

**OPINION NO. 79-048****Syllabus:**

County commissioners have no authority under R.C. Chapter 135 to invest interim funds in repurchase agreements with stock brokerage firms.

**To: Anthony G. Pizza, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William J. Brown, Attorney General, July 31, 1979**

I have before me your request for my opinion concerning the following question:

Do county commissioners, under the Uniform Depository Act (R.C. Chapter 135), have the authority to enter into a repurchase agreement for the investment of interim funds with a stock brokerage firm?

You indicated that these repurchase agreements would pertain to investments

in United States treasury notes identical to those currently obtained from local banks under repurchase agreements. Further, you state that the security offered by the brokerage firm would be the same as provided by banking institutions.

The investment of interim moneys, as defined in R.C. 135.01(F), is governed by R.C. 135.14, which states in pertinent part:

The treasurer or governing board may invest or deposit any part or all of the interim moneys, provided that such investments will mature or are redeemable within two years from the date of purchase, except as otherwise limited in this section. The following classifications of obligations shall be eligible for such investment of deposit:

(A) Bonds, notes, or other obligations of or guaranteed by the United States, or those for which the faith of the United States is pledged for the payment of principal and interest thereon;

(B) Bonds, notes, debentures, or other obligations or securities issued by any federal government agency, or the export-import bank of Washington;

. . . .

The treasurer or governing board may also enter into a repurchase agreement for a period not to exceed thirty days with any eligible institution mentioned in section 135.03 of the Revised Code, under the terms of which agreement the treasurer or governing board purchases, and such institution agrees unconditionally to repurchase any of the securities listed in division (A) or (B) of this section that will mature or are redeemable within five years from the date of purchase . . . (Emphasis added.)

"Governing board," with respect to a county, means the board of county commissioners. R.C. 135.01(D). Thus, under the express terms of R.C. 135.14, county commissioners may enter into repurchase agreements for the securities listed in divisions (A) and (B) of that section only with an "eligible institution mentioned in section 135.03 of the Revised Code."

The institutions eligible for deposits listed in R.C. 135.03 are national banks located in this state, any bank as defined by R.C. 1101.01, and domestic building and loan associations as defined in R.C. 1151.01. The question, therefore, is whether it is possible to construe R.C. 135.03 to include stock brokerage firms.

Absent specific statutory authorization, public moneys cannot be loaned or invested by the officers in charge thereof. See, e.g., State v. Buttles, 3 Ohio St. 309 (1854) and Fidelity & Casualty Co. v. Union Savings Bank Co., 119 Ohio St. 124 (1928). As such, I stated in 1973 Op. Att'y Gen. No. 73-111 that the authority to deposit public moneys under R.C. Chapter 135 is to be strictly construed. Accordingly, R.C. 135.03 must be read narrowly in determining whether a stock brokerage firm may come under the definition of a bank or a building and loan association.

R.C. 1101.01(B) defines "bank" as follows:

"Bank" means any corporation soliciting, receiving, or accepting money or its equivalent on deposit as a business, whether such deposit is made subject to a check or is evidenced by a certificate of deposit, passbook, note, receipt, ledger card, or otherwise, and also includes commercial banks, savings banks, trust companies, and special plan banks, but does not include any building and loan association, credit union, or federal savings and loan association.

A "building and loan association" is defined in R.C. 1151.01(A) which states:

"Building and loan association" means a corporation organized for the

purpose of raising money to be loaned to its members or to others;  
and "building and loan association" includes "savings association."

Under the rule of strict construction, a stock brokerage firm does not come within either the definition of a bank, or of a savings and loan association.

Moreover, the additional duties and limits imposed by R.C. Chapter 135 upon eligible institutions are fundamentally inapplicable to an entity other than a banking institution. If, for instance, stock brokerages were considered to be within the ambit of R.C. 135.03, the obligations of R.C. 135.031 (that eligible institutions participate in the guaranteed student loan program) could not be satisfied. Similarly, the limits imposed upon eligible institutions with respect to the ratio of public moneys to non-public moneys held by them could not be enforced. See R.C. 135.03, R.C. 135.06, R.C. 135.08. An expansion of R.C. 135.03 to include stock brokerage firms would therefore violate the canon of statutory interpretation that all provisions of a code bearing upon a single subject matter are to be construed harmoniously and in a manner which effectuates, rather than frustrates, the legislative purpose. Cf., State v. Glass, 27 Ohio App. 2d 214 (1971) and R.C. 1.47(B).

R.C. 135.03 specifically lists three institutions which are eligible to become depositories for public funds, and under the maxim expressio unius est exclusio alterius (the mention of one thing implies the exclusion of another) it can be presumed that the General Assembly did not intend to include stock brokerage firms within the purview of R.C. Chapter 135. Compare, State ex rel. Alden E. Stilson & Assoc., Ltd. v. Ferguson, 154 Ohio St. 139 (1950). Furthermore, when a statute directs a thing to be done by a specified means or in a particular manner, it may not be done by other means or in a different manner. City of Cincinnati v. Roettinger, 105 Ohio St. 145 (1922); Akron Transportation Co. v. Glander, 155 Ohio St. 471 (1951). R.C. 135.14 directs that funds invested in repurchase agreements be invested with an eligible institution mentioned in R.C. 135.03. An investment with a stock brokerage firm would be in a manner different than that set out in the statute and is therefore impermissible. See 1938 Op. Att'y Gen. No. 2390, p. 928. (Township officials can, under the Uniform Depository Act, deposit money only in a public depository as defined by statute.)

Accordingly, it is my opinion, and you are advised, that county commissioners have no authority under R.C. Chapter 135 to invest interim funds in repurchase agreements with stock brokerage firms.