

Lease-Purchase and Alternate Financing Structures

(A World Beyond General Obligation Debt)

SEPTEMBER 17, 2025

Dinsmôre



Today's Presenters



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Today's Agenda

- **Basics of General Obligation Debt**
- **Overview of Alternate Financing Structures**
 - Revenue Bonds
 - Revenue Anticipation Notes (CRANs)
 - Tax Anticipation Notes (TANs)
 - Lease-Purchase Financing
 - Manuscript and Manuscript-Like Debt



But first...

Basics of GO Debt

Chapter 133 Securities

- Ohio's Uniform Public Securities Law
- Used to finance "permanent improvements"
 - Property or assets having an estimated useful life of 5+ years
- Includes most GO bonds and bond anticipation notes (BANs), tax anticipation notes (TANs), and revenue anticipation notes
- Maximum maturity of the bonds is determined by the expected useful life of the financed assets, as certified by fiscal officer (ORC 133.20)

Section 133.20 | Maximum maturity.

Ohio Revised Code / Title 1 State Government / Chapter 133 Uniform Public Securities Law

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Effective: September 29, 2011 Latest Legislation: House Bill 153 - 129th General Assembly PDF: Download Authenticated PDF

(A) This section applies to bonds that are general obligation Chapter 133. securities. If the bonds are payable as to principal by provision for annual installments, the period of limitations on their last maturity, referred to as their maximum maturity, shall be measured from a date twelve months prior to the first date on which provision for payment of principal is made. If the bonds are payable as to principal by provision for semiannual installments, the period of limitations on their last maturity shall be measured from a date six months prior to the first date on which provision for payment of principal is made.

(B) Bonds issued for the following permanent improvements or for permanent improvements for the following purposes shall have maximum maturities not exceeding the number of years stated:

(1) Fifty years:

- (a) The clearance and preparation of real property for redevelopment as an urban redevelopment project;
- (b) Acquiring, constructing, widening, relocating, enlarging, extending, and improving a publicly owned railroad or line of railway or a light or heavy rail rapid transit system, including related bridges, overpasses, underpasses, and tunnels, but not including rolling stock or equipment;
- (c) Pursuant to section [307.675](#) of the Revised Code, constructing or repairing a bridge using long life expectancy material for the bridge deck, and purchasing, installing, and maintaining any performance equipment to monitor the physical condition of a bridge so constructed or repaired. Additionally, the average maturity of the bonds shall not exceed the expected useful life of the bridge deck as determined by the county engineer under that section.

(2) Forty years:

- (a) General waterworks or water system permanent improvements, including buildings, water mains, or other structures and facilities in connection therewith;
- (b) Sewers or sewage treatment or disposal works or facilities, including fireproof buildings or other structures in connection therewith;
- (c) Storm water drainage, surface water, and flood prevention facilities.

(3) Thirty-five years:

- (a) An arena, a convention center, or a combination of an arena and convention center under section [307.695](#) of the Revised Code;
- (b) Sports facilities.

(4) Thirty years:

- (a) Municipal recreation, excluding recreational equipment;
- (b) Urban redevelopment projects;
- (c) Acquisition of real property, except as provided in division (F) of this section;
- (d) Street or alley lighting purposes or relocating overhead wires, cables, and appurtenant equipment underground.

(5) Twenty years: constructing, reconstructing, widening, opening, improving, grading, draining, paving, extending, or changing the line of roads, highways, expressways, freeways, streets, sidewalks, alleys, or curbs and gutters, and related bridges, viaducts, overpasses, underpasses, grade crossing eliminations, service and access highways, and tunnels.

(6) Fifteen years:

- (a) Resurfacing roads, highways, streets, or alleys;
- (b) Alarm, telegraph, or other communications systems for police or fire departments or other emergency services;
- (c) Passenger buses used for mass transportation;
- (d) Energy conservation measures as authorized by section [133.06](#) of the Revised Code.

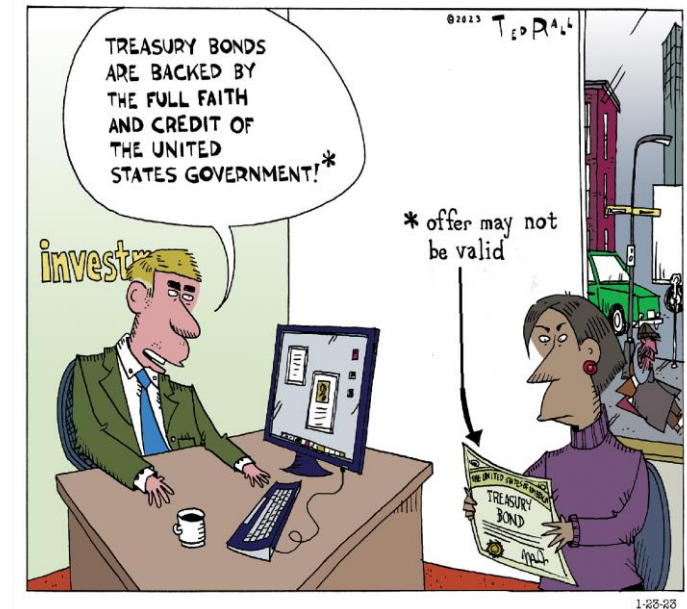
(7) Ten years:

- (a) Water meters;
- (b) Fire department apparatus and equipment;
- (c) Road rollers and other road construction and servicing vehicles;
- (d) Furniture, equipment, and furnishings;
- (e) Landscape planting and other site improvements;
- (f) Playground, athletic, and recreational equipment and apparatus;
- (g) Energy conservation measures as authorized by section [505.264](#) of the Revised Code.

(8) Five years: New motor vehicles other than those described in any other division of this section and those for which provision is made in other provisions of the Revised Code.

General Obligation Bonds

- Issuer pledges its “full faith and credit and general taxing power” to payment of debt charges
- Unvoted GO: secured by an ad valorem tax on all taxable property within the Issuer within limitations prescribed by law (limited tax pledge)
- Voted GO: secured by an ad valorem tax on all taxable property within the Issuer without limitation as to rate or amount (unlimited tax pledge)
- Lower risk for investors, so often provides lower borrowing costs for issuers than alternate financing options



Direct Debt Limitations

- Statutory debt limitations for net indebtedness
 - County (ORC 133.07)
 - Municipality (ORC 133.05)
 - Township (ORC 133.09)
 - School district (ORC 133.06)
- Based on a political subdivision's assessed valuation



Direct Debt Limitations

- Certain debt is not included in the net indebtedness of a political subdivision and not subject to the direct debt limitation:
 - Special assessment bonds
 - Revenue bonds
 - Sales tax bonds
 - Certain “self-supporting” obligations
 - Debt issued for specific purposes (such as jail bonds)

FINANCIAL STATEMENT

MUNICIPALITY
Section 133.05, O.R.C.STATE OF OHIO)
) SS.
COUNTY OF _____)

I, _____, of the Municipality of _____ State of Ohio, do hereby certify that the following statements concerning the finances of said municipality are true and correct as they appear from the records in my office:

1. ASSESSED VALUATION of the taxable property of the municipality, as shown on the tax duplicate for the year 20____, \$ _____
2. Total of all bonds and notes or other evidence of indebtedness issued and outstanding, INCLUDING THE PRESENT ISSUE of \$ _____
3. Exempt Debt: \$ _____
 - (A) Securities issued under Chapter 122., 140., 165., 725., or 761., or Section 131.23, O.R.C.; \$ _____
 - (B) Securities issued to pay costs of permanent improvements to the extent they are issued in anticipation of the receipt of, and are payable as to principal from, federal or state grants for that principal or for the costs of those permanent improvements. \$ _____
 - (C) Securities issued to evidence loans from the state capital improvements fund pursuant to Chapter 164, O.R.C. \$ _____
 - (D) Other securities, including self-supporting securities, excepted by law from the calculation of net indebtedness for from the application of Chapter 133, O.R.C. \$ _____
 - (E) Any other securities outstanding on October 30, 1989, and then excepted from the calculation of net indebtedness or from the application of Chapter 133, O.R.C., and securities issued at any time to fund or refund those securities \$ _____
 - (F) Self-supporting securities issued for any purposes including, without limitations, any of the following general purposes: \$ _____
 - (a) Water systems or facilities; \$ _____
 - (b) Sanitary sewerage systems or facilities, or surface and storm water drainage and sewerage systems or facilities or a combination of those systems or facilities; \$ _____
 - (c) Electric plants and facilities and steam or cogeneration facilities that generate or supply electricity, or steam and electrical or steam distribution systems and lines; \$ _____
 - (d) Airports or landing fields or facilities; \$ _____
 - (e) Railroads, rapid transit and other mass transit systems; \$ _____
 - (f) Off-street parking lots facilities or buildings or on-street parking facilities, or any combination of off-street and on-street parking facilities; \$ _____
 - (g) Facilities for the care or treatment of the sick or infirm, and for housing and persons providing such care or treatment and their families; \$ _____
 - (h) Solid waste or hazardous waste collection or disposal facilities, or resource recovery and solid or hazardous waste recycling facilities, or any combination of those facilities; \$ _____
 - (i) Urban redevelopment projects; \$ _____
 - (j) Recreational, sports, convention, auditorium, museum, trade show, and other public attraction facilities; \$ _____
 - (k) Facilities for natural resources exploration, development, recovery, use, and sale; \$ _____
 - (l) Correctional and detention facilities, including multicounty municipal jails, and related rehabilitation facilities. \$ _____
 - (G) Securities issued for the purpose of purchasing, constructing, improving, or extending water or sanitary or surface and storm water sewerage systems or facilities, or a combination of those systems or facilities, to the extent that an agreement entered into with another subdivision requires the other subdivision to pay to the municipal corporation amounts equivalent to debt charges on the securities \$ _____
 - (H) Securities issued under order of the director of health or director of environmental protection under Section 6109.18, O.R.C. \$ _____
 - (I) Securities issued under Section 3, 10, or 12 of the Article XVIII, Ohio Constitution \$ _____
 - (J) Securities that are not general obligations of the municipal corporation \$ _____
 - (K) Voted securities issued for the purposes of urban redevelopment to the extent that their principal amount does not exceed an amount equal to two percent of the tax valuation of the municipal corporation \$ _____
 - (L) Unvoted general obligation securities to the extent that the legislation authorizing them includes covenants to appropriate annually from lawfully available municipal income taxes or other municipal excises or taxes, including taxes referred to in section 701.06 of the Revised Code but not including ad valorem property taxes, and to continue to levy and collect municipal income taxes or other applicable excise taxes in, amounts necessary to meet the debt charges on those securities. \$ _____
 - (M) Self-supporting securities issued prior to July 1, 1997, under Chapter 133, O.R.C., for the purpose of municipal university residence halls to the extent that revenues of the successor state university allocated to debt charges on those securities, from sources other than municipal excises and taxes, are sufficient to pay those debt charges \$ _____

- (N) Securities issued for the purpose of acquiring or constructing roads, highways, bridges or viaducts or acquiring or making other highway permanent improvements or for the purpose of procuring and maintaining computer systems for the office of the clerk of the Municipal Court to the extent that the legislation authorizing the issuance of the securities includes a covenant to appropriate from money distributed to the municipal corporation pursuant to Chapter 4501., 4503., 4504., or 5735. of the Revised Code a sufficient amount to cover debt charges on and financing costs relating to the securities as they become due \$ _____
- (O) Securities issued for the purpose of providing some or all of the funds required to satisfy the municipal corporation's obligation under an agreement with the board of trustees of the police and fireman's disability and pension fund under section 742.30 of the Revised Code \$ _____
- (P) Securities issued for the acquisition, construction, equipping, and improving of a municipal educational and cultural facility under division (B)(2) of section 307.672 of the Revised Code \$ _____
- (Q) Securities issued for energy conservation measures under section 717.02 O.R.C. \$ _____
- (R) Securities that are obligations issued to pay costs of a sports facility under section 307.673 O.R.C. \$ _____
- (S) Special assessment bonds or notes issued in anticipation of the levy or collection of special assessments, either in original or refunded form \$ _____
- (T) Securities issued in anticipation of the collection of current revenue for the fiscal year or other period not to exceed twelve consecutive months, or securities issued in anticipation of the collection of the proceeds from the specifically identified voter approved tax levy \$ _____
- (U) General Obligation Securities issued purposes under Section 133.12, O.R.C. \$ _____
- (V) Bonds issued to pay final judgment or court approved settlements under authorizing laws and securities issued under Section 2744.081, O.R.C. \$ _____
- (W) Other types of exempt debt: \$ _____

Specify: _____
- TOTAL \$ _____
4. Total bonds and notes subject to 10 – ½% limitation (2 minus 3) \$ _____
 - (A) Amount in sinking fund or bond retirement fund applicable to the payment of principal: \$ _____
 - (B) Net amount subject to 10 – ½% limitation: \$ _____
5. Bonds and notes included in item 4 above but issued WITHOUT AUTHORITY OF AN ELECTION. \$ _____
 - (A) Amount in sinking fund or bond retirement fund applicable to the payment of principal: \$ _____
 - (B) Net amount subject to 5 – ½% limitation: \$ _____
6. Bonds and notes included in items 4 and 5 above, issued during PRESENT CALENDAR YEAR WITHOUT AUTHORITY OF AN ELECTION \$ _____

I FURTHER CERTIFY (a) that the income from the waterworks, sewer system, off-street parking and other revenue producing facilities for which bonds were issued as included in item 3(F) above is sufficient to cover all operating expenses of such facilities and interest charges on such bonds and to provide a sufficient amount for retirement of sinking fund to retire \$ _____ principal amount of such bonds as they become due, and (B) that revenues of the municipal university or of the municipal recreational facilities, from sources other than taxation, are sufficient to pay all operating expenses of the residence halls or recreational facilities, and the principal of and interest on \$ _____ principal amount of bonds included in item 3(M) above, as they become due.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

City Auditor
Dinsmore & Shohl LLP
BOND ATTORNEYS
CINCINNATI AND COLUMBUS, OHIO

Constitutional Debt Limitation

- Art. XII, Section 2 of the Ohio Constitution prohibits taxation of property in excess of 1% (10 mills) of true value without a vote
 - ORC 5705.02 further limits this to 10 mills of a property's tax valuation
 - Tax rate limitation indirectly limits the ability to issue unvoted debt with a GO pledge
 - Known as "ten-mill limitation" or "indirect debt limitation"
- Applies to overlapping political subdivisions
 - Calculate overlapping subdivisions with the highest ad valorem taxes pledged to debt service on unvoted bonds.

TEN-MILL CERTIFICATE

For Political Subdivisions Issuing Unvoted General Obligation Debt

I, County Auditor of _____ COUNTY, OHIO, hereby certify in connection with the following proposed issues of obligations of the _____ (the "Issuer") in the principal amount of \$ _____, dated _____, 20____, that the tax rates required to produce an amount to pay the highest annual aggregate debt charges for the proposed issue and all other obligations of the Issuer and the subdivisions overlapping it, which are payable from taxes subject to the ten-mill limitation of Article XII, Section 2, Ohio Constitution and applicable Revised Code provisions, based on the facts set forth below and assuming that all levies were to be made for those debt charges on the general tax list and duplicate, are as follows:

Overlapping Subdivision	Assessed Valuation	Bonds and Notes Outstanding Payable from Tax Inside 10-Mill Limitation	Present Principal Amount	Debt Charges for calendar year in which they will be the highest (20____)		Required Tax Rate in Mills for Two Previous Columns
				For Principal	For Interest	
County _____	\$ _____	Bonds and Notes	\$ _____	\$ _____	\$ _____	_____
Municipality Gallipolis	\$ _____	Bonds and Notes	\$ _____	\$ _____	\$ _____	_____
School District _____	\$ _____	Bonds and Notes	\$ _____	\$ _____	\$ _____	_____
Township _____	\$ _____	Bonds and Notes	\$ _____	\$ _____	\$ _____	_____
Joint Vocational School District _____	\$ _____					
Other _____	\$ _____	Bonds and Notes	\$ _____	\$ _____	\$ _____	_____
		PROPOSED ISSUE	\$ _____	\$ _____	\$ _____	_____
					TOTAL	_____

DATED this _____ day of _____, 20____

COUNTY AUDITOR

INSTRUCTIONS:

1. ~~When~~ bond anticipation notes constitute the proposed issue or are otherwise included above, use the estimated debt charges for the bonds anticipated by the notes as described in the note legislation.
2. ~~If~~ the issuer is a county, the information should relate to the county, and the combination of overlapping city/village, school district, township and other political subdivisions requiring the highest millage for debt charges inside the ten-mill limit.
3. ~~Do not~~ include voted bonds or notes, mortgage revenue bonds issued under Article XVIII, Section 12, Ohio Constitution, or bonds payable solely and exclusively from revenues or funds not derived from property taxation.
4. ~~Fill~~ in all blanks, using the word "NONE" where applicable.
5. ~~Include~~ all required millage for debt charges even though no taxes are currently levied for those debt charges.

DINSMORE & SHOHL LLP
~~SEAN O'NEILL~~
BOND ATTORNEYS

Bond Anticipation Notes

- Option preceding the issuance of general obligation bonds
- Frequently issued during construction period or during high-interest rate periods.
- Faster issuance process than bonds and generally lower costs of issuance (often no rating or official statement)
- Subject to same debt limitations as GO bonds

ORC 133.22



Bond Anticipation Notes

- Short-term, interim financing option (typically 6-month or 1-year maturity)
- May renew for up to 20 years, depending on maximum maturity of anticipated bonds
- After 5 years, must begin to pay down principal as if bonds had been issued

ORC 133.22

Alternate Financing Structures



Revenue Bonds

- Pledge of a specific revenue stream to pay debt service
 - Utility revenues (water, sewer, electricity)
 - PILOT payments
 - Sales tax revenues (counties)
 - Income tax revenues (municipalities)
- Typically, no pledge of the general taxing power of the Issuer if the revenues generated are insufficient to pay debt service
 - May include an additional GO pledge (“double barrel”)
- Exempt from Direct Debt Limitations

Revenue Bonds

Often secured by an Indenture or Trust Agreement

- Creation/granting of “trust estate” (security for the bonds)
- Pledge of revenues and other collateral
- Flow of funds
- Affirmative and negative covenants
- Parity bonds/additional debt provisions
- Default and remedy provisions
- Defeasance provisions
- Trustee-related provisions



Revenue Bonds

Advantages

- Do not require voter approval
- Do not count against debt limitations
- Beneficiaries of the projects are often paying debt service if the bonds are repaid with a revenue source associated with the project being financed

Disadvantages

- May carry higher interest rates than GO bonds
- Typically more complex than GO bonds, which may result in higher administrative costs/fees

Current Revenue Anticipation Notes (CRANs)

- Anticipated Current Revenues (up to 12 months)
 - May be issued by any political subdivision
 - In anticipation of the collection of current revenues from any source(s) except property taxes
 - Including distributions of federal or state moneys
 - Principal amount cannot exceed 50% of the amount of revenues that the fiscal officer estimates the political subdivision will receive in the remainder of the fiscal year.
 - Must mature by the end of the fiscal year



ORC 133.10(B)

Tax Anticipation Notes (TANs)



- Types of TANs:
 - Current property tax revenues (short-term)
 - Permanent improvement (multi-year)
 - Income tax anticipation notes upon passage of tax (school districts)
- Special obligation (not subject to debt limitations)
- Sometimes issued while waiting for delayed tax collection
- Cash-flow solution
- Proceeds used for purposes for which anticipated taxes are levied

Tax Anticipation Notes (TANs)

- Anticipated Property Tax Collections (up to 6 months)
 - Any political subdivision
 - Issued in anticipation of the collection of current property tax revenues
 - Principal amount cannot exceed 50% of the amount of property taxes that the budget commission estimates the political subdivision will receive in the current fiscal year and within six months after issuance
 - Must mature within six months (or by the end of the fiscal year, if earlier)

ORC 133.10(A)

Tax Anticipation Notes (TANs)

- Anticipated Property Tax Collections (up to 12 months)
 - Counties, municipalities, townships, or school districts.
 - Issued in anticipation of the collection of current property tax revenues
 - Principal amount cannot exceed 50% of the amount of property taxes that the budget commission estimates the political subdivision will receive in the remainder of the fiscal year
 - Must mature by the end of the fiscal year

ORC 133.10(C)

Tax Anticipation Notes (TANs)

- Permanent Improvement
 - Related to a voted property tax levy
 - Issued any time after approval of levy
 - Not more than 50% of the total estimated proceeds of the levy for the next ten years (if continuing) or throughout the term of the levy
 - Multi-year obligations

ORC 5705.191, 5705.193, 133.24

Tax Anticipation Notes (TANs)

- Income Tax (school districts)
 - After approval of school district income tax
 - May be issued prior to time of first payment to the school district
 - Not more than 50% of the total estimated proceeds of the tax for the first year of collections (as estimated by tax commissioner)
 - Not to exceed five years.

ORC 5748.05, 133.24

Lease-Purchase Financing

- Types of lease-purchase transactions:
 - Equipment
 - Real property
 - Certificated (COPs)
 - Lease revenue bonds
- Other common structures include lease/lease-back and sale/lease-back
- Private placement (negotiated or RFP) or public offering (COPs)



Lease

vs



Buy

Lease-Purchase Financing

- Basics

- Governmental entity makes installment payments with interest, subject to annual appropriation each fiscal year
- Title to the equipment or property transfers at the end of the lease
- Leased equipment or property serves as collateral



Lease-Purchase Financing

- **Subject to Annual Appropriations**
 - Annual appropriation is a condition precedent to renewal
 - Not considered indebtedness under state law, so not subject to direct debt limitations
 - Failure to appropriate
 - Return of leased equipment/property
 - Impact on Issuer's credit and potential future ability to borrow

Lease-Purchase Financing

- Other Considerations
 - Escrow fund
 - Title work for real property leases
 - Provisions benefitting Lessor
 - Federal tax rules
 - Financial obligation under SEC Rule 15c2-12



Manuscript Debt

- Internal debt of the political subdivision
 - Securities of the political subdivision may first be offered to the officer(s) in charge of the bond retirement fund or the treasury investment board of a municipality.
- Must bear interest at a fair market rate (certified by fiscal officer)
- Can be outstanding for 5 years, unless matched to a specific obligation or debt of the subdivision (ORC 135.14)
- Taxable debt (not viewed as debt in the eyes of the IRS although it is debt for state-law purposes)

ORC 133.29

County Treasurer-Purchased Debt “Manuscript-Like Debt”

- Chapter 133 debt
- But rather than purchased by bank or public investors, County Treasurer serves as the purchaser
 - Securities of the political subdivision may first be offered to the officer(s) in charge of the bond retirement fund or the treasury investment board of a municipality.
- Permitted under ORC 133.29 and if County investment policy allows for it
- Can be tax-exempt

ORC 135

Restrictions on Investments by County Treasurer

- County Investment Policy
- ORC 135.35(A)(4):
 - “Bonds and other obligations of this state or the political subdivisions of this state, provided the bonds or other obligations of political subdivisions mature within ten years from the date of settlement;”
- County Auditor must certify that the interest rate is “a fair market rate or rates for such securities at the time of the sale” . . .
 - . . . But the County Auditor isn’t in the investing business . . .

Why Manuscript Debt is Appealing

- For borrowing political subdivisions
 - Avoid expense of public sale or placement with a bank
 - No underwriter fees, placement agent fees, etc.
 - Potential interest rate breaks
- For County Treasurers
 - Actively promote funding qualified projects for local jurisdictions
 - Mitigate/eliminate risk of default
 - County Budget Commission can assess risk first-hand
- Help the local community by facilitating lower cost borrowings at competitive interest rates



COMMERCIAL LOANS



Auditor of State
Bulletin 2024-002

AOS Bulletin 2024-002

DATE ISSUED: January 31, 2024

TO: All Public Offices
Independent Public Accountants

FROM: Keith Faber
Ohio Auditor of State

SUBJECT: Clarifying when Governmental Entities are Permitted to Assume Debt
in the Form of Standard Installment Loans from Private Financial
Institutions

Bulletin Purpose

The purpose of this bulletin is to clarify when governmental entities are permitted to assume debt in the form of standard installment loans from private financial institutions.

Implementation Date

Upon issuance.

Background

The Ohio Auditor of State (AOS) has noticed an increase in the number of audit clients executing standard installment loans issued by banks or other private financial institutions without statutory authority. When debt is improperly assumed by governments, the revenue raised by those governments through taxation or other means may be placed at risk. Therefore, issuing a bulletin to address the confusion surrounding when governmental entities are permitted to assume debt in the form of standard installment loans from private financial institutions, became of great importance to AOS.

Please consult with your legal counsel prior to entering into any debt agreements.

Bulletin Detail**I. Governmental Entities are Generally Prohibited from Assuming Debt in the Form of a Standard Installment Loan from Private Financial Institutions Unless Clearly Permitted by Statute.**

A standard installment loan agreement, for purposes of this bulletin, is any arrangement involving a private financial institution (usually a bank) that requires the borrower to execute a loan agreement detailing: the amount of money to be loaned (usually as a lump sum), a period of repayment, and the regular intervals (usually yearly or monthly) when part of the principle is expected to be repaid to the lender with interest (usually at a fixed rate). For purposes of this bulletin, the loan agreement is usually either encompassed within - or accompanied by - a promissory note or similar instrument that the borrower must execute to evidence the loan arrangement. A local government borrowing money from a private institution must have authority to both borrow money and provide evidence of the indebtedness (i.e., issue notes or other securities).¹

It is a well-established principle in Ohio Law that most governmental entities are “creatures of statute,” and may only act in accordance with the limited powers conferred upon them by statute or necessarily implied therefrom. Therefore, governmental entities that are created by statute must have clear statutory authority to execute a standard installment loan agreement from a private financial institution.

In addition, the authority to spend money and incur debt is construed strictly under the law – meaning there must be clear, express, statutory authority for a public body to engage in a specific type of financial transaction or assume debt.² Therefore, unless a legal authority (statute, regulation, etc.) clearly authorizes a governmental entity to (1) borrow money from private lenders for its intended purpose(s) and (2) issue evidences of the debt (usually in the form of a promissory note or similar security), such governmental entity is prohibited from obtaining a standard installment loan from a private financial institution.³

¹ It is important to clarify that the private installment loan agreement addressed by this bulletin is not a lease-purchase arrangement. Lease-purchase arrangements allow buyers to rent a piece of property for a few years by paying fixed payments in installments before purchasing the property at a nominal price at the end of the term. An entity entering into a lease-purchase should look for express statutory authority and should follow the requirements in O.R.C. Chapter 133 and other applicable Revised Code provisions with respect to those lease-purchases.

² See generally 2006 Op. Att’y Gen. No. 2006-008 at 2-71 n.3 (“Financial powers given to public bodies are construed strictly, and there must be clear authority to enter into financial transactions.”); see also *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571 (1916) (“The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed . . .”); see also 2004 Op. Att’y Gen. No. 2004-005 at 2-44 (“a board of county commissioners may incur debt only if it has clear statutory authority to do so.”); see also 1993 Op. Att’y Gen. No. 93-039, at 2-203 (“The power to borrow money or to incur debt is not necessarily to be implied from the authority conferred upon a board of township trustees to expend funds for particular purposes.”).

³ While there is early case law that concluded the power of governmental entities to borrow money for a particular purpose carried with it an incidental power of executing/delivering such evidence of indebtedness (including

A starting place to look for authority to borrow money and the authority to issue securities is O.R.C. Chapter 133 ("the Uniform Public Securities Law").⁴ Some examples of entities that may utilize the provisions of O.R.C. Chapter 133 for their security issuances include:

- A board or boards of county commissioners;
- The legislative authority for a municipal corporation;
- The board of education for a school district;
- A board of township trustees for township,
- Any other political subdivision or taxing district or other local public body or agency authorized by the Uniform Public Securities Law or other laws to issue "Chapter 133 securities."

Under O.R.C. §133.01(KK), a "security" includes "bonds, notes, certificates of indebtedness, commercial paper, and other instruments in writing, including, unless the context does not admit, anticipatory securities, issued by an issuer to evidence its obligation to repay money borrowed, or to pay interest, by, or to pay at any future time other money obligations of, the issuer of the securities" As stated previously, promissory notes are a common debt instrument (a type of security, per O.R.C. Chapter 133) used by private institutions to evidence a borrower's indebtedness and the borrower's obligation to repay the bank, usually with interest, when the bank lends money.

One example of a provision in the Revised Code that would permit the taxing authority of a subdivision to both borrow money and issue securities (evidence of indebtedness) is O.R.C. § 133.15, which grants broad authority for the issuance of securities for the purpose of paying all or any portion of the costs of any permanent improvement that the subdivision is authorized to acquire, improve, or construct.

Nearly all the security issuances authorized by and subject to O.R.C. Chapter 133 are detailed/complex and any governmental entity seeking to borrow money from a private financial institution utilizing any provision of O.R.C. Chapter 133 as statutory authority for the loan arrangement should consult its legal counsel before taking any actions.

negotiable bonds, notes, or other securities), later case law on this subject suggests that the power to issue securities is not necessarily incident to a power to borrow money and that generally, both powers must be expressly granted. Compare *State ex rel. Shoemaker v. Trustees of Goshen Tp.*, 14 Ohio St. 569, 1863 WL 53 (1863) ("The grant of power to the trustees to borrow money for the purpose of paying the amount subscribed, carried with it the necessary incidental power of executing and delivering such evidences of indebtedness, as are sanctioned by the known usages of business, in such cases; and it was, therefore, competent for the trustees to issue the negotiable bonds of the township in payment for the stock subscribed"), and *Muskingum County Com'rs v. State*, 78 Ohio St. 287, 302-3, 85 N.E. 562 (1908) ("The power to issue bonds, or other negotiable securities, is not necessarily incident to a power expressly conferred upon a municipal corporation to borrow money, but generally the one power, as well as the other, must be expressly granted.").

⁴ The "Uniform Public Securities Law" was enacted to: (1) defines key terms related to public securities and bonds; (2) provide authority for the issuance of securities by various political subdivisions and taxing units; and (3) prescribe a uniform procedure for issuing securities including the form(s), content(s), and manner(s) of execution.

Questions?

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Accomplish môre.™

DINSMORE & SHOHL LLP / LEGAL COUNSEL

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