

**General Provisions Relating to the Legal Nature of a CIC Under 1724.01 et seq.**

It is well-settled that CIC's are independent agencies or instrumentalities of the governing bodies which create them. See: 1724.01 et seq. They are recognized as being "hybrid" corporations in the sense that they are established by a governmental body but, by design are intended to serve independently pursuant to the mission they have been charged with. (e.g. "...a hybrid creation with some private characteristics and some public characteristics, Op. Atty Gen No. 2000-037; "agencies or instrumentalities" Ohio Const. Art. VIII, Sec 13; "...may be considered...an independent contractor..." Op. Atty Gen No. 2000-037; Op. Atty Gen. No 2003-037; Op. Atty Gen. No. 1979-061.

The Ohio Supreme Court has ruled that "...the debts incurred by the [community improvement] corporation are solely those of the corporation, not the political subdivision." (Emphasis added) Burton v. Greater Portsmouth Growth Association, 7 Ohio St. 2d at 40; Op. Atty. Gen No. 2000-037. There is an explicit separation between CICs and their creating political subdivision as prescribed by the CIC statute as interpreted by the Court in Burton, supra. The CIC is not deemed to be a political subdivision [though it may be so deemed--whether as an "agency," "instrumentality," "hybrid" or otherwise--in other code sections See e.g.: R.C. 5722.01 et seq. (CIC is an "Electing subdivision"); R.C. 9.833]. See: Op. Atty. Gen No. 1987-024 (Syllabus 1.).

As stated above, the OAG in Opinion 1987-024 concluded that a community improvement corporation organized under R.C. Chapter 1724 is not a "political subdivision" as that term is defined in R.C. 2744.01(F). However, in rebuttal to that conclusion we note that the OAG offers no detailed analysis supporting this conclusion. The OAG reasons as follows:

[T]he Ottawa CIC is a nonprofit corporation created pursuant to R.C. Chapters 1702 and 1724. Such a corporation serves the public purpose of advancing, encouraging, and promoting industrial, economic, commercial, and civic development. See R.C. 1724.01. See also Ohio Const. art. VIII, §13. It is required to submit an annual report and audit to the Director of Development. See R.C. 1724.05. It thus "possesses certain characteristics that are suggestive of a public status." 1979 Op. Att'y Gen. No. 79-061 at 2-204. Nonetheless, the fact that a community improvement corporation is organized as a private nonprofit corporation compels the conclusion that it is not, in itself, a public body and that it is not a "political subdivision" for purposes of R.C. Chapter 2744.<sup>1</sup>

---

<sup>1</sup> OAG Opinion 1987-024 at 2-163.

Hence it is clear that general principles of common law agency, for example the principle by which the acts of the agent may be imputed to the principal, are either abrogated or preempted by the statutes. There are countless examples of statutory provisions defining the relationships of parties in derogation of the common law, i.e. insurance agents, products liability chain-of-distribution entities, mortgage brokers, etc. Within this general framework and statutory prescription, the CIC-creating political subdivision is authorized, without affecting any of the foregoing principles, to enter into all forms of agreements with the CIC to assist it in any way it chooses. This assistance may take many forms. See e.g. R.C. 307.01(D); 307.78; 307.07; 307.09; 307.64; 307.698. These relationships and activities, should the county choose, are typically established pursuant to contracts between the CIC and the County without adversely affecting the separation of obligations between the entities.

Health Care is one example. Of course, the CIC will pay for its own health insurance. A question has arisen about the CIC participating, pursuant to a contract, with the County's insurance plan. R.C. 9.833 clearly encourages multiple public-purpose entities to do just this, and to join for their mutual benefit in the provision of health related benefits for their respective employees. In general, this is the public sector equivalent of multiple private employers combining with COSE, for example, in the provision of health benefits for their respective employees. No one would objectively assert that because a COSE member is on the COSE plan, pursuant to contract, his/her employees somehow become vicarious employees of COSE or its constituent participating employers. Indeed, R.C. 9.833 provides in pertinent part that separate public purpose enterprises, i.e. "...counties...other body corporate...and agencies and instrumentalities (language used in the Ohio Constitution whereby CICs are authorized) of these entities...may do any of the following"

\* \* \*

"Pursuant to written agreement, join in any combination with other political subdivisions to procure or contract policies, contracts, or plans of insurance to provide health benefits..." (Emphasis added).

R.C. 9.833(A) and (B)(5).

Again, the relationship clearly is not one of vicarious agency, but one arising out of contract or independent "written agreement" among separate entities.