

## OHIO ETHICS COMMISSION ISSUES ADVISORY OPINION ALLOWING VOLUNTARY CONTRIBUTIONS FROM SOLAR DEVELOPER TO LOCAL GOVERNMENT

OPINION INCLUDES SEVERAL IMPORTANT CAVEATS

by Terrence O'Donnell, Christine Pirik, and Matthew McDonnell

On May 20, 2022, the Ohio Ethics Commission issued an advisory opinion in response to a local government's questions about accepting voluntary contributions from a solar developer seeking to develop a project in the community. In rendering the Opinion, the Commission took feedback from a variety of stakeholders, including the Ohio Chamber of Commerce and the Ohio Township Association.

In short, the Commission opined that such voluntary payments—whether monetary or in-kind—are generally permitted under Ohio law. However, the Commission recommended the following guidelines.

- The donations should be “considered in a transparent manner,” and the public should be able to give input on the acceptance of the donation. For example, the topic should be considered in a public meeting.
- The donation should be accepted using legislative authority.
- The donation should not be directed towards any individual or group of individuals. It should be directed at the public as a whole, without restrictions on the donation.
- The donation should not be used in a manner that would provide a benefit to an individual. For example, the donation should not be used to give a public official a salary increase.
- The donation should be used in a manner that is useful to the public or offsets the potential negative impacts of the environmental project.

### Background

Harvey Solar applied to the Ohio Power Siting Board to construct a 350-MW solar facility in Licking County. The Board of Township Trustees intervened in the permitting case to represent local interests. Harvey had pledged donations to the Township Fire Department and the Village of approximately \$4.2 million over the estimated forty-year life of the project.

The contribution pledged to the Township Fire Department was unrestricted, and the donation to the Village was to compensate for public expenses the Village may incur in the construction process and otherwise.

### General Guidelines

The Ethics Commission stated that the Township Fire Department is not prohibited from accepting the pledge, as it is “reasonably required”

to equip and train local responders pursuant to the “qualified energy project” statute under which developers make a “payment in lieu of tax, or PILOT.” R.C. 5727.75(F)(5). The Opinion noted the PILOT statute specifically contemplates and even requires payments to certain entities such as first responders.

In addition to the Township Fire Department, the local Village is similarly not prohibited from accepting a voluntary payment as it would “not manifest a substantial and improper influence on any public official or employee.”

The Ethics Commission emphasized the fact that this is not a case of “improper influence,” as the voluntary payment goes to the Township and Village as a whole, not to specific individuals. In addition, the Commission suggested that while not directly addressed in state law, a public entity should exercise caution in accepting a private contribution when a matter involving the “donor” is pending before the public entity. Accepting or providing donations under these circumstances could create an appearance of impropriety, the Commission reasoned.

### Power Siting Board Approval & SB 52

The Power Siting Board approves all major utility facilities such as solar farms. Further, under the recently-adopted Senate Bill 52, local governments in a project area are permitted to add two *ad hoc* voting members to the Board. When deciding whether to approve a facility, the Power Siting Board looks into whether the facility “will serve the public interest, convenience, and necessity.” The Opinion states that since the Power Siting Board, not the Village, is the entity that approves each project, no appearance of impropriety is created when the Village, or other public agency, accepts a voluntary payment.

### Payment in Lieu of Taxes

R.C. 5725.75 (the PILOT statute) provides owners of renewable energy projects tax exemption from tangible personal property if they meet certain requirements and provide a payment in lieu of tax (PILOT). One of those requirements is to train and provide equipment to first responders—so naturally, the Commission found payments to those entities were proper.

### Conclusion

Solar developers should exercise caution when contemplating a contribution to local governmental entities. The Commission's deliberations were thoughtful, and its members recognized the value Ohio's business community can bring to local communities through voluntary contributions. However, developers should follow the recommended guidelines to avoid the appearance of impropriety and comply with state ethics law.

For assistance regarding solar projects in Ohio, please feel free to reach out to any of the following Dickinson Wright attorneys.

# CLIENT ALERT

June 2022

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