

The Law Firm of
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Presents:

JOINT ECONOMIC DEVELOPMENT DISTRICTS (JEDDs):

***AN OVERVIEW:
NEW USES, NEW PARTNERS, NEW REVENUE***

RELEVANT SECTIONS
O.R.C. §§ 715.72 to 715.83

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**JOINT ECONOMIC DEVELOPMENT DISTRICTS (JEDD)
RELEVANT SECTIONS
O.R.C. SECTIONS 715.72 to 715.83**

1. **Which Entities May Form A JEDD?** One or more municipal corporations and one or more townships.
 - 1.1. **Contiguity** - No more than one intervening township or municipality. R.C. 715.72(C).
 - 1.2. **Constitutionality** – In Desenco, Inc. v. City of Akron, (1999) 84 Ohio St. 3d 535, the Ohio Supreme Court rejected four constitutional challenges, upholding the General Assembly's establishment of JEDDs and their taxing authority.
 - 1.3. **Third Party Beneficiaries** - State ex rel. Dellagnese v. Bath-Akron-Fairlawn Joint Economic Dev. Dist. (Ohio App. 9 Dist., 2006) 2006 WL 378446. Township resident and JEDD taxpayer alleged misapplication of JEDD tax funds. Court found that the plaintiff lacked standing to seek injunctive relief against the JEDD or its participating municipalities under ORC 733.56 - Application for Injunction, based on a common law taxpayer action, or as a third party beneficiary to the JEDD. The court noted that the JEDD agreement contained a clause which expressly excluded third party beneficiaries to the agreement. This case is cited often for the proposition that a third party who simply receives a benefit from an agreement, without more, is not an intended third-party beneficiary of that contract.
 - 1.4. **Excluded as a Party.** School Districts, developers and individuals cannot be parties to a JEDD Agreement. However, school districts may receive revenue from a JEDD district and may be parties to annexation agreements along with individuals, developers, townships and municipalities. See Section 4.5 below.
2. **Purpose of A JEDD.**
 - 2.1. "...to facilitate economic development to create or preserve jobs and employment opportunities and to improve the economic welfare of the people in this state and in the area of the contracting parties." ORC 715.72(C).

3. Territory To Be Included In A JEDD. R.C. 715.73.

- 3.1. No electors may reside within territory of the JEDD on the effective date of the contract creating the JEDD.
- 3.2. Territory zoned for residential use may now be included within a JEDD district, but the income of an individual who resides in the JEDD district shall not be subject to such income tax unless the income is received for personal services performed in the district. (See R.C. 715.74).
- 3.3. The JEDD may include all or a part of the territory of the contracting parties.
- 3.4. Not to include territory owned by the township or municipality without its consent.

**4. Provisions of the JEDD Agreement (the "Contract"):
R.C. Sections 715.74, 715.79, 715.80.**

- 4.1. **Annexation**. Annexation of territory from the JEDD District is prohibited for three years, or longer if the parties agree. Annexation can occur at any time with the consent of township. No contracting party is divested or relieved of its rights or obligations under the contract creating a JEDD because of annexation, merger, or consolidation. R.C. 715.79.

4.1.1. **Prohibiting Annexation in Twp. & Outside JEDD?**

Graceworks Lutheran Services v. City of Hamilton, (Oh. App. 12th, 2007) 2997 WL 40099509. Church sought annexation of its Fairfield Township property to City of Hamilton. Hamilton declined to cooperate because in 1996 JEDD with Fairfield Township, Hamilton agreed not to accept any annexation petitions for any property located in Fairfield Township. Graceworks was not in the JEDD, and had expressly declined to include its Fairfield Township property in the district. Because the church had not yet filed an annexation petition with the county, nor had the city acted on any such petition, the Court found that the case did not present an actual controversy and the issues presented to the trial court were nonjusticiable.

- 4.2. **Contribution of Parties, Share Tax Revenue, Joint Construction of Projects.** The contract shall state the amount or nature of the contribution of each contracting party to the development and operation of the district and may provide for the sharing of the costs of the operation of and improvements for the district. Contribution may be in any form to which the contracting parties agree and may include, but are not limited to, the provision of services, money, real or personal property, facilities or equipment. The contract may provide for the contracting parties to share revenue from the taxes levied on property by one or more of the contracting parties if those revenues may lawfully be applied to that purpose under the legislation by which those taxes are levied. The contract shall specify and provide for new, expanded or additional services, facilities, or improvements. The contract may provide for expanded or additional capacity for or other enhancement of existing services, facilities, or improvements. R.C. 715.74(A).
- 4.3. **Duties of Board of Directors.** The contract shall enumerate the specific powers, duties and functions of the Board of Directors of the district. R.C. 715.74(B).
- 4.4. **Income Tax, Sharing Of Income Tax.** The contract must determine whether an income tax shall be levied within the JEDD district. If levied, it will apply against the income earned by persons working within the district *and on the net profits of businesses* located in the district. The income tax shall be used for the purposes of the district or any portion of the district in which the contract authorizes an income tax, and for the purposes of the contracting parties pursuant to the contract. R.C. 715.74(C)(1).
- 4.4.1. The rate of the income tax shall be no higher than the highest rate being levied by municipal corporations that is a contracting party. R.C. 715.74(C)(1).
- 4.4.2. Municipal corporation to administer. R.C. 715.74(C)(2).
- 4.4.3. Income tax to apply regardless of annexation. R.C. 715.74(E)(4).

4.5 **Sharing of Income Tax Revenues with School Districts.** As stated above in Section 1.4, a school district may not be a party to a JEDD agreement. However, there is support in the law for allowing JEDD districts to distribute a portion of their income tax revenue to school districts. See Sections 4.4. and 2.1 above.

4.5.1 **JEDD Agreement Preamble:**

"The Contracting Parties agree that the establishment of the JEDD District is also intended to benefit the _____ School District by contributing funding thereto, and that the contribution of such funding will facilitate economic development, create and preserve jobs and employment opportunities, and improve the economic welfare of the people of the state of Ohio and within _____ County.

It is specifically acknowledged herein by the Contracting Parties that promoting public education by the contribution of funding to the _____ School District will specifically benefit the Contracting Parties by encouraging economic development, creating an educated workforce, preserving jobs and retaining jobs, and generally improving the economic welfare of the people of Ohio and _____ County.

It is the desire and intent of the Contracting Parties that the _____ School District utilize such funding in part to offer educational and vocational training to educate students regarding economic development, creating and preserving jobs, improving the economic welfare of the people of the state of Ohio and in _____ County, and promoting educational training as relates to job opportunities and the performance of job duties for local employers."

4.5.2 An annexation agreement may be used as a companion document to a JEDD agreement whereby the parties, including the school district, agree to certain provisions. For example, query whether a school district can agree not to annex its property in return for receipt of JEDD revenues payable to it under the JEDD Agreement. Additionally, a companion annexation agreement could be used to achieve collateral agreements between the JEDD contracting parties and other parties, such as developers and individuals.

- 4.6. **Term of Agreement, Renewal.** A JEDD agreement shall have a stated term and may be amended, renewed or terminated with approval of the parties. If territory is added abbreviated form of adoption process required. R.C. 715.74(D).
- 4.7. **Contract For Utility Services.** The amendment, renewal or termination of separate contract for utility services shall not constitute any part of the consideration for creating the JEDD. R.C. 715.74(E).
- 4.7.1. Rebuttable presumption.
- Other substantial consideration
 - No duress or coercion.
- 4.8. **Zoning, Land Use.** The contract shall determine which entity's zoning, land use regulations, building codes, shall apply and which entity's permanent public improvements and other regulatory and proprietary matter shall govern. R.C. 715.80.
- 4.8.1 **Hampton House Mgmt. Co. v. Brimfield Township Bd. of Zoning Appeals,** (Oh. App. 11th, 2007) 2007 WL 4226673. Landowner sought a use variance from the township zoning board for property located wholly within a JEDD and zoned for highway commercial use. The board denied the variance to build housing because no area of JEDD may be zoned residential under ORC 715.73. The court upheld the board's denial finding that the board had no authority to grant the variance based on the prohibition of ORC 715.73, and further that the landowner had failed to show "unnecessary hardship" with evidence that the property was unsuitable for any permitted use in the JEDD.
- 4.9. **Tax Exemptions.** Neither party may grant certain tax exemptions without the consent of the other party. R.C. 715.81.

5. Procedure to Create JEDD District. R.C. Sections 715.75, 715.76, 715.77, 715.771.

- 5.1. Each contracting party holds a separate hearing on proposed JEDD agreement. R.C. 715.75.
- 5.2. Each party provides thirty days notice in a newspaper of general circulation. R.C. 715.75.

5.3. Documents available for public inspection, including:

5.3.1. Copy of JEDD Agreement.

5.3.2. Description of area to be included.

5.3.3. Economic development plan with a schedule for additional services, facilities or improvements, a schedule for collection of income tax to be levied.

See R.C. 715.75.

5.4. Whether the county is a party or not, a copy of proposed JEDD Agreement must be delivered to county commissioners before it is signed. County may enter into agreement with the contracting party to provide any county services. R.C. 715.75.

5.5. After hearings of all parties are completed, each party may adopt an ordinance or resolution approving the contract. Upon adoption of the same, the parties shall deliver to the county commissioners the following documents, regardless of whether the county is a party or not:

5.5.1. A signed copy of the JEDD Agreement.

5.5.2. A description of the territory of the JEDD.

5.5.3. The economic development plan.

5.5.4. Certified copies of the ordinance and resolution of the contracting parties adopting the JEDD Agreement.

5.5.5. A certificate that the public hearings were held.

5.5.6. A petition signed by a majority of the owners of property located within the area or areas to be included in the District.

5.5.7. A petition signed by a majority of the owners of businesses, if any, located within the area or areas to be included in the District.

See R.C. 715.76.

5.6. Notice given to property owners and business owners who did not sign the petition by certified mail that their land shall be included within the JEDD area and that all documents are available for public inspection in the office of the clerk of the municipal corporation and clerk of the township. R.C. 715.76.

5.7. If all documents are not filed as required, or if the county determines that the JEDD agreement was not entered into freely and without duress or coercion, it may adopt a resolution disapproving the creation of the JEDD district. R.C. 715.76.

5.8. Unless it makes a determination disapproving the creation of the district, the county commissioners, within thirty days, must adopt a resolution approving the creation of the district. R.C. 715.77(A)(2).

5.9. Thereafter, the matter must be submitted to a vote of the electorate of the township unless all three of the following criteria are met:

5.9.1. The resolution was approved by unanimous vote by the board of township trustees, or, if the county is a party, the resolution was approved by a majority vote of the township trustees.

5.9.2. The creation of the JEDD is proposed at the request of a majority of the owners of land included within the proposed district.

5.9.3. The territory to be included in the proposed JEDD is zoned in a manner appropriate to the function of the proposed district.

See R.C. 715.77(A)(1).

- 5.10. If said criteria are not met, the matter must be submitted to vote of the electorate of the township at the next succeeding general, primary or special election. R.C. 715.77.
- 5.11. The JEDD is effective thirty-one days after approval of the township trustees, or, if a vote is required or utilized, thirty-one days after approval by electors of the township. Such approval is subject to referendum petition. R.C. 715.77(A)(4).
- 5.12. All documents must be filed with the Director of Development of the State of Ohio. R.C. 715.771.

6. **Board of Directors.** The Board of Directors of the district shall be either a five person or three person board, depending upon whether there are businesses located and persons working within the area to be included in the district. See R.C. 715.78.

- 6.1. If there are such businesses and persons, the Board is comprised of five members, as follows:
 - 6.1.1. One member representing the municipal corporation.
 - 6.1.2. One member representing the township trustees.
 - 6.1.3. One member representing the owners of the businesses.
 - 6.1.4. One member representing the persons working within the district.
 - 6.1.5. One member representing the county, if the county is a party, or, if no county is a party, one member selected by the members described above.

See R.C. 715.78(A)(1)(a) through (e).

- 6.2. Persons serve staggered terms of four years, and no more than two consecutive terms. R.C. 715.78(A).
- 6.3. If there are no businesses or persons working within the area included in the district, the Board shall be composed of three members, as follows:

- 6.3.1. One member representing the municipal corporation.
- 6.3.2. One member representing the township trustees.
- 6.3.3. One member representing the county, if the county is a party, or, if no county is a party, one member selected by the members described above.

See R.C. 715.78(A)(2).

- 6.4. The district board is subject to the Sunshine Law of the State of Ohio, R.C. 121.22, but is not considered the “holding” of public office or employment. R.C. 715.78(C) and (D).

7. Is a JEDD Agreement Possible? The Five Most Important Factors:

- 7.1 Where is the property located?

- (a) Is the property easily annexable to a municipality?

- (b) See Figures 1 and 2 attached.

- 7.2 Are businesses located within the proposed JEDD territory, or is the JEDD for future development only?

- 7.3 Does the land owner(s) (and business owner(s), if any) consent to the formation of the JEDD District?

- (a) Leverage: Water, sewer, zoning, tax abatement, tax increment financing (TIF), subdivision approval, other amenities.

- 7.4 What items are needed from the Municipality and Township to make the property in the JEDD District development ready?

- (a) Water, sewer, police, fire, EMS, etc.

- 7.5 Will the income tax on property within the JEDD District make it substantially less competitive?

8. **When To Use A JEDD District, Distinguishing JEDDs From Cooperative Economic Development Districts (CEDAs) And Annexation Agreements.** See handout "Comparative Analysis of JEDDs, CEDAs, and Annexation Agreements".