



Ohio Revised Code

Section 133.02 Public securities are negotiable instruments.

Effective: July 17, 2009

Legislation: House Bill 1 - 128th General Assembly

(A) Securities lawfully authorized and issued by an issuer, and fractionalized interests in public obligations, subject to applicable provisions for registration or of the proceedings, are negotiable instruments and securities under Chapters 1303. and 1308. of the Revised Code, notwithstanding that the promise to pay debt charges on the particular securities or fractionalized interests may be limited to payment out of a particular fund or the proceeds from a particular source.

(B) Unless a judicial action or proceeding challenging the validity of public obligations or of fractionalized interests in public obligations is commenced by personal service on the chief executive officer or legal officer or fiscal officer of the issuer and, if applicable, the obligor, prior to the initial delivery of the public obligations or the fractionalized interests in public obligations, the public obligations or the fractionalized interests in them and the proceedings relating to them are incontestable and the public obligations or the fractionalized interests in them shall be conclusively considered to be and to have been issued, secured, entered into, payable, sold, executed, and delivered, and the proceedings relating to them taken, in conformity with all legal requirements if all of the following apply:

(1) They state that they are issued or entered into under or pursuant to authorizing provisions of law or of any applicable charter or the Ohio Constitution and comply on their face with those provisions.

(2) They are issued or entered into for a lawful purpose, as stated in the securities or the legislation authorizing their issuance, and within any limitations prescribed by law.

(3) Their purchase price, if any, has been paid in full.

(4) The transcript of the proceedings contains a statement by the officer having charge of the applicable records, or by the legal officer or fiscal officer, of the issuer and, if applicable, of the obligor that all the proceedings were held in compliance with law, which statement creates a conclusive presumption that the proceedings were held in compliance with all laws, including, as



applicable, section 121.22 of the Revised Code, and rules.

(C) An individual as such, or as an officer, director, stockholder, or employee of or owner of any interest in an entity, or relatives or business associates of such individual, purchasing securities or fractionalized interests in public obligations as the original or subsequent purchaser, or providing a credit enhancement facility, or acting as a lessor, trustee, fiscal agent, financial adviser, paying agent, or registrar related thereto, shall not be deemed to be interested, either directly or indirectly, solely by reason of such purchase, provision, or relationship, in such purchase or sale or servicing or in the contract evidenced by the securities or the fractionalized interests in public obligations or the credit enhancement facility, for the purpose of any law of this state that prohibits a public officer, servant, or employee, or his relatives or business associates, from being interested in any contract of the particular issuer or obligor.

(D) As used in this division, "tax compliance payments" means any amounts determined or estimated as amounts required to be paid to the federal government in order to maintain the exclusion from gross income for federal income tax purposes of interest on those obligations, including any amounts computed at the time to represent the portion of investment income to be rebated, or amounts in lieu of or in addition to any rebate amount and any penalty or interest to be paid, for that purpose pursuant to the Internal Revenue Code; and "public obligations" includes any bond within the meaning of section 150(a) of the Internal Revenue Code.

Notwithstanding any other law, an issuer and an obligor may agree, in specific or general terms, to do or cause or require to be done all things necessary for, and not to do or permit or authorize to be done anything that would adversely affect, the exclusion of interest on public obligations or on fractionalized interests in public obligations from gross income for federal income tax purposes under the Internal Revenue Code, or the classification or qualification of the public obligations or the interest on the public obligations or fractionalized interests in public obligations for, or their exemption from, other treatment under the Internal Revenue Code, including compliance with the provisions for tax compliance payments to the United States in accordance with the Internal Revenue Code. Those actions and covenants and compliance therewith shall be valid, incontestable, final, and conclusive to the extent that they support that exclusion from gross income or those classifications, qualifications, or exemptions. The authorization in this division is solely for the purpose of satisfying such federal conditions or requirements, and is in addition to and not a limitation upon



other authorization granted by or pursuant to law or the Ohio Constitution, and does not preclude or exclude any actions or covenants by the issuer or obligor, or its officer, to satisfy the federal conditions or requirements for the purpose, including actions and covenants previously taken or made. Subject to the terms of those covenants, compliance with covenants referred to in this division by the issuer or obligor and its officers are acts specifically enjoined by law as duties resulting from their office, trust, and station for purposes of section 2731.01 of the Revised Code. The issuer or obligor, and its officers, employees, and agents responsible in the circumstances, shall do all things necessary or appropriate to comply with such covenants and shall take all actions to account for, calculate, report, make available, and make tax compliance payments pursuant to the Internal Revenue Code to the extent required to comply with such covenants. In order to protect the tax exemption of interest or other qualification, classification, or exemption for tax purposes, and to reduce tax compliance payments:

(1) Moneys from the funds to which any such interest is credited, and from any fund that is generally available for the general purposes of the issuer or obligor, available for the purpose of the securities issue, or available for operating and maintenance expenses of any improvements financed or refinanced by that issue or of any system or enterprise of which those improvements are a part, shall be appropriated and are deemed appropriated for all purposes to the payment of such amounts pursuant to such covenant, and may be so appropriated in the absence of such a covenant. Subject to the provisions of the applicable proceedings and notwithstanding any statutory or administrative limitations on the use or transfer of those funds or receipts, the appropriate official of the issuer or obligor may:

(a) Withdraw or transfer tax compliance payments from the fund or funds designated by the issuer or obligor for the purpose, including any bond, improvement, or special fund, and any bond retirement fund after provision for current debt charges requirements, or direct the deposit from receipts, and deposit tax compliance payments in or credit them to the fund or account established for the purpose, which establishment is hereby authorized, and disburse moneys from that fund or account for that purpose.

(b) Withdraw or transfer investment income from any bond or improvement fund, from any bond retirement fund after provision for current debt charges requirements, and from any other special fund established with respect to an issue of securities, and deposit that investment income in or



credit that investment income to any other fund or account.

(2) An issuer or obligor may invest any proceeds or gross proceeds, as defined in the Internal Revenue Code, of public obligations or fractionalized interests in public obligations in tax-exempt bonds of any person authorized to issue tax-exempt bonds under the Internal Revenue Code, and in any regulated investment company, the investment in which is treated as an investment in tax-exempt bonds for purposes of provisions of section 148 of the Internal Revenue Code, and in any special series of obligations of the United States made available for purposes of compliance with provisions of section 148 of the Internal Revenue Code. The authority to invest proceeds under this division is in addition to and not restricted or conditioned by any other authority of an issuer to invest its moneys.

Nothing in this division or in other prior or current provisions of law requires that an issuer or obligor comply with provisions of federal tax law or regulations to exclude interest on its public obligations from gross income for federal income tax purposes or otherwise to have the public obligations or interest thereon treated in any particular way under federal tax laws, except to the extent, if any, that the issuer or obligor covenants to do so, and the validity of the public obligations shall not be adversely affected by the absence of that compliance or of compliance with any covenants made pursuant to this division.

This division applies to public obligations and fractionalized interests in public obligations, outstanding on or entered into prior to, or issued or entered into on or after, October 30, 1989.

(E) Notwithstanding any other law, the income from the investment of proceeds of public obligations or fractionalized interests in public obligations of a public issuer, or payments received by or on behalf of a public issuer under section 6341 of the Internal Revenue Code, 26 U.S.C. 6431, may be credited to the fund or account in which those proceeds are held, to the fund or account from which debt charges on those public obligations are paid, or to the general fund or other fund or account as the public issuer authorizes, and used for the purposes of that fund or account.