December 23, 2003

The Honorable Richard D. Welch
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

SYLLABUS: 2003-037

1. When a county has designated a community improvement corporation (CIC) as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art. VIII, § 13, the county and the CIC are responsible for their respective obligations under any agreement made pursuant to R.C. 1724.10. Except as provided by agreement in accordance with Ohio Const. art. VIII, § 13 and R.C. 1724.10, any debts incurred by the CIC in a business venture are those of the CIC and not those of the county. However, it is possible that the county may be required by R.C. 2744.07 to provide defense or indemnification for the CIC or for some or all members of the CIC's governing board, in connection with acts or omissions that meet appropriate statutory criteria.

2. When a county has designated a CIC as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art. VIII, § 13, the CIC must comply with applicable provisions of R.C. Chapters 1702 and 1724 and with the terms of any agreement under R.C. 1724.10. In buying, selling, or leasing real or personal property or services, the CIC is not required to follow competitive bidding requirements or other restrictions that apply to a board of county commissioners but are not expressly made applicable to a CIC by statute or agreement.

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December 23, 2003

OPINION NO. 2003-037

The Honorable Richard D. Welch
Morgan County Prosecuting Attorney
109 East Main Street
McConnelsville, Ohio 43756-1125

Dear Prosecutor Welch:

We have received your request for an opinion addressing various issues surrounding the relationship between the Morgan County Commissioners and the Morgan County Improvement Corporation (Morgan CIC), which was created as a community improvement corporation under R.C. Chapter 1724. You have asked the following questions:

1. If the Morgan CIC fails in any particular business venture and its expenses exceed its revenue, what financial exposure is there for Morgan County since the Morgan CIC is its agent for economic development? In other words, if the Morgan CIC has no assets to satisfy a judgment, do the assets of Morgan County as a whole become exposed to satisfy the judgment or liability?

2. Even though the Morgan CIC is a nonprofit corporation organized under R.C. Section 1724.01 et seq., must it engage in the competitive bidding process, the same as would be required for the Board of Commissioners, for any of its activities since it is the Agent for the Board of Commissioners of Morgan County for economic development activities? If the answer is in the affirmative, are there any exceptions under which the Morgan CIC, as agent for the County, would be exempt from the competitive bidding requirements?

3. Since the Morgan CIC is the Agent of Morgan County for economic development activities, are there any restrictions on how it may buy, sell, or lease real or personal property to carry out its charter mission and purpose? For example, is it limited to the same statutory restrictions placed on the Board of County Commissioners for buying, selling, and leasing real or personal property?

Background

As you have described the situation, the Morgan CIC was created in 1967, pursuant to R.C. Chapter 1724, for the sole purpose of advancing, encouraging, and promoting the industrial, commercial, distribution and research development of and for Morgan County, Ohio. At that time, the Board of Commissioners of Morgan County passed a resolution designating the Morgan CIC as the agent and instrumentality of Morgan County for the purposes outlined above, as provided in R.C. 1724.10. The Morgan CIC has continued to act in that capacity. The three county commissioners are members of the Morgan CIC.

You have stated that, due to the economic downturn in recent years, the Morgan CIC has taken a more active role in promoting, maintaining, attracting, and encouraging economic development in the county. In undertaking this activity, the Morgan CIC has purchased real estate and vacated industrial sites that have created indebtedness in the millions of dollars. You are concerned about the financial exposure that the county might face in connection with the business ventures of the Morgan CIC, and also the statutory restrictions that might apply to the actions of the Morgan CIC.

Community Improvement Corporations

To answer your questions, it is necessary to consider the nature of a community improvement corporation, commonly known as a CIC. Pursuant to statute, a CIC is a nonprofit corporation organized under the provisions of R.C. Chapter 1724 and subject to the general nonprofit corporation provisions of R.C. Chapter 1702 to the extent that they are not inconsistent with R.C. Chapter 1724. R.C. 1724.01; R.C. 1724.08. A CIC is organized "for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area." R.C. 1724.01. The articles of incorporation of a CIC must be approved by the Attorney General as being in accordance with R.C. Chapter 1724 before they are filed and recorded by the Secretary of State. R.C. 1724.04. The CIC must submit an annual financial report to the Auditor of State and is subject to audit by the Auditor of State. R.C. 1724.05.

A CIC is empowered to borrow money, issue bonds and notes, make loans, acquire or dispose of real and personal property, acquire assets or interests of businesses and undertake their obligations and liabilities, and acquire real estate for the purpose of constructing businesses or disposing of the real estate to others for such construction. R.C. 1724.03. A CIC may also acquire, construct, operate, sell, or lease industrial plants or business establishments and may acquire, hold, or dispose of stocks, bonds, notes, and other securities in private businesses. *Id*.

Pursuant to R.C. 1724.10, counties, townships, and municipal corporations, or combinations of these political subdivisions, may designate a CIC "as the agency of each such political subdivision for the industrial, commercial, distribution, and research development in such political subdivision" when the legislative authority has determined that it is the policy of the political subdivision "to promote the health, safety, morals, and general welfare of its

inhabitants" through the designation of the CIC. R.C. 1724.10. Following such a designation, the political subdivision may enter into an agreement with the CIC to provide the CIC with one or more of the following types of authority: (A) authority to prepare a plan for the political subdivision and participate as the agency of the political subdivision in carrying out the plan; (B) authority to sell or lease lands or interests in lands owned by the political subdivision and not needed for purposes of the subdivision; and (C) authority to acquire lands or interests in lands from the political subdivision or others and use them for purposes that "promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, and assist in the development of industrial, commercial, distribution, and research activities" to benefit the people of the political subdivision and provide additional opportunities for their gainful employment. R.C. 1724.10.

R.C. Chapter 165 provides a means by which a county or municipal corporation that has designated a CIC pursuant to R.C. 1724.10 may issue industrial development bonds to implement a plan prepared by the CIC, and R.C. 505.701 authorizes a township to issue general obligation bonds under R.C. Chapter 133 to finance the purchase of real property to be transferred to a CIC. Further, political subdivisions that designate a CIC as their agency are permitted to contribute money or other assistance to the CIC. *See* R.C. 307.78 (county);[1] R.C. 505.701 (township); 1991 Op. Att'y Gen. No. 91-071.

If a CIC is designated as the agency of one or more political subdivisions, appointed or elected officers of the political subdivisions (such as county commissioners) must compose not less than two-fifths of the CIC's governing board, with at least one officer from each political subdivision. R.C. 1724.10(A). Membership on the governing board of a CIC does not constitute the holding of a public office or employment within the meaning of R.C. 731.02 and R.C. 731.12 (restricting the authority of members of the legislative authority of a city or village to hold other public offices or employment) or any other section of the Revised Code. Further, such membership does not constitute an interest, either direct or indirect, in a contract or expenditure of money by a political subdivision. In addition, no member of the governing board of a CIC

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[1] R.C. 307.78 states:

> The board of county commissioners of any county may make contributions of moneys, supplies, equipment, office facilities, and other personal property or services to any community improvement corporation organized pursuant to Chapter 1724. of the Revised Code to defray the expenses of the corporation. The community improvement corporation may use the board's contributions for any of its functions under Chapter 1724. of the Revised Code.
>
> Any moneys contributed by the board for such purposes shall be drawn from the general fund of the county not otherwise appropriated. The board may anticipate the contributions of money for such purposes and enter the amount of such contributions in its annual statement to the county budget commission for inclusion in the budget upon which rates of taxation are based.

shall forfeit or be disqualified from holding any public office or employment by reason of that membership. *Id*.

As described above, a CIC is a nonprofit corporation with distinct ties to the government. It is, accordingly, a hybrid creation, with some private characteristics and some public characteristics. *See* 2000 Op. Att'y Gen. No. 2000-037; 1979 Op. Att'y Gen. No. 79-061, at 2-204 to 2-205 (a CIC "is a hybrid entity that possesses certain features of both a public and private nature").

Financial exposure of county for business ventures of CIC designated as its agency

The statutes authorizing the creation and operation of community improvement corporations were enacted to implement Ohio Const. art. VIII, § 13. *See State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 40, 218 N.E.2d 496 (1966) (R.C. 1724.10 "was enacted pursuant to and as a result of [Ohio Const. art. VIII, § 13]. It provides the machinery to make [Ohio Const. art. VIII, § 13] operative"); 2000 Op. Att'y Gen. No. 2000-037, at 2-230. Ohio Const. art. VIII, § 13 was adopted as an exception to the provisions of Ohio Const. art. VIII, §§ 4 and 6, that prohibit the state and its counties, cities, and townships from owning stock in private companies or lending their credit to, or in aid of, private companies. Section 13 expressly permits the state and its political subdivisions (including counties), or their agencies or instrumentalities, or nonprofit corporations designated by them as agencies or instrumentalities, to make or guarantee loans, to borrow money and issue bonds or other obligations, and to lend aid and credit for certain purposes, "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." Ohio Const. art. VIII, § 13.[2]

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[2] The full text of Ohio Const. art. VIII, § 13 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

The Ohio Supreme Court has examined a CIC and has determined that it is a nonprofit corporation separate from any political subdivision that designates the CIC as its agency or instrumentality. In particular, while recognizing that a political subdivision may designate a CIC as its agent, the Ohio Supreme Court has stated that "the debts incurred by the [community improvement] corporation are solely those of the corporation, not of the political subdivision." *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d at 40.[3] This is consistent with the language of Ohio Const. art. VIII, § 13, quoted above, that prohibits the pledging of tax moneys to pay for bonds, obligations, or guarantees made pursuant to laws enacted under its provisions. It is also consistent with the language of R.C. 1724.10(A) that authorizes a CIC to incur debt, mortgage its property, and issue its obligations to carry out its participation in a plan,

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> 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 in furtherance of laws enacted pursuant to this section.

[3] When *State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d 34, 218 N.E.2d 496 (1966), was decided, a county that designated a CIC as its agency was not permitted to appropriate moneys derived from taxation to provide for the maintenance or operating expenses of the CIC. That result was changed by the enactment of R.C. 307.78. *See* 1967 Op. Att'y Gen. No. 67-056 (overruled by 1985 Op. Att'y Gen. No. 85-024 and 1991 Op. Att'y Gen. No. 91-071 on the basis of legislative change); note 1, *supra*; see *also* 1971-1972 Ohio Laws, Part II, 2361 (H.B. 1030, eff. Sept. 27, 1972) (enacting R.C. 307.78).

provided that "[a]ny such debt shall be solely that of the corporation and shall not be secured by the pledge of any moneys received or to be received from any political subdivision." R.C. 1724.10(A).

The intent of R.C. 1724.10, and of the provisions of Ohio Const. art. VIII, § 13 authorizing its enactment, thus is to permit a county to implement industrial development through the agency of a CIC, allowing the county to provide assistance to the CIC but restricting the CIC from incurring debt on behalf of the county. The county and the CIC are responsible for their respective obligations under any agreement made pursuant to R.C. 1724.10. Except as provided by agreement in accordance with Ohio Const. art. VIII, § 13 and R.C. 1724.10, the county does not take on debts incurred by the CIC. Therefore, business ventures undertaken by a CIC pursuant to R.C. Chapter 1724 may subject the CIC to financial risk, but the risk remains that of the CIC and does not extend to a county that has designated the CIC as its agency.

Financial exposure of county for judgments or liabilities of CIC designated as its agency

The possibility that a political subdivision might incur some expenses or liability in connection with a CIC designated as its agency was addressed in 1987 Op. Att'y Gen. No. 87-024. That opinion considered a situation in which a village designated a CIC as its agency pursuant to R.C. 1724.10. The CIC voted against recommending industrial revenue bond financing for a particular project, and the persons whose project was thus thwarted brought suit against the village, the CIC, and members of the CIC in their official and individual capacities, alleging antitrust violations.

1987 Op. Att'y Gen. No. 87-024 concluded that, pursuant to R.C. 2744.07, a municipal corporation, county, or township that has designated a CIC as its agency under R.C. 1724.10: (1) is required to provide for the defense of the CIC and the members of its governing board in a civil action for damages in connection with a determination regarding the issuance of industrial revenue bonds, if the acts or omissions occurred or are alleged to have occurred while the corporation and the members of its governing board were acting in good faith and not manifestly outside the scope of their official responsibilities; and (2) is required to indemnify and hold harmless the CIC and the members of its governing board in the amount of a treble damage judgment in a federal antitrust case for injury or loss caused by acts or omissions of the CIC or the members of its governing board in connection with a determination as to the issuance of industrial revenue bonds, if at the time of the acts or omissions the CIC and the members of its governing board were acting in good faith and within the scope of their official responsibilities. 1987 Op. Att'y Gen. No. 87-024 (syllabus, paragraphs 4 and 6). The analysis set forth in 1987 Op. Att'y Gen. No. 87-024 is based in large part upon the argument that a CIC designated as an agency of a political subdivision is an agent of the political subdivision for purposes of the definition of employee appearing in R.C. 2744.01(B), which includes an agent,[4] so that the CIC

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[4] R.C. 2744.01(B) states, in part:

and members of its governing board are employees of the political subdivision when they act within the scope of the designation. *See also State ex rel. Burton v. Greater Portsmouth Growth Corp.*, 7 Ohio St. 2d at 40 (R.C. 1724.10 "in general provides that a county or municipality may designate a community improvement corporation as its agent for the industrial, commercial and research development of the area"); 1979 Op. Att'y Gen. No. 79-061, at 2-206 (a CIC designated under R.C. 1724.10 "is quite literally an agency of a county or a municipal corporation" and is a public body for the open meeting provisions of R.C. 121.22).

As a practical matter, the issuance of 1987 Op. Att'y Gen. No. 87-024 provided a basis for the village in question to post an appeal bond on behalf of the CIC and its governing board. In subsequent proceedings, it was determined that neither the CIC nor the members of the governing board bore any liability. *Riverview Investments, Inc. v. Ottawa Cmty. Improvement Corp.*, 899 F.2d 474 (6th Cir. 1990).

Further, the court stated that, "[a]lthough CIC approved of bonds on behalf of the Village, and therefore acted as its 'agent,' this argument ignores the reality that CIC was an independent body, making independent decisions without the input, advice, involvement, or oversight of the Village or any other governmental body." *Id*. at 481-82. The court also noted an earlier finding that the CIC was not considered by the state as an agency of a municipality, but simply as a body of people organized for the purpose of economic development. *Id*. at 479, 484. These findings were made in connection with the application of the doctrine of state action immunity in antitrust proceedings and, therefore, are not determinative of the question whether an agency relationship exists in other contexts. *See* 1987 Op. Att'y Gen. No. 87-024, at 2-168 n.3. Nonetheless, they raise the question of the purposes for which an agreement under R.C. 1724.10 creates the relationship of principal and agent between a political subdivision and a CIC that the subdivision designates as its agency.

It is clear that the word "agency" may have various meanings. It may indicate a legal relationship of principal and agent, it may describe an entity that serves as a subdivision or subordinate department of a public body, or it may mean simply a mechanism by which a particular result is accomplished. *See Webster's New World Dictionary* 25 (2d college ed. 1978) (including the following definitions of "agency": "**2.** that by which something is done; means; instrumentality"; "**3.** the business of any person, firm, etc. empowered to act for another"; and "**5.** an administrative division of government with specific functions").

> "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 [3319.30.1] of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision.

The fact that Ohio Const. art. VIII, § 13, in authorizing the creation of organizations such as community improvement corporations, speaks of "corporations not for profit designated … as … agencies or instrumentalities," indicates that the intent was to provide an entity that could serve a particular function, rather than necessarily to create the relationship of principal and agent. Therefore, it is not clear that for all purposes a CIC will have a principal-agent relationship with a political subdivision that designates it as an agency. It appears, rather, that because the relationship is created pursuant to contract, the CIC may be considered an independent entity or independent contractor for at least some purposes, in accordance with the contractual provisions. *See* R.C. 1724.10. As was stated by a prior Attorney General:

> The rule is, thus, that an employer-employee or principal-agent relationship exists if the employer or principal retains control of, or the right to control, the mode and manner in which the services are performed, and the relationship of independent contractor exists if there is no such retention of the right of control. It is even possible for certain aspects of a relationship to constitute an employment or agency relationship while others constitute an independent contractor arrangement.

1987 Op. Att'y Gen. No. 87-102, at 2-684 (citations omitted). *See generally* 1985 Op. Att'y Gen. No. 85-024, at 2-94 ("although a township may designate a community improvement corporation to act on its behalf in the establishment and growth of industrial, commercial, distribution and research facilities, the General Assembly did not contemplate that a township could directly carry out such purposes").

Questions of liability are decided by the courts, in particular contexts and with consideration of specific facts. *See, e.g.,* 2000 Op. Att'y Gen. No. 2000-021, at 2-136 ("[q]uestions of liability are resolved by the courts and cannot be determined by means of an opinion of the Attorney General"); 1999 Op. Att'y Gen. No. 99-047, at 2-297. Similarly, the courts decide when to impose costs or require payment for damages. It is not possible, by means of a formal opinion of the Attorney General, to predict with certainty whether or when a court might find that a county should suffer some expense or liability in connection with a CIC that has been designated as its agency. 1987 Op. Att'y Gen. No. 87-024 concludes that some expense or liability might be incurred pursuant to R.C. Chapter 2744. That conclusion is most evident with regard to the defense or indemnification of officers of the political subdivision who serve as members of the governing board of the CIC because of the offices they hold. As discussed in 1987 Op. Att'y Gen. No. 87-024, on appropriate facts that conclusion might be extended to the CIC and other members of its governing board. We cannot with any certainty predict what liability or judgment a court might impose in a particular instance. *See generally* 1993 Op. Att'y Gen. No. 93-001 (concluding that a county or township is not required by R.C. 2744.07 to provide for the defense or indemnification of a member of the governing board of a regional planning commission, including a member who serves by virtue of holding an office with the county or township; rather, the regional planning commission, as a political subdivision, is itself responsible for such defense or indemnification); 1987 Op. Att'y Gen. No. 87-102 (the defense and indemnification provisions of R.C. 2744.07 do not apply when a contract creates an

independent contractor relationship with a nonprofit organization but do apply when a contract creates an employment or agency relationship).[5]

We conclude, therefore, that when a county has designated a CIC as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art VIII, § 13, the county and the CIC are responsible for their respective obligations under any agreement made pursuant to R.C. 1724.10. Except as provided by agreement in accordance with Ohio Const. art. VIII, § 13 and R.C. 1724.10, any debts incurred by the CIC in a business venture are those of the CIC and not those of the county. However, it is possible that the county may be required by R.C. 2744.07 to provide defense or indemnification for the CIC or for some or all members of the CIC's governing board, in connection with acts or omissions that meet appropriate statutory criteria.

Application to CIC of county competitive bidding requirements and other restrictions governing the purchase, sale, or lease of real or personal property or services

Your second question asks whether a CIC that has been designated as the agency of a county must engage in the competitive bidding process for any of its activities, as the board of county commissioners would be required to do. Your third question asks whether there are other restrictions on the manner in which a CIC may buy, sell, or lease real or personal property to carry out its charter mission and purpose. In particular, you ask whether the CIC is subject to the same statutory restrictions that are placed on the board of county commissioners. Because these two questions require the same analysis, we discuss them together.

As noted above, a CIC is a nonprofit corporation, separate and distinct from a political subdivision that designates the CIC as its agency. It is subject to the provisions of R.C. Chapter 1724 and, unless they are inconsistent, the provisions of R.C. Chapter 1702. R.C. 1724.01; R.C. 1724.08. A CIC has basic corporate powers to purchase, lease, otherwise acquire, or dispose of real or personal property and to enter into contracts for the purpose of carrying out its authorized functions. R.C. 1702.12(C) and (F); R.C. 1724.02. It is free to undertake business ventures as a private entity, without statutory imposition of competitive bidding requirements or other restrictions applicable to political subdivisions. *See, e.g.,* 2000 Op. Att'y Gen. No. 2000-037 (syllabus) ("[f]or purposes of a lease of real property by a county to a community improvement corporation pursuant to R.C. 1724.10, a community improvement corporation is not a governmental subdivision under R.C. 307.09(B)").

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[5] R.C. Chapter 2744 addresses only civil actions. You have not raised the possibility of criminal liability and this opinion does not address that possibility, except to note that there may be circumstances in which a political subdivision will provide counsel or will reimburse attorney fees for officers who are faced with criminal charges in matters in which they are involved in their official capacities. *See, e.g.,* 1993 Op. Att'y Gen. No. 93-001; 1990 Op. Att'y Gen. No. 90-096; 1971 Op. Att'y Gen. No. 71-080.

Your basic concern appears to be whether the relationship between the county and the CIC requires that the CIC comply with competitive bidding requirements and other restrictions that apply to the county. The statutes nowhere indicate that such requirements or restrictions apply. Rather, the statutes impose upon the county conditions that it must meet in contracting with a CIC and transferring or conveying property to the CIC, and then permit the CIC to take independent action to execute its obligations under the contract. *See* R.C. 1724.10.

General competitive bidding provisions applicable to counties appear in R.C. 307.86. They state that competitive bidding requirements apply to "[a]nything to be purchased, leased, leased with an option or agreement to purchase, or constructed … by or on behalf of the county or contracting authority, as defined in [R.C. 307.92], at a cost in excess of twenty-five thousand dollars," with certain exceptions. R.C. 307.92 defines "contracting authority" to mean "any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board thereof." For purposes of this provision, a county agency has been construed to mean a body that is essentially a subdivision or subordinate department of the county. The factors used to make this determination are: (1) whether the territory comprising the entity is coextensive with the territorial limits of the county; (2) whether the county is responsible for the organization and supervision of the entity; and (3) whether the entity is funded by or through the county. 1993 Op. Att'y Gen. No. 93-065, at 2-308; 1992 Op. Att'y Gen. No. 92-060, at 2-247.

Although a CIC may have various connections with a county, it cannot reasonably be considered a county agency for purposes of this definition. A CIC is a nonprofit corporation, organized by private persons pursuant to R.C. 1702.04. *See* R.C. 1724.01. The CIC is created to provide for the development of a defined community or area, but that community or area is not necessarily coextensive with the county. *Id.*; *see also* 1970 Op. Att'y Gen. No. 70-007. The CIC may receive property or funds from the county, but it is an independent body that remains responsible for its own financial operations. *See* R.C. Chapter 1702; R.C. 1724.02. Further, although a county that designates a CIC as its agency works with the CIC in some respects, the county does not have consistent supervisory responsibility over the CIC. *See* R.C. 1724.10.

As discussed above, a CIC may be considered an agent or agency of a county for various purposes. It appears, however, that when a county designates a CIC as its agency for industrial, commercial, distribution, and research development pursuant to R.C. 1724.10, the CIC is authorized to act on its own behalf in entering into the various contracts that enable it to carry out its functions, rather than contracting for or on behalf of the county or as its agent. *See Riverview Investments, Inc. v. Ottawa Cmty. Improvement Corp.*, 899 F.2d at 481-82; 1998 Op. Att'y Gen. No. 98-004 (a regional council of governments is not required to comply with the general budgetary requirements of R.C. Chapter 5705 when compliance has already been achieved by the member governments and no duty of compliance is transferred to the regional council); *cf.* 1991 Op. Att'y Gen. No. 91-012 (syllabus) (when a municipal legislative authority contracts with a board of county commissioners under R.C. 307.15 to manage and operate a county sewer district, it "must exercise the specific powers and duties that pertain thereto in accordance with

the terms of such statutory provisions as apply to the exercise of those powers and duties by the board of county commissioners," including competitive bidding provisions); 1982 Op. Att'y Gen. No. 82-103 (when a regional council of governments assumes certain duties and responsibilities of member political subdivisions, it must comply with all statutory requirements imposed upon the member political subdivisions in the performance of those duties and responsibilities); 1969 Op. Att'y Gen. No. 69-013. *See generally Sentinal Sec. Sys. v. Medkeff*, 36 Ohio App. 3d 86, 521 N.E.2d 7 (Summit County 1987) (a county hospital is subject to R.C. 307.86); 1994 Op. Att'y Gen. No. 94-021 (a joint-county entity is distinct from the county and is not subject to R.C. 307.86); 1993 Op. Att'y Gen. No. 93-065 (a veterans service commission is a county agency that is subject to R.C. 307.86); 1992 Op. Att'y Gen. No. 92-060 (a county solid waste management district is a subdivision or subordinate department of the county and is subject to R.C. 307.86); 1992 Op. Att'y Gen. No. 92-050 (a county children's services board is a contracting authority that is subject to R.C. 307.86); 1990 Op. Att'y Gen. No. 90-018 (a joint township district hospital is not a county agency and is not subject to R.C. 307.86).

A CIC's general independence from competitive bidding requirements is evident from the provisions of R.C. 1724.10. A contract under R.C. 1724.10(A) may provide for a CIC to prepare a plan for a county and may set forth the extent to which the CIC shall participate in carrying out the plan. After the county commissioners confirm the plan, the CIC is permitted to take the actions authorized by statute to carry out its functions. The statute provides authority for the CIC to issue its obligations and incur its debt. R.C. 1724.10(A). In this regard, the CIC acts as an independent nonprofit corporation and not as an agent of the county.

When an agreement under R.C. 1724.10(B) authorizes a CIC to sell or lease lands or interests in lands that are owned by the county and determined not to be needed for county purposes, there is express authority for the CIC to act without competitive bidding. The statute authorizes the county to specify the consideration and other terms. It states: "The community improvement corporation acting through its officers and on behalf and as agent of the political subdivision shall execute the necessary instruments, including deeds conveying the title of the political subdivision or leases, to accomplish such sale or lease. Such conveyance or lease shall be made without advertising and receipt of bids." R.C. 1724.10(B). Thus, the county is permitted to authorize the CIC to convey or lease unneeded property, and the CIC is permitted to operate, manage, develop, lease, or dispose of the property, without competitive bidding, in accordance with the terms established by the county, pursuant to the charter and purpose of the CIC, and subject to applicable provisions of its agreement with the county and relevant provisions of R.C. Chapter 1702 and 1724.

An agreement under R.C. 1724.10(C) may authorize a CIC to accept lands and interests in lands conveyed to it by a county for the consideration and upon the terms established. The statute specifies that "[a]ny conveyance or lease by the political subdivision [county] to the [CIC] shall be made without advertising and receipt of bids." R.C. 1724.10(C); *see* 1973 Op. Att'y Gen. No. 73-060. Once the CIC has accepted the property, it may use or dispose of it in accordance with the agreement and relevant provisions of R.C. Chapters 1702 and 1724. If the CIC sells any property at a price in excess of the consideration that it paid the county, the excess

must be paid to the county, following the deduction of certain costs and fees as provided in the agreement.

Various other statutes govern the purchase, sale, or lease of property by the county, or requirements for competitive bidding. *See, e.g.,* R.C. 307.02 (authority for county to provide county facilities by purchase, lease, or other arrangements; provisions establishing bidding procedure); R.C. 307.08 (authority for county to appropriate lands); R.C. 307.09 (authority for county to sell, lease, or rent real property); R.C. 307.092 (authority for county to sell, lease, or transfer real property to a nonprofit senior citizens' organization); R.C. 307.10 (authority for county to sell or lease property for various purposes; provisions indicating when bidding is required); R.C. 307.11 (authority for county to lease mineral lands); R.C. 307.12 (authority for county to sell, lease, or otherwise dispose of personal property; provisions indicating when bidding is required). *See generally* 1992 Op. Att'y Gen. No. 92-060. However, these provisions apply to the county and do not appear to extend to a CIC that is functioning as a nonprofit corporation pursuant to R.C. Chapters 1702 and 1724, even if the CIC has been designated as the agency of the county.

In entering into an agreement with a CIC pursuant to R.C. 1724.10, a county is required to comply with conditions imposed by R.C. 1724.10 and is limited by restrictions on its authority imposed by other statutes. For example, R.C. 307.09 restricts the time period for which a county may lease real property that it owns and that is not needed for public use, and a county must comply with these restrictions in leasing property to a CIC. *See* 2000 Op. Att'y Gen. No. 2000-037. After the CIC has acquired the use of property, however, it is subject only to the statutory provisions of R.C. Chapters 1702 and 1724, and to the terms of any relevant agreement. If an agreement under R.C. 1724.10 imposes upon the CIC competitive bidding requirements or other restrictions, then the CIC must comply with those requirements or restrictions.

We conclude, therefore, that when a county has designated a CIC as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art. VIII, § 13, the CIC must comply with applicable provisions of R.C. Chapters 1702 and 1724 and with the terms of any agreement under R.C. 1724.10. In buying, selling, or leasing real or personal property or services, the CIC is not required to follow competitive bidding requirements or other restrictions that apply to a board of county commissioners but are not expressly made applicable to a CIC by statute or agreement. Of course, even when competitive bidding is not required, a CIC may elect to implement a bidding procedure. *See* 1994 Op. Att'y Gen. No. 94-021, at 2-95; 1987 Op. Att'y Gen. No. 87-079, at 2-519.

Conclusions

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

1. When a county has designated a community improvement corporation (CIC) as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art. VIII, § 13, the county and the CIC are responsible for their

respective obligations under any agreement made pursuant to R.C. 1724.10. Except as provided by agreement in accordance with Ohio Const. art. VIII, § 13 and R.C. 1724.10, any debts incurred by the CIC in a business venture are those of the CIC and not those of the county. However, it is possible that the county may be required by R.C. 2744.07 to provide defense or indemnification for the CIC or for some or all members of the CIC's governing board, in connection with acts or omissions that meet appropriate statutory criteria.

2. When a county has designated a CIC as its agency pursuant to R.C. 1724.10 and in accordance with Ohio Const. art. VIII, § 13, the CIC must comply with applicable provisions of R.C. Chapters 1702 and 1724 and with the terms of any agreement under R.C. 1724.10. In buying, selling, or leasing real or personal property or services, the CIC is not required to follow competitive bidding requirements or other restrictions that apply to a board of county commissioners but are not expressly made applicable to a CIC by statute or agreement.

Respectfully,

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