

"willful" to mean "intentional; purposeful; not accidental or involuntary"). *See generally Johnson v. Johnson*, 71 Ohio App. 3d 713, 595 N.E.2d 388 (Portage County 1991). The finding of willfulness is necessary to bring the interest provision into effect under R.C. 3113.219(A), even as the finding of lack of a good faith effort is necessary to bring the interest provision into effect under R.C. 1343.03(C). The conclusion reached by the Ohio Supreme Court in *Huffman* is, therefore, applicable also in the situation here under consideration: an obligor's willful failure to pay occurring prior to the effective date of the statute cannot be constitutionally penalized. Accordingly, interest under R.C. 3113.219(A) cannot be awarded for the period prior to the effective date of the statute, which is July 15, 1992. *See Dunbar v. Grebler*, No. CA91-12-209, slip op. at 5 (Ct. App. Butler County Aug. 10, 1992) ("we can find nothing in Am. Sub. S.B. No. 10 which would rebut the general presumption of statutory construction that these amended and newly enacted provisions of the Revised Code [including R.C. 3113.219(A)] are to be prospective only in their operation and application" (citations omitted)).

Other Interest Provisions

You have asked about the interest that a court is required to assess under R.C. 3113.219(A) and this opinion has addressed that question. This opinion does not, however, consider whether, or in what circumstances, a court may assess interest on child support arrearages pursuant to any other statute. *See generally, e.g., Dunbar v. Grebler* (discussing R.C. 1343.03 and cases applying its provisions to child support arrearages).

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. The statutory interest rate in effect under R.C. 1343.03 was six percent from July 1, 1962 through July 29, 1980, and eight percent from July 30, 1980 through July 4, 1982. The current interest rate in effect under R.C. 1343.03, as of July 5, 1982, is ten percent.
2. Interest under R.C. 3113.219(A) may not be assessed for time periods prior to July 15, 1992.

OPINION NO. 93-038

Syllabus:

1. When a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case, and such order does not specifically require the sealing of the pertinent official records of an administrative licensing agency, the agency is not required to seal any of its official records. However, insofar as an administrative licensing agency's records, reports, orders, or official minutes of meetings contain information or other data the release of which is prohibited by R.C. 2953.35(A), the agency may seal such information or data or otherwise segregate it from its public records in order to comply with R.C. 2953.35(A). The manner of sealing or segregating such information or data is a matter for the agency's discretion. (1983 Op. Att'y Gen. No. 83-100, approved and followed.)

2. When a court, acting pursuant to R.C. 2953.32(C)(2), specifically orders the sealing of certain official records of an administrative licensing agency, the agency is required to seal the affected records. Except as provided in the court's order, the manner of sealing the records is a matter for the agency's discretion. (1983 Op. Att'y Gen. No. 83-100, approved and followed.)
3. If a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case (whether or not the order includes the pertinent official records of an administrative licensing agency), such order does not affect any prior disciplinary action taken by an administrative licensing agency against a licensee of the agency, or foreclose the agency from pursuing any disciplinary action against a licensee of the agency, when the agency's action relies upon the facts and circumstances that resulted in the licensee's criminal conviction.
4. If an administrative licensing agency takes disciplinary action against a licensee of the agency on the basis of information or other data pertaining to a criminal case in which the records have been ordered sealed pursuant to R.C. 2953.32(C)(2), it appears that the most appropriate course for the agency would be to seal or otherwise segregate from its public records all information or other data pertaining to the details of that criminal case. The agency may, however, indicate on its records, reports, orders, or official minutes of meetings the type of disciplinary action taken against the licensee and that such action was taken by the agency either on the basis of a criminal conviction or on the basis of information or data pertaining to a criminal conviction.

To: Joseph R. Sabino, Jr., President, State Board of Pharmacy, Columbus, Ohio

By: Lee Fisher, Attorney General, November 16, 1993

One of your predecessors requested an opinion concerning the sealing of criminal conviction records. Specifically, your predecessor asked:

When a court of law orders expungement or sealing of criminal conviction records and related investigative documents pursuant to Section 2953.31 et. seq. of the Ohio Revised Code, how is an administrative licensing agency, its records and reports, its administrative orders, and its official minutes of meetings, affected by such order?¹ (Footnote added.)

¹ The provisions of R.C. 2953.41-.43, which were repealed in 1988, *see* 1987-1988 Ohio Laws, Part II, 2554 (Am. Sub. H.B. 175, eff. June 29, 1988), concerned the *expungement* of the records of an individual who was arrested for a misdemeanor and who had effected an agreed bail forfeiture. No other provision in R.C. 2953.31-.61, as currently enacted, authorizes a court to expunge the official records of an individual convicted of an offense. Accordingly, this opinion will address only the situation in which a court, acting pursuant to R.C. 2953.32(C)(2), orders the *sealing* of all official records pertaining to a case.

Sealing of Records

An individual who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction may apply to the sentencing court if convicted in this state, or to a court of common pleas if convicted in another state or in a federal court, for the sealing of his record in the case after a specified lapse of time.² R.C. 2953.32(A)(1). Upon the filing of an application under R.C. 2953.32(A)(1), the court is required to set a hearing date and notify the prosecuting attorney in the case thereof. R.C. 2953.32(B). If the court determines that the individual is a first offender, that no criminal proceeding is pending against him, that the interests of the individual in having the records pertaining to his conviction sealed are not outweighed by any legitimate governmental needs to maintain such records, and that the rehabilitation of the individual has been attained to the satisfaction of the court, the court, except as provided in R.C. 2953.32(G),³ is required to order all official records pertaining to the case sealed and, except as provided in R.C. 2953.32(F),⁴ all index references to the case deleted. R.C. 2953.32(C)(2). The proceedings in a case the records of which have been ordered sealed pursuant to R.C. 2953.32(C)(2) are to be considered not to have occurred, R.C. 2953.32(C)(2), and "an order to seal the record of a person's conviction restores the person who is the subject of the order to all rights and privileges not otherwise restored by termination of sentence or probation or by final release on parole," R.C. 2953.33(A).

An Administrative Licensing Agency Is Not, as a General Matter, Required to Seal Its Official Records

1983 Op. Att'y Gen. No. 83-100, which discussed the sealing of records maintained by the State Board of Psychology, concluded as follows:

2. When a court orders that the criminal conviction of an individual who is a licensee of the Ohio State Board of Psychology be sealed, pursuant to

² Pursuant to R.C. 2953.32(A)(2), an individual "who has been arrested for any misdemeanor offense and who has effected a bail forfeiture may apply to the court in which the misdemeanor criminal case was pending when bail was forfeited for the sealing of his record in the case." In addition, an individual who is found not guilty of an offense by a jury or a court, or who is the defendant named in a dismissed complaint, indictment, or information, or against whom a no bill is entered by a grand jury, may have all official records sealed that pertain to the case. R.C. 2953.52(A). Because you have asked only about the sealing of criminal conviction records and related investigative documents, this opinion does not address the sealing of official records of an administrative licensing agency under similar circumstances.

³ R.C. 2953.32(G) permits a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded from attending any of the public schools of this state under R.C. 3301.121 and R.C. 3313.662 to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record.

⁴ R.C. 2953.32(F) authorizes a person or governmental entity that maintains sealed records pertaining to convictions or bail forfeitures to maintain a manual or computerized index to the sealed records.

R.C. 2953.32(C), the Ohio State Board of Psychology is not required to seal any of its official records because of the order, unless specifically directed to do so by the court.

3. To the extent that records maintained by the Ohio State Board of Psychology contain information or other data the release of which is prohibited by R.C. 2953.35(A), such records are not "public records" within the meaning of R.C. 149.43(A)(1). The Board may, therefore, seal such information or data or otherwise segregate it from its public records in order to comply with R.C. 2953.35(A).

Op. No. 83-100 (syllabus, paragraphs two and three). As noted in Op. No. 83-100, no provision of R.C. 2953.31-.36 explicitly requires an administrative licensing agency to seal its records pertaining to a case the records of which have been ordered sealed pursuant to R.C. 2953.32(C)(2). *Id.* at 2-387. However, since R.C. 2953.32(C) empowers a court to order the sealing of "all official records pertaining to the case," a court may "have the authority to determine in a particular case that the official records of an administrative [licensing agency] are so interconnected with those of a related criminal case that such administrative records are in fact 'official records pertaining to the case.'" Op. No. 83-100 at 2-387. Upon making such a determination, a court may order the sealing of the pertinent official records of an administrative licensing agency. *Id.*

Since the issuance of Op. No. 83-100, the General Assembly has not enacted a provision that expressly requires an administrative licensing agency to seal its records pertaining to a case the records of which have been ordered sealed pursuant to R.C. 2953.32(C)(2). Nevertheless, R.C. 2953.32(C) still authorizes a court to order the sealing of "all official records pertaining to the case," including the pertinent official records of an administrative licensing agency where the court concludes that such action is appropriate.

In light of the above, it is apparent that Op. No. 83-100's determination that an administrative licensing agency is not required to seal its records pertaining to a case the records of which have been ordered sealed pursuant to R.C. 2953.32(C)(2), unless specifically directed to do so by the court, remains a correct statement of law. *But see* R.C. 2953.51(D) (for purposes of R.C. 2953.51-.55, which concerns the sealing of official records after not guilty finding, dismissal of proceedings, or no bill, the term "official records" "means all records that are possessed by any public office or agency that relate to a criminal case"); *see also* R.C. 2953.32(G) (a board of education of a city, local, exempted village, or joint vocational school district that maintains records of an individual who has been permanently excluded from attending any of the public schools of this state under R.C. 3301.121 and R.C. 3313.662 is permitted to maintain records regarding a conviction that was used as the basis for the individual's permanent exclusion, regardless of a court order to seal the record). Accordingly, when a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case, and such order does not specifically require the sealing of the pertinent official records of an administrative licensing agency, the agency is not required to seal any of its records. *See* Op. No. 83-100 (syllabus, paragraph two).

An Administrative Licensing Agency May, in Certain Situations, Seal Its Official Records

Pursuant to R.C. 2953.35(A), however,

[e]xcept as authorized by divisions (D), (E), and (F) of section 2953.32 of the Revised Code,⁵ any officer or employee of the state, or a political subdivision of the state, who releases or otherwise disseminates or makes available for any purpose involving employment, bonding, or licensing in connection with any business, trade, or profession to any person, or to any department, agency, or other instrumentality of the state, or any political subdivision of the state, any information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which he had knowledge of were sealed by an existing order issued pursuant to sections 2953.31 to 2953.36 of the Revised Code, ... is guilty of divulging confidential information, a misdemeanor of the fourth degree. (Footnote added.)

It is clear that, except as provided in R.C. 2953.32(D)-(F), R.C. 2953.35(A) prohibits the release by a state official of information or other data concerning any arrest, complaint, indictment, trial, hearing, adjudication, conviction, or correctional supervision the records with respect to which such state official has knowledge were sealed by an order issued pursuant to R.C. 2953.31-.36. Op. No. 83-100 at 2-389; see also *Shifflet v. Thomson Newspapers (Ohio), Inc.*, 69 Ohio St. 2d 179, 185, 431 N.E.2d 1014, 1018-19 (1982) (the objective of R.C. 2953.35 is to prevent public officials from disseminating official records which the court has ordered sealed).

Obviously, if an administrative licensing agency's records, reports, orders, or official minutes of meetings contain "information or other data" as described in R.C. 2953.35(A), the officers and employees of the agency are prohibited, except as provided in R.C. 2953.32(D)-(F), from releasing such information or other data. Op. No. 83-100 at 2-389 and 2-390; cf. R.C. 2953.32(G) (any school employee in possession of or having access to the sealed conviction records of an individual that were the basis of a permanent exclusion from attending any of the public schools of this state is prohibited from releasing any information or other data pertaining to a case the records of which have been ordered sealed). Because of the prohibition of R.C. 2953.35(A), it may be necessary for an administrative licensing agency to seal or segregate such information or data as a matter of internal security. Op. No. 83-100 at 2-390. Thus, to the extent that an administrative licensing agency's records, reports, orders, or official minutes of meetings contain information or other data the release of which is prohibited by R.C. 2953.35(A), the agency may seal such information or data or otherwise segregate it from its public records in order to comply with R.C. 2953.35(A). *Id.* See generally *State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the

⁵ R.C. 2953.32(D) provides that a law enforcement officer, a prosecuting attorney or his assistants, the parole or probation officer of the person who is the subject of the records, the bureau of criminal identification and investigation, and an individual named in an application by the person who is the subject of the records may, under certain circumstances, inspect and use information or other data pertaining to a case the records of which have been ordered sealed pursuant to R.C. 2953.32(C)(2). R.C. 2953.32(E) provides that "[i]n any criminal proceeding, proof of any otherwise admissible prior conviction may be introduced and proved, notwithstanding the fact that for any such prior conviction an order of sealing previously was issued." R.C. 2953.32(F) states that an index to sealed records must be made available for the purposes set forth in R.C. 2953.32(C)-(E).

command carries with it the implied power and authority necessary to the performance of the duty imposed"), *aff'd sub nom. State ex rel. Davis v. Hildebrant*, 241 U.S. 565 (1916).

An Administrative Licensing Agency Must Comply with a Court Order

Although an administrative licensing agency is not, as a general matter, required to seal its official records when a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case, the court may specifically order the sealing of the pertinent official records of an administrative licensing agency. *See* Op. No. 83-100 at 2-387. When an administrative licensing agency is the subject of a court order, the agency may: (1) obey that order; (2) seek to have the order changed by the courts; or (3) disobey the order at its peril. *See* 1992 Op. Att'y Gen. No. 92-072 at 2-306. An officer or employee of an administrative licensing agency who disobeys or resists a court order directed at the agency may be subject to a contempt proceeding. *See* R.C. 2705.02(A); Op. No. 92-072 at 2-306. Prior opinions of the Attorney General have determined that "an opinion of the Attorney General regarding a court's authority cannot authorize a public official to disregard any order of that court." 1990 Op. Att'y Gen. No. 90-009 at 2-39. Accordingly, when a court, acting pursuant to R.C. 2953.32(C)(2), specifically orders the sealing of certain official records of an administrative licensing agency, the agency is required to seal the affected records. *See* Op. No. 83-100 (syllabus, paragraph two).

The Manner of Sealing or Segregating the Records Is a Matter for the Agency's Discretion

As noted above, an administrative licensing agency must seal its official records pertaining to a case when specifically ordered by a court, R.C. 2953.32(C)(2), or an agency may, for purposes of internal security, seal or segregate particular information or data that appears in its records, *see* R.C. 2953.35(A). No provision in R.C. 2953.31-.36, however, specifically directs the manner in which an administrative licensing agency is to seal or segregate its official records. Where a statute authorizes performance of a particular act, but does not specify how the act is to be performed, the implication is that it is to be carried out in a reasonable manner. *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Insofar as R.C. 2953.32(C)(2) authorizes a court specifically to order the sealing of the pertinent official records of an administrative licensing agency, and R.C. 2953.35(A) prohibits the officers and employees of such an agency from releasing information and other data that has been sealed by an order issued pursuant to R.C. 2953.31-.36, an agency may determine a reasonable manner in which to seal, or otherwise segregate from its public records, information or other data that is not to be released. Such a determination depends, in large part, upon particular questions of fact peculiar to the manner of recordkeeping of each administrative licensing agency that can be resolved only by each agency on a case by case basis. *See, e.g.*, 1987 Op. Att'y Gen. No. 87-082 (syllabus, paragraph three) (providing, in part, that R.C. 109.14 does not authorize the Attorney General to decide questions of fact by means of an opinion). Accordingly, the manner of sealing or segregating the records is a matter for an administrative licensing agency's discretion. *See* Op. No. 83-100 at 2-390.

Effect of the Court Order

In its letter, the State Board of Pharmacy has also expressed a specific concern regarding its ability to pursue administrative disciplinary proceedings in the case of a licensee whose criminal conviction records have been sealed pursuant to a court order issued under R.C. 2953.32(C)(2). In particular, the Board is concerned that it may not be able to pursue

administrative disciplinary proceedings if the court's order specifically directs the agency to seal its records that pertain to the licensee's criminal conviction.

The practice of pharmacy in Ohio is regulated by certain provisions of R.C. Chapter 4729. R.C. 4729.01 establishes the State Board of Pharmacy as the governmental body responsible for overseeing the practice of pharmacy in Ohio, and for enforcing the provisions pertaining thereto that are set forth in R.C. Chapter 4729. R.C. 4729.25(A). An individual who wishes to engage in the practice of pharmacy in Ohio must apply to the Board for registration as a pharmacist, and thereafter appear before the Board to take an examination to determine his fitness to practice pharmacy. R.C. 4729.07. R.C. 4729.08 further describes the personal and educational qualifications that must be satisfied by an applicant who wishes to be registered as a pharmacist. If the Board is satisfied that the applicant meets those requirements, and if the applicant passes the examination prescribed by R.C. 4729.07, then the Board "shall issue to the applicant a certificate of registration and an identification card authorizing him to practice pharmacy." R.C. 4729.08(D).

Pursuant to R.C. 4729.16 and R.C. 4729.17, the Board is empowered to hold or undertake any investigation, inquiry, or hearing into the conduct of a pharmacist or a pharmacy intern. When appropriate, the Board may revoke, suspend, place on probation, or refuse to grant or renew an identification card, or impose a monetary penalty or forfeiture, if the Board finds a pharmacist or pharmacy intern:

- (1) Guilty of a felony or gross immorality;
- (2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;
- (3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render him unfit to practice pharmacy;
- (4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;
- (5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of sections 3715.52 to 3715.72 or Chapter 2925., 3719., or 4729. of the Revised Code;
- (6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;
- (7) Guilty of knowingly lending his name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy; or
- (8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, a practitioner or any owner, manager, or employee of a health care facility, rest home, or nursing home.

R.C. 4729.16(A).

In addition, the Board is also responsible for regulating registered wholesale distributors of dangerous drugs and licensed terminal distributors of dangerous drugs. See R.C. 4729.51-.64. Specifically, the Board is authorized to suspend, revoke, or refuse to renew any registration certificate issued to a wholesale distributor of dangerous drugs or any license issued to a terminal distributor of dangerous drugs, or impose a monetary penalty or forfeiture, if the Board determines that a wholesale distributor of dangerous drugs has performed any of the acts set forth in R.C. 4729.56(A), or a terminal distributor of dangerous drugs has committed one of the offenses listed in R.C. 4729.57(A). The Board thus is statutorily responsible for

disciplining a registered pharmacist or pharmacy intern, registered wholesale distributor of dangerous drugs, or licensed terminal distributor of dangerous drugs under specified circumstances.

Although a court, acting pursuant to R.C. 2953.32(C)(2), may order the sealing of an individual's criminal conviction records, such order does not generally prohibit a regulatory agency from exercising its disciplinary authority with respect to a licensee of the agency. *See, e.g., In re Niehaus*, 62 Ohio App. 3d 89, 574 N.E.2d 1104 (Franklin County 1989); *Ohio State Bd. of Pharmacy v. Friendly Drugs*, 27 Ohio App. 3d 32, 499 N.E.2d 361 (Cuyahoga County 1985). For example, if an agency suspends or revokes a license because the licensee was convicted of a crime, the subsequent sealing of the criminal conviction records by a court pursuant to R.C. 2953.32(C)(2) does not remove the suspension or reinstate the licensee for purposes of practicing the profession or occupation for which that person was first licensed. *See, e.g., In re Niehaus*.

Moreover, the sealing of the official records pertaining to a criminal conviction of an individual licensed by an administrative licensing agency does not bar the agency from inquiring into acts of that licensee that directly involve the course of practice or work for which the license was granted. R.C. 2953.33(B) provides, in pertinent part, as follows:

In any application for employment, license, or other right or privilege, any appearance as a witness, or any other inquiry, except as provided in division (E) of section 2953.32 of the Revised Code, *a person may be questioned only with respect to convictions not sealed, ... unless the question bears a direct and substantial relationship to the position for which the person is being considered.* (Emphasis added.)

The language of R.C. 2953.33(B) thus authorizes an administrative licensing agency to inquire into sealed convictions if the inquiry bears a direct and substantial relationship to a position for which an individual must be licensed. *In re Application of Davis*, 61 Ohio St. 2d 371, 372, 403 N.E.2d 189, 190 (1980); *In re Niehaus*, 62 Ohio App. 3d at 96-97, 574 N.E.2d at 1109-10; *Ohio State Bd. of Pharmacy v. Friendly Drugs*, 27 Ohio App. 3d at 34, 499 N.E.2d at 363.

The court of appeals in *In re Niehaus* examined the language of R.C. 2953.33(B), and concluded that:

Contrary to appellant's assertion, expungement or sealing of the record "... does not literally obliterate the criminal record...." *Pepper Pike v. Doe* (1981), 66 Ohio St.2d 374, 378, 20 O.O.3d 334, 336, 421 N.E.2d 1303, 1306. Nor is expungement absolute as it applies to professional licensure. R.C. 2953.33(B) provides inquiry into sealed convictions if "... the question bears a direct and substantial relationship to the position for which the person is being considered."...

R.C. 2953.33(B) is not limited to consideration of sealed records only with respect to the questioning of an applicant for professional licensure, *but also encompasses any other inquiry which bears a direct and substantial relationship to other rights and privileges associated with such license*, as in the case herein. In that respect, we adopt the sound reasoning of the trial court at page two of its decision:

" ... The acts complained of relative to the prescription of Dalmane were also concluded to be an inappropriate prescribing

and issuance of a prescription. Even if the Board would not have known, through expungement, of the guilty plea to a misdemeanor (a violation of 4731.22(B)(11) Revised Code), the Board considered these acts separate and apart from the misdemeanor plea as violations of 4731.22(B)(2) and 4731.22(B)(3), Revised Code. The record refers to 4711.22(B)(10) when it should be 4711.22(B)(11). The Appellant's stipulation of the conviction, and later the effort to legally erase the conviction through expungement did not preclude the Board from considering and concluding that Appellant violated the Medical Practice Act. *A licensing Board should not be barred, by expungement, from inquiry into acts of a licensee that directly involve the course of practice or work for which the license has been granted.*"

62 Ohio App. 3d at 96-97, 574 N.E.2d at 1109-10 (emphasis in original and emphasis added); *see also State v. Bissantz*, 40 Ohio St. 3d 112, 532 N.E.2d 126 (1988) (R.C. 2953.33(B) permits an expunged conviction of bribery in office under R.C. 2921.02(B) to be considered subsequently in determining an individual's eligibility for public office); *Ohio State Bd. of Pharmacy v. Friendly Drugs* (State Board of Pharmacy had the right to question an applicant for licensure as a terminal distributor of dangerous drugs with respect to his previously expunged drug conviction).

In light of the above, it is clear that R.C. 2953.33(B) authorizes an administrative licensing agency to inquire into the existence and circumstances of a sealed criminal conviction if it bears a direct and substantial relationship to a licensee's fitness to practice the profession or occupation for which the license was granted. It follows that if an administrative licensing agency is entitled to inquire about a licensee's sealed criminal convictions, it is also entitled to take disciplinary action with respect to a licensee of the agency that relies upon the facts and circumstances which resulted in the licensee's criminal conviction. *See, e.g., In re Niehaus*, 62 Ohio App. 3d at 95-97, 574 N.E.2d at 1108-10 (a sealed conviction could be considered by the State Medical Board in determining that a physician violated the Medical Practice Act); *see also State v. Bissantz*, 40 Ohio St. 3d at 115, 532 N.E.2d at 129 (expungement of an individual's conviction for bribery in office does not prevent such conviction from being considered in determining his eligibility for public office). It also follows that the sealing of a licensee's criminal conviction does not affect any prior disciplinary action taken by the agency against that licensee. Therefore, if a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case (whether or not the order includes the pertinent official records of an administrative licensing agency), such order does not affect any prior disciplinary action taken by an administrative licensing agency against a licensee of the agency, and does not foreclose the agency from pursuing any disciplinary action against a licensee of the agency, when the agency's action relies upon the facts and circumstances that resulted in the licensee's criminal conviction.

An Administrative Licensing Agency Must Seal or Otherwise Segregate from its Public Records All of the Information or Other Data Pertaining to a Criminal Conviction that Is Sealed

As a final matter, the State Board of Pharmacy asks, if the Board takes disciplinary action against a licensee of the Board on the basis of information or other data pertaining to a criminal case in which the records have been ordered sealed pursuant to R.C. 2953.32(C)(2), how is the disciplinary action to be reflected in the records of the Board? As noted above, an administrative licensing agency must seal its official records pertaining to a case when

specifically ordered to do so by a court, R.C. 2953.32(C)(2), or an agency may, for purposes of internal security, seal or segregate particular information or data that appears in its records, *see* R.C. 2953.35(A). Thus, if an administrative licensing agency takes disciplinary action against a licensee of the agency on the basis of information or other data pertaining to a criminal case in which the records have been ordered sealed pursuant to R.C. 2953.32(C)(2), it appears that the most appropriate course for the agency would be to seal or otherwise segregate from its public records all information or other data specifically pertaining to the details of that criminal case.

Although an administrative licensing agency thus would be advised to seal or otherwise segregate from its public records all information or other data specifically pertaining to the details of a criminal case in which the records have been ordered sealed pursuant to R.C. 2953.32(C)(2), the agency is not required to remove from its records any generic reference to the existence of such a conviction. Specifically, the agency may indicate on its records, reports, orders, or official minutes of meetings the type of disciplinary action taken against the licensee, and that such action was taken by the agency either on the basis of a criminal conviction or on the basis of information or data pertaining to a criminal conviction. Such notation on an agency's records, reports, orders, or official minutes of meetings, however, must not contain specific information or other data pertaining to the details of that criminal case.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. When a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case, and such order does not specifically require the sealing of the pertinent official records of an administrative licensing agency, the agency is not required to seal any of its official records. However, insofar as an administrative licensing agency's records, reports, orders, or official minutes of meetings contain information or other data the release of which is prohibited by R.C. 2953.35(A), the agency may seal such information or data or otherwise segregate it from its public records in order to comply with R.C. 2953.35(A). The manner of sealing or segregating such information or data is a matter for the agency's discretion. (1983 Op. Att'y Gen. No. 83-100, approved and followed.)
2. When a court, acting pursuant to R.C. 2953.32(C)(2), specifically orders the sealing of certain official records of an administrative licensing agency, the agency is required to seal the affected records. Except as provided in the court's order, the manner of sealing the records is a matter for the agency's discretion. (1983 Op. Att'y Gen. No. 83-100, approved and followed.)
3. If a court, acting pursuant to R.C. 2953.32(C)(2), orders the sealing of all official records pertaining to a case (whether or not the order includes the pertinent official records of an administrative licensing agency), such order does not affect any prior disciplinary action taken by an administrative licensing agency against a licensee of the agency, or foreclose the agency from pursuing any disciplinary action against a licensee of the agency, when the agency's action relies upon the facts and circumstances that resulted in the licensee's criminal conviction.

4. If an administrative licensing agency takes disciplinary action against a licensee of the agency on the basis of information or other data pertaining to a criminal case in which the records have been ordered sealed pursuant to R.C. 2953.32(C)(2), it appears that the most appropriate course for the agency would be to seal or otherwise segregate from its public records all information or other data pertaining to the details of that criminal case. The agency may, however, indicate on its records, reports, orders, or official minutes of meetings the type of disciplinary action taken against the licensee and that such action was taken by the agency either on the basis of a criminal conviction or on the basis of information or data pertaining to a criminal conviction.

OPINION NO. 93-039

Syllabus:

1. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of township trustees may purchase a building and site for a township hall and township police district facility by issuing notes under the terms and conditions set out in R.C. 505.262, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes. (1990 Op. Att'y Gen. No. 90-010, approved and followed.)
2. Subject to the limitations on unvoted debt imposed by Ohio Const. art. XII, §§ 2 and 11, when there are insufficient funds in the general fund, a board of trustees of a township police district may purchase a building and site for a township police district facility by issuing notes under the terms and conditions set out in R.C. 505.53, without submitting to the electorate either the question of whether to make the purchase or the question of whether to issue such notes.

To: Stephen M. Stern, Jefferson County Prosecuting Attorney, Steubenville, Ohio

By: Lee Fisher, Attorney General, November 16, 1993

You have asked whether a board of township trustees may purchase a building and land for use as a township hall and police district facility¹ when there are not sufficient funds in the general fund to cover the purchase price, without first submitting the question of such purchase to the electorate. The trustees have been leasing the property in question for these purposes for eleven years. The owner now plans to sell the property, and the trustees have an opportunity to purchase it for what they consider a reasonable price. Because the general fund does not have sufficient funds to purchase the property outright, the trustees wish to borrow money from local

¹ The building is described in your request as a "township hall." Phone conversations between our staff members indicate the additional use of the building by the township police district. A town hall, as traditionally understood in Ohio, is the hall where the people of a township hold their elections and township meetings. 1969 Op. Att'y Gen. No. 69-132 at 2-290; see also *Trustees of New London Township v. Miner*, 26 Ohio St. 452, 460 (1875).