

## OPINION NO. 88-003

**Syllabus:**

The word "property," as it is used in R.C. 121.22(G)(2), means real and personal property, which includes both tangible and intangible property. Accordingly, the Public Employees Retirement Board may discuss in executive session the purchase or sale of tangible or intangible property authorized under R.C. 145.11, including, but not limited to such items as bonds, notes, stocks, shares, securities, commercial paper, and debt or equity interests.

**To: William S. McLaughlin, Executive Director, Public Employees Retirement System of Ohio, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, January 25, 1988**

I have before me your request for my opinion concerning the meaning of the word "property" as that word is used in R.C. 121.22. Specifically, you ask:

Does the purchase or sale of tangible and intangible property authorized under R.C. 145.11, including but not limited to, such items as bonds, notes, debentures, certificates of indebtedness, stocks, shares, securities, commercial paper and debt or equity interests constitute the "purchase or sale of property" as contemplated in R.C. 121.22(G)(2)?

R.C. 145.07 requires that "[a]ll meetings of the [public employees retirement] board shall be open to the public except executive sessions as set forth in...[R.C. 121.22(G)]...." R.C. 121.22(G) enumerates the circumstances in which public officials may hold "executive sessions," which are closed to the public. R.C. 121.22(G)(2), with which you are particularly concerned, provides in pertinent part:

*(G) The members of a public body may hold an executive session only at a regular or special meeting for the sole purpose of the consideration of any of the following matters:*

*...  
(2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. (Emphasis added.)*

You wish to know whether the word "property" as it is used in R.C. 121.22(G)(2) includes tangible and intangible property. R.C. 145.11, which enumerates the investment powers of the members of the public employees retirement board, authorizes the board to invest in a variety of so-called "intangible" properties, including the items listed in your question.

"Property" is not defined in R.C. 121.22. However, R.C. 1.59, which defines several terms commonly used in the Revised Code, provides in pertinent part: "As used in any statute, unless another definition is provided in such statute or a related statute....(E) 'Property' means real and personal property."

In addition, I note that R.C. 1.42 provides that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." *Black's Law Dictionary* contains definitions of "real property" and "personal property." "Real property" is defined as "[l]and, and generally whatever is

erected or growing upon or affixed to land." *Black's Law Dictionary* 1096 (5th ed. 1979). In addition, "personal property" is defined in pertinent part as:

everything that is the subject of ownership, not coming under denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right or interest which one has in things movable.

....

Personal property includes money, goods, chattels, things in action, and evidences of debt....

Personal property is divisible into (1) corporeal personal property, which includes movable and tangible things, such as animals, furniture, merchandise, etc.; and (2) incorporeal personal property, which consists of *such rights as personal annuities, stocks, shares, patents, and copyrights.*

*Id.* (emphasis added). Clearly, the phrase "such rights as personal annuities, stocks, shares, patents, and copyrights," includes as "personal property" the "bonds, notes, debentures, certificates of indebtedness, stocks, shares, securities" and the other items that you mention in your letter. Although this definition of "property" is somewhat broad, nothing in R.C. 121.22(G)(2) indicates that the General Assembly intended to use the term in a narrow sense. If the General Assembly had intended to restrict the meaning of the word "property," it could have given the term a more narrow definition in the statute, as it chose to do when it defined "public body," "meeting," and "regulated individual" in R.C. 121.22(B). *See generally, Lake Shore Electric Railway Co. v. Public Utilities Commission of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (noting that had the legislature intended a term to have a particular meaning, "it would not have been difficult to find language which would express that purpose"). Hence, I have no reason not to rely on the definitions of "property" found in R.C. 1.59(E) and *Black's Law Dictionary*, and conclude that the term "property" as it is used in R.C. 121.22(G)(2) includes both tangible and intangible personal property.

Therefore, it is my opinion and you are advised that the word "property," as it is used in R.C. 121.22(G)(2), means real and personal property, which includes both tangible and intangible property. Accordingly, the Public Employees Retirement Board may discuss in executive session the purchase or sale of tangible or intangible property authorized under R.C. 145.11, including, but not limited to such items as bonds, notes, stocks, shares, securities, commercial paper, and debt or equity interests.