



Clean Ohio Fund Expands to Promote Livable Communities

Cleaning up and rejuvenating underutilized industrial properties remains an important focus for Ohio communities. The Clean Ohio Revitalization Fund (CORF) has, since its 2000 inception, approved 106 grants totaling more than \$298 million, resulting in remediation and development of brownfields in communities throughout Ohio. Community focus also remains on creating "livable" and "sustainable" communities as a way to improve neighborhoods and attract and retain residents, as reflected in the proposed federal Livable Communities Act of 2010 (H.R. 4690).

Why not use funding authority under CORF to promote livable communities in Ohio? The Clean Ohio Council took the first step toward this by announcing in September 2010 an \$8 million Sustainable Reinvestment Pilot Track as part of CORF, using recaptured funds from prior CORF grants. Communities can obtain up to a \$1.5 million grant under this Pilot Track to remediate brownfields for creating signature parks and green infrastructure (referred to as "sustainable infrastructure"), renewing urban waterfronts and introducing renewable energy projects. As with many new funding programs, the types of projects to be funded are not yet well defined, leaving some flexibility in qualifying for funding. The basic description of qualifying projects is as follows:

- Signature parks are brownfields that will turn into parks with unique recreational or natural areas, and facilities that attract community and development opportunities.

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In addition to bond counsel services, Squire Sanders also provides many other legal services to Ohio public sector clients, including economic development, tax increment financing, legislative counseling, special assessments, intergovernment and development agreements, real estate, construction and contracting, brownfields, environmental, litigation, labor, tax and employee benefits. For more information about Squire Sanders, [click here](#).

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- Green infrastructure can include wet weather (storm water) management projects, wetland restoration, and even development of transit stations, food banks and community kitchens, so long as brownfields are involved.
- Urban waterfronts include urban areas adjacent to rivers and lakes that are significant to the urban area and create an attractive site, and provide for public access to the waterfront. This funding is of particular interest for communities with abandoned industrial properties along a riverfront that, for whatever reason, have not gained interest for retail or commercial development.
- Renewable energy project funding is available for remediation of brownfields with a planned end use for wind power ("cleanfields") or solar power ("brightfields"). Funding may not be used for the purchase of wind turbine and solar components, although this funding opportunity may play an important role in attracting renewable energy projects to your community.

Applications under this Pilot Track are due by January 14, 2011, the same time all other CORF applications are due. The Clean Ohio Council has already received significant interest in this funding and, as a result, approved, during its November 19, 2010 meeting, offering a similar amount of funding for the anticipated July 2011 CORF round.

Squire Sanders' public finance and environmental, health and safety lawyers have substantial experience in all facets of municipal property redevelopment, and have particular expertise in developing creative ways to fund brownfield cleanup and make your community more livable.

Recent Decisions of Interest

A dwelling that is held in trust may qualify as a "homestead" (for purposes of the homestead exemption as well as the 2.5% rollback) when the trustee is an individual who occupies the property as a home. *Gilman v. Hamilton County Board of Revision, 2010-Ohio-4992 (Ohio Supreme Court)*

In a dispute as to who may provide water and sanitary service to a parcel annexed to a municipality, the court determined that (i) the municipality did not have the exclusive right to provide water and sewer services within its corporate boundaries, (ii) the General Assembly did not protect entities created under Revised Code Chapter 6119 from encroachment of their service

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areas by annexation, and (iii) the municipality has the right to provide such services based on a "balancing test" applied by the trial court to the unique facts and circumstances presented. *Southwest Licking Community Water & Sewer District v. Board of Education of the Reynoldsburg City School District, et al.*, 2010-Ohio-4119 (Ohio App. 5th Dist.)

A contract without the required certification under Revised Code Section 5705.41(D)(1) is void and a vendor could therefore not maintain a claim thereunder against the county, nor could the vendor maintain a claim for unjust enrichment against the county. *NaphCare, Inc. v. County Council of Summit County, Ohio, et al.*, 2010-Ohio-4458 (Ohio App. 9th Dist.)

Domestic partner registration ordinance does not violate Section 11, Article XV of the Ohio Constitution (sometimes called the Marriage Amendment) since such registry "is, in essence, simply a label that confers little or no legal benefits on the domestic partners and thus does not 'approximate the design, qualities, significance or effect of marriage.'" *Cleveland Taxpayers for Ohio Constitution, et al. v. City of Cleveland*, 2010-Ohio-4685 (Ohio App. 8th Dist.)

Revised Code Chapter 339 does not authorize a board of county hospital trustees to borrow money from a port authority or a private loan company that is not a bank, savings and loan association, or savings bank. 2010 Op. Att'y General No. 2010-024

A prosecuting attorney does not have a statutory duty to represent a joint board of county commissioners established under Revised Code Chapter 6133 or the *ex officio* fiscal agents, clerk and engineer of a joint county ditch improvement undertaken pursuant thereto, nor does the prosecuting attorney have discretion to provide such legal representation under current law. (Note: the Attorney General suggested that a change in law could be sought from the General Assembly and pointed to language covering a similar point in the laws relating to joint solid waste management districts.) A joint board of county commissioners established under Revised Code Chapter 6133 has implied authority to retain legal counsel for performance of its statutory duties and for the purpose of representing and advising officers serving on behalf of a joint county ditch improvement. 2010 Op. Att'y General No. 2010-025

For purposes of calculating the payment of accrued, unused sick leave to a retiring public employee pursuant to Revised Code Section 124.39(B), a "day" is equal to the number of hours an employee regularly is scheduled to work in an ordinary work day. 2010 Op. Att'y General No. 2010-030

A person who in the same county serves as a member of a hearing board of a county board of revision and as a city council member is subject to impermissible conflicts of interest even if that hearing board does not hear complaints and render decisions as to the value of real property located in that city. A person appointed to serve on that hearing board serves in a public office for purposes of Revised Code Section 731.02, which provides that a city council member shall not hold any other public office. *2010 Op. Att'y General No. 2010-031*



The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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