



Ohio Attorney General clarifies storm shelter moratorium financing requirements for public and private schools

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On November 1, 2017, the Ohio Board of Building Standards (OBBS) adopted an update to the Ohio Building Code requiring the inclusion of storm shelters in the construction of educational occupancies. That update has resulted in costly design changes for the many public and private schools that are planning, or in the process of constructing, new school facilities throughout the state. In response, on June 7, 2018, the Ohio General Assembly adopted House Bill 21, codified as O.R.C. 3781.1010, imposing a moratorium on the storm shelter requirement for schools in operation prior to September 15, 2019, or those schools “undergoing or about to undergo construction, alteration, repair, or maintenance for which financing has been secured prior to that date.” [O.R.C. 3781.1010](#) Amended Substitute House Bill 166 recently extended the date to September 15, 2020.

O.R.C. 3781.1010, however, does not expressly define what action is required for a school to demonstrate that “financing has been secured” for a construction project, leading to a request by the OBBS to the Office of the Ohio Attorney General (OAG) for clarification. In a recently issued [opinion](#) (2019-027), the OAG concludes that the phrase “financing has been secured” means that a “school must have arranged for and is able to provide assurance of the availability of the financing necessary to carry out its construction project, as planned and proposed, and that this act has been completed prior to September 15, 2020.” The OAG further states that “[t]he statute does not require that the school acquire and have on hand all of the funds which will be necessary to cover the anticipated cost of its project, although moneys on hand which have been properly designated for that purpose may be attributed toward project costs.” In reaching this determination, the OAG cites a belief that “the General Assembly in the enactment of the provision anticipated that such construction projects, often if not in all cases, would be

undertaken prior to the actual accumulation by a school of all of the funds which it is anticipated will be necessary to fully complete the work.” For a school to demonstrate it has secured financing, “[i]t is sufficient that the school has and demonstrates legally enforceable mechanisms for the provision of the anticipated costs of the project.”

The OAG’s opinion describes various methods that a school can use to demonstrate it has secured financing by the September 15, 2020, deadline, including encumbering funds; obtaining an unconditional commitment letter from a lending institution; issuing securities; issuing general obligation bonds; levying taxes; establishing a reserve balance account; establishing a capital maintenance fund; and entering a binding agreement with the Ohio Facilities Construction Commission.

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