opportunity in Ohio, but an indirect, unauthorized means to achieve an end which is legitimate within the context of Chapter 3377, supra. I believe a Pandora's box possibly would be opened if a contrary result were reached.

Therefore, it is my opinion and you are advised that Chapter 3377, Revised Code, confers no specific or implicit authority upon the Ohio Higher Educational Facility Commission to repay a loan made by a private insurance company to a college, even though the ultimate purpose of such repayment may be to facilitate the building of a new college library.