



**OHIO CONSTITUTION
ARTICLE VIII
SECTIONS 4, 5 AND 6**

**PRESENTATION TO
FINANCE, TAXATION, AND ECONOMIC DEVELOPMENT COMMITTEE
OF THE
OHIO CONSTITUTIONAL MODERNIZATION COMMISSION**

JUNE 9, 2016

BY

GREGORY W. STYPE
SQUIRE PATTON BOGGS (US) LLP
41 SOUTH HIGH STREET, SUITE 2000
COLUMBUS, OHIO 43215
TEL: 614-365-2742
GREG.STYPE@SQUIREPB.COM

I. Sections 4 and 6 – Prohibition on Lending Aid and Credit.

Section 4 – Credit of state; the state shall not become joint owner or stockholder.

“The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.” (1851)

Section 6- Counties, cities, towns, or townships, not authorized to become stockholders, etc.; insurance, etc.

“No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit.” (1912)¹

II. Section 5 – No Assumption of Debts by the State.

Section 5 – No Assumptions of debts by the State.

“The state shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.” (1851)

¹ Section 6 of Article VIII, as originally approved as part of the 1851 Ohio Constitution, read as follows: “The general assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.” The version of Section 6 approved by the voters in 1912 substituted “No laws shall be passed authorizing” for “the general assembly shall never authorize” at the beginning of this Section, and added the following at the end: “: provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit.”

III. Express Exceptions in Sections of Article VIII Subsequently Approved by the Voters.

- A. Section 13 - Economic Development (Originally approved by voters May 4, 1965; Amended effective Nov. 5, 1974).²
- The requirements, limitations or prohibitions of any other section of Article VIII (including but not limited to Sections 4, 5 and 6) do not apply to the making of guarantees and loans and the lending of aid and credit for facilities and projects *“for industry, commerce, distribution and research”*, and the issuance of bonds or other obligations for that purpose, *“provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.”* (emphasis added)³
- B. Section 14 - Financing of certain housing; revenue bonds; loans from corporations (Approved by voters Nov. 2, 1982).⁴
- The requirements, limitations, or prohibitions of any other section of Article VIII (including but not limited to Sections 4, 5 and 6) do not apply to the making of guarantees and loans and the lending of aid and credit for projects for the acquisition, construction, rehabilitation, remodeling, and improvement of privately owned multiple-unit dwellings used and occupied exclusively by persons sixty-two years of age and older, and privately owned, owner occupied single family housing by providing loans to, or through, the agency of, or originated by, or purchasing loans from persons regularly engaged in the business of making or brokering residential mortgage loans; *“provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section.”* (emphasis added)

2 Section 13 of Article VIII was proposed to the voters in 1965 after the decision of the Ohio Supreme Court in *State ex rel Saxbe v. Brand*, 176 Ohio St. 44 (1964), holding that where the Ohio Development Financing Commission sells revenue bonds and uses the proceeds thereof to make a loan to a private borrower there is a prohibited giving or loaning of the State’s credit within the meaning of Section 4 of Article VIII, even though the issuance and sale of those revenue bonds involved no financial indebtedness of the State.

³ See *State ex rel Duerk v. Donahey*, 67 Ohio St.2d 216 (1981), holding the pledge of profits from the State’s liquor enterprise to the payment of debt service on bonds issued to make loans for economic development projects is authorized under Section 13 of Article VIII and does not violate Section 4.

⁴ Section 14 of Article VIII was proposed to the voters in 1982 after the decision of the Ohio Supreme Court in *State ex rel Brown v. Beard*, 48 Ohio St.2d 290 (1976), holding that the issuance of bonds by the Ohio Housing Development Board to provide funds for mortgage loans to developers for the construction and rehabilitation of low and moderate income rental housing would violate Section 4 of Article VIII and was not within the scope of Section 13 of Article VIII.

- C. Section 15 - Coal Research and Development (Approved by voters Nov. 5, 1985).
- The requirements, limitations, or prohibitions of any other section of article VIII (including but not limited to Sections 4, 5 and 6) do not apply to State general obligations issued for the purpose of making grants and making or guaranteeing loans for research and development of coal technology that will encourage the use of Ohio coal, to any individual, association, or corporation doing business in this state, or to any educational or scientific institution located in this state, and the state may share in any royalties, profits, or other financial gain resulting from the coal research and development it funds.
- D. Section 16 - Financing Housing for Individuals and Families by State and Political Subdivisions. (Adopted Nov. 6, 1990).
- The requirements, limitations or prohibitions of any other Section of Article VIII (including but not limited to Sections 4, 5 and 6) do not apply to grants, loans, subsidies to loans, loans to lenders, the purchase of loans, guarantees of loans to provide housing in the State for individuals and families, including shelters to provide temporary housing, for individuals and families, and the issuance of special obligations to finance those activities.
- E. Section 2l - Bonds for capital improvements for state and local parks and land and water recreational facilities. (Approved by voters June 30, 1993)
- Sections 4 and 6 of Article VIII do not apply to general obligations the State is authorized to issue to finance or assist in financing the costs of capital improvements for state and local parks and land and water recreation facilities.
- F. Sections 2o (Approved by the voters on November 7, 2000) and 2q (Approved by the voters on November 4, 2008) - Environmental and related conservation, preservation, and revitalization purposes.
- Sections 4 and 6 of Article VIII do not apply to the issuance of State general obligations for “conservation purposes” and State special obligations for “revitalization purposes”, or to the obligations of local governmental entities issued for those conservation and revitalization purposes, the provisions for payment of debt service on those obligations, and the purposes and uses to which their proceeds or moneys from other sources are or may be applied.

G. Section 2p - Issuance of general obligations for research and development and site development purposes (Originally approved by voters Nov. 8, 2005; amended eff. May 4, 2010)

- Authorizes the issuance of State general obligations for (i) research and development purposes, and (ii) development of sites and facilities for and in support of Ohio industry, commerce, distribution, and research and development, are proper public purposes of state and local government. Sections 4 and 6 of Article VIII do not apply to those State obligations, and the obligations of local governmental entities issued for those research and development and site development purposes, the provisions for payment of debt service on those obligations, and the purposes and uses to which their proceeds or moneys from other sources are or may be applied and other implementation of those development purposes.

(THIS SPACE INTENTIONALLY LEFT BLANK.)

Some Cases of Note

IV. Sections 4 and 6 – Lending of Aid and Credit

- Contracting for Services/Historic Context
Grendell v. Ohio Environmental Protection Agency, 146 Ohio App.3d 1 (9th Dist. 2001)
Holding that legislation requiring private contractors to provide E-Check inspections of automobile emission control systems did not constitute a violation of Article VIII, Section 4.
- Current Appropriations
State ex rel. Dickman v. Defenbacher, 85 Ohio App. 398 (Ohio 1949)
An Ohio taxpayer wanted to stop government officials from giving certain veterans organizations appropriations. He alleged the organizations were private enterprises and the state violated Section 4 by extending appropriations to them. The Court held that Section 4 was not violated because it does not limit the General Assembly's power to make current appropriations from current revenue funds.
- Public Purpose -- Education
State ex rel. Ohio Congress. of Parents & Teachers v. State Board of Education., 2006 Ohio 5512 (Ohio 2006)
The plaintiff sued the state board of education because it allegedly violated section 4; article VIII of the Ohio Constitution by granting community schools loans for buildings and other facilities. The Court held that the State did not violate Section 4 by providing loans to community schools because the schools are public organizations created to advance a public purpose -- the State's public school system.
- Public Purpose – Health Care
State ex rel. Taft v. Campanella, 51 Ohio App. 2d 237 (Ohio Ct. App., Cuyahoga County 1977)
Plaintiff initiated an action in mandamus seeking to compel the defendant to perform the bond resolution and purchase and lease resolutions relating to existing hospital facilities. Defendant claimed he did not have to perform because issuing bonds to retire a hospital's existing debt would not promote a public purpose. The Court held that a county is not lending its credit to a private interest in violation Section 6, when it issues first-mortgage revenue bonds to acquire existing hospital facilities with outstanding debt or retires the debt.

- Public Purpose – Intergovernmental
Bazell v. Cincinnati, 13 Ohio St. 2d 63, 42 (Ohio 1968).
A Cincinnati taxpayer sued the City to enjoin it from spending more money on a proposed stadium for the City. After analyzing the facts, the Court concluded Section 6 does not prohibit the lending of a City's credit to a public organization such as a county.
- Public Purpose – Nonprofit Corporation (Agricultural Fair)
State ex rel. Leaverton v. Kerns, 104 Ohio St. 550 (1922).
Sections 4 and 6 do not forbid financial aid or the loan of the credit of the State to an agricultural fair that is a public institution designed for public instruction, the advancement of learning and the dissemination of useful knowledge.
- Public Purpose – Nonprofit Corporation (Homeless Shelter)
Franklinton Coalition v. Open Shelter, Inc., 13 Ohio App. 3d 399 (Ohio Ct. App., Franklin County 1983).
Plaintiff filed an injunction to stop the defendant, a not-for-profit organization, from opening a homeless shelter claiming it would be a nuisance and a misuse of public funds. The court determined that it is appropriate for a political subdivision to contract with a nonprofit corporation to provide services to the inhabitants of the political subdivision that could be provided by the municipality itself as a public service.

V. Section 5 - No Assumption of Debts by the State

- Butler County Transp. Improvement Dist. v. Tracy, 120 Ohio App. 3d 346, 697 (Ohio Ct. App., Butler County 1997).
Butler County Transportation Improvement District sued to validate bonds to finance a highway after citizens objected to the issuance of the bonds based on Article VIII Section 5 grounds. The Court determined that the Transportation Improvement District bonds, and the lease agreement with the Department of Transportation, did not create a debt of the State in violation of Section 5.
- Long v. Ohio State University, 24 Ohio App. 261 (1926).
The Ohio State University was sued by an Ohio taxpayer after it acquired a private corporation which operated a bookstore on the University's campus. The Court dismissed the action, finding that where the University purchased the books and other inventory from a private corporation, and assumed certain specified debts, this does not fall within Ohio Const. Art VIII, Section 5, forbidding the State from assuming debts.