May 5, 2006

Julie N. Combs, Executive Director
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SYLLABUS: 2006-020

1. As expressed in R.C. 4781.04(A)(1), the General Assembly enacted R.C. Chapter 4781 in order to grant the Ohio Manufactured Homes Commission authority to establish a manufactured housing installation program that complies with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, codified at 42 U.S.C.A. §§ 5401-5426 (West 2003). To achieve this intent, the term "installation," as defined in R.C. 4781.01(B), may reasonably be interpreted to be consistent with the term "installation standards," as defined in 42 U.S.C.A. § 5402(19) (West 2003), and to encompass, in general, the same factors included in model installation standards established by the Department of Housing and Urban Development (HUD) in accordance with 42 U.S.C.A. § 5404 when those standards are validly adopted and made part of federal law. Whether Ohio law encompasses particular components of the federal standards cannot be determined until rules of HUD governing model installation standards are finally adopted.

2. The Ohio Manufactured Homes Commission and the Ohio Department of Health are separate agencies of state government, and no provision of statute grants the Commission express authority to assure that the Department of Health complies with rules adopted by the Commission.

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OPINION NO. 2006-020

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Dear Executive Director Combs:

We have received your request for an opinion concerning the scope of the authority of the Ohio Manufactured Homes Commission with regard to the establishment of standards governing the installation of manufactured housing. You have raised the following questions, which we have reworded slightly and placed in a different order for purposes of discussion:

1. The Commission must be able to adequately interpret the meaning of installation. The question is whether "installation," as defined by R.C. 4781.01(B), may be interpreted to encompass those components of installation as effectively defined by the United States Department of Housing and Urban Development (HUD), thereby enabling the Commission to comply with HUD standards.

2. The Commission must be able to adopt standards that are comparable to and not less stringent than those standards adopted by HUD. This includes not only the definition of installation and the aspects thereof, but, in a broader sense, any and all installation-related standards adopted by HUD. The question is whether the Commission has the authority to adopt HUD standards in their entirety (or create comparable standards) thereby allowing the Commission to comply with R.C. 4781.04.

3. The Commission must have a working understanding of the overlapping jurisdictions that are encompassed in the Ohio Revised Code. The question is whether the Commission has the authority to make certain that the Ohio Department of Health properly complies with the rules as promulgated by the Commission.

For the reasons discussed below, we conclude that, as expressed in R.C. 4781.04(A)(1), the General Assembly enacted R.C. Chapter 4781 in order to grant the Ohio Manufactured Homes Commission authority to establish a manufactured housing installation program that complies with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, codified at 42 U.S.C.A. §§ 5401-5426 (West 2003). To achieve this intent, the term "installation," as defined in R.C. 4781.01(B), may reasonably be interpreted to be consistent with the term "installation standards," as defined in 42 U.S.C.A. § 5402(19) (West 2003), and to encompass, in general, the same factors included in model installation standards established by the Department of Housing and Urban Development in accordance with 42 U.S.C.A. § 5404 when those standards are validly adopted and made part of federal law. Whether Ohio law encompasses particular components of the federal standards cannot be determined until rules of HUD governing model installation standards are finally adopted. We conclude, further, that the Ohio Manufactured Homes Commission and the Ohio Department of Health are separate agencies of state government, and no provision of statute grants the Commission express authority to assure that the Department of Health complies with rules adopted by the Commission.

Rule-making authority of the Ohio Manufactured Homes Commission

The Ohio Manufactured Homes Commission is created pursuant to R.C. 4781.02. It consists of nine appointed members, including a representative of the Board of Building Standards and a representative of the Department of Health, as well as representatives of various sectors of the manufactured homes industry, including installers and manufacturers. R.C. 4781.02. The Commission has, among its various duties, responsibility for licensing manufactured housing installers and for adopting rules to govern the installation of manufactured housing in Ohio. R.C. 4781.04; R.C. 4781.08-.11. The rules must govern such matters as licensing fees and compliance inspections, the investigation of complaints and establishment of a dispute resolution program, and the certification of local building departments to approve plans and specifications and make inspections. R.C. 4781.04(A)(7), (9), (10), (11); R.C. 4781.07.

By statute, the Ohio Manufactured Homes Commission is required to adopt rules that accomplish various purposes, including the following:

> Establish uniform standards that govern the installation of manufactured housing. Not later than one hundred eighty days after the secretary of the United States department of housing and urban development adopts model standards for the installation of manufactured housing or amends those standards, the commission shall amend its standards as necessary to be consistent with, and not less stringent than, the model standards for the design and installation of manufactured housing the secretary adopts or any manufacturers' standards that the secretary determines are equal to or not less stringent than the model standards.

R.C. 4781.04(A)(1).[1] The Commission is also required to adopt rules that "[g]overn the inspection of the installation of manufactured housing" and rules that "[g]overn the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing." R.C. 4781.04(A)(2) and (3).

The Commission is thus authorized to adopt rules governing the installation of manufactured housing. The Commission is also required, after HUD adopts or amends model standards for the installation of manufactured housing, to amend its standards so they are consistent with, and not less stringent than, the model standards for the design and installation of manufactured housing adopted by the Secretary of HUD, or manufacturers' standards that are equal to or not less stringent than the model standards. The legislation initially granting the Commission the authority to establish manufactured housing installation standards was enacted with the intent of establishing in Ohio a regulatory program for the installation of manufactured housing that satisfies the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, codified at 42 U.S.C.A. §§ 5401-5426 (West 2003) (Federal Act). R.C. 4781.04; *see* 70 Fed. Reg. 21,498 (Apr. 26, 2005); Sub. S.B. 102, 125th Gen. A. (2004) (eff. Aug. 6, 2004).[2]

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[1] The current version of R.C. 4781.04(A)(1), quoted above in the body of this opinion, was recently adopted in an amendment enacted by Am. Sub. H.B. 530, 126th Gen. A. (eff. Mar. 30, 2006, with certain sections eff. other dates) (providing in Section 815.03 that amendments to R.C. 4781.04 and various other sections "are not subject to the referendum" and "go into immediate effect when this act becomes law"). Prior to this amendment, R.C. 4781.04(A)(1) stated:

> Establish uniform standards that govern the installation of manufactured housing. The standards shall be consistent with, and not less stringent than, the model standards for the design and installation of manufactured housing adopted by the secretary of the United States department of housing and urban development or manufacturers' standards that the secretary determines are equal to or not less stringent than the model standards.

[2] In this regard, the Ohio Legislative Service Commission's analysis of the Ohio legislation initially enacting R.C. Chapter 4781 states, in part:

> Federal law requires that if a state wants to regulate the installation of manufactured housing and the installers of manufactured housing, the state must have an installation regulation program in place by December 27, 2005. If a state does not have a program in place, the state must comply with the program the United States Secretary of Housing and Urban Development implements (42 U.S.C.S. 5404(c)(2)(B)). The standards a state establishes must be at least as stringent as the standards the Secretary establishes. Ohio currently does not have a program to license manufactured housing installers.

HUD model standards for the design and installation of manufactured housing

The Federal Act provides for HUD to adopt both Manufactured Home Construction and Safety Standards (MHCSS), 42 U.S.C.A. § 5403, and Model Manufactured Home Installation Standards (Model Installation Standards), 42 U.S.C.A. § 5404.[3] The Manufactured Home Construction and Safety Standards have been formally adopted and appear at 24 C.F.R. Part 3280 (2005).

The Federal Act establishes a procedure for the development of proposed model installation standards and the establishment of model installation standards after notice and an opportunity for public comment. 42 U.S.C.A. § 5404(b) (West 2003). It provides that a state wishing to regulate the installation of manufactured housing must have a program in place no later than December 27, 2005. If the state has not established an installation program by that date, the Secretary of HUD will establish a program. 42 U.S.C.A. § 5404(c)(2) (West 2003). In either case, the installation program must meet the following requirements:

> **(3) Requirements**
>
> An installation program meets the requirements of this paragraph if it is a program regulating the installation of manufactured homes that includes –
>
> **(A)** installation standards that, in the determination of the Secretary, provide protection to the residents of manufactured homes that equals or exceeds the protection provided to those residents by –
>
> (i) the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section; or
>
> (ii) the designs and instructions provided by manufacturers under subsection (a) of this section, if the Secretary determines that such designs and instructions provide protection to the residents of

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Ohio Legisl. Serv. Comm'n, Final Analysis at 2, 125th Gen. A., Sub. S.B. 102 (As Passed by the General Assembly) (footnote omitted).

[3] The Federal Manufactured Home Construction and Safety Standards preempt any disparate state or local requirements or standards that might affect the uniformity and comprehensiveness of the federal standards. 42 U.S.C.A. § 5403(d) (West 2003); *see also* 42 U.S.C.A. § 5413 (West 2003) (federal enforcement authority); 42 U.S.C.A. § 5422 (West 2003) (state enforcement). In contrast, with regard to the Model Installation Standards "there is reserved to each State the right to establish standards for the stabilizing and support systems of manufactured homes sited within that State, and for the foundations on which manufactured homes sited within that State are installed, and the right to enforce compliance with such standards," except that the state is subject to 42 U.S.C.A. § 5404 and the standards must be consistent with the design of the manufacturer and the purposes of the federal legislation. 42 U.S.C.A. § 5403(d) (West 2003); *see also* 42 U.S.C.A. § 5422(c)(11) (West 2003).

> manufactured homes that equals or exceeds the protection provided by the model manufactured home installation standards established by the Secretary under subsection (b)(2) of this section;
> **(B)** the training and licensing of manufactured home installers; and
> **(C)** inspection of the installation of manufactured homes.

42 U.S.C.A. § 5404(c) (West 2003).

Pursuant to the Federal Act, HUD promulgated Proposed Model Manufactured Homes Installation Standards on April 26, 2005. Model Manufactured Home Installation Standards; Proposed Rule, 70 Fed. Reg. 21,498 (Apr. 26, 2005) (to be codified at 24 C.F.R. pts. 3280 and 3285). These Proposed Model Manufactured Homes Installation Standards, as their name indicates, are proposed rules that have not yet been adopted as part of the federal law and are not enforceable or binding.[4] Hence, the Secretary of HUD has not yet adopted model standards for the design and installation of manufactured housing, and there are currently no federal standards with which Ohio's program must conform. Because the Model Installation Standards have not yet been adopted, it is impossible to know which their final terms will be. Therefore, the Ohio Manufactured Homes Commission is not yet required – or able – to establish uniform standards for the installation of manufactured housing that are consistent with, and not less stringent than, model standards for the design and installation of manufactured housing adopted by HUD.[5]

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[4] It is a basic principle of administrative law that an administrative agency may adopt rules only pursuant to its statutory authority, and that a rule that is validly adopted in accordance with that authority is part of the applicable law. *See, e.g., Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (legislative regulations of an administrative agency "are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute"); *Lilly v. Grand Trunk Western R. Co.*, 317 U.S. 481, 488 (1943) (a rule validly adopted in the exercise of the authority of an administrative agency "acquires the force of law and becomes an integral part of the Act"); *Central Ohio Joint Vocational Sch. Dist. Bd. of Educ. v. Ohio Bureau of Employment Servs.*, 21 Ohio St. 3d 5, 10, 487 N.E.2d 288 (1986) (administrative rules may not add to or subtract from the legislative enactment; a rule is invalid where it clearly is in conflict with any statutory provision); 1998 Op. Att'y Gen. No. 98-035 at 2-212 ("the standard for the validity of rules is that they be reasonable and not in conflict with provisions of statute or constitution, and that they do not exceed the authority granted by statute").

[5] At one time there was a question as to whether R.C. 4781.04(A)(1) permitted the Commission to take action, before the adoption of the applicable HUD model standards, to adopt state rules establishing uniform standards that govern the installation of manufactured housing. That issue, however, was resolved by the recent amendment of R.C. 4871.04 by Am. Sub. H.B. 530. *See* note 1, *supra.* That amendment makes it clear that the Commission has current authority to adopt rules establishing uniform standards governing the installation of

With an understanding of this background, we turn now to your specific questions.

Question 1: May the term "installation," as defined by R.C. 4781.01(B), be interpreted to encompass those components of installation as effectively defined by HUD, thereby enabling the Ohio Manufactured Homes Commission to comply with HUD standards?

Your first question is whether the definition of "installation" appearing in R.C. 4781.01(B) may be interpreted to encompass those components of installation as effectively defined by HUD, thereby enabling the Ohio Manufactured Homes Commission to comply with HUD standards. You have informed us that this question has arisen because, as the Commission has been proceeding with the promulgation of rules pursuant to R.C. Chapter 4781, challenges have been raised to the scope of the Commission's jurisdiction. It has been argued that, in the Proposed Model Manufactured Home Installation Standards appearing in the Federal Register of April 26, 2005, HUD effectively defines "installation" more broadly than does the Ohio Revised Code, by including in the installation standards elements that may encompass more than the components of "installation" as defined in R.C. 4781.01(B).

As noted above, these Proposed Model Installation Standards are merely proposed rules that may be changed in any respect prior to their adoption and are not yet part of federal law. Accordingly, they are not federal standards with which Ohio's program must conform, and it would be premature to discuss portions of these proposed rules in this opinion.[6] Instead, we

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manufactured housing, and that consistency with federal model standards is not required until one hundred eighty days after HUD adopts or amends model standards.

[6] Although this opinion does not attempt to analyze the proposed rules appearing in the Model Manufactured Home Installation Standards; Proposed Rule, 70 Fed. Reg. 21,498 (Apr. 26, 2005) (to be codified at 24 C.F.R. pts. 3280 and 3285), we note that the question of which activities should be included within the meaning of "installation" for purposes of the federal rules is currently a matter of discussion. In submitting its proposed rules to the public for comment, HUD has specifically requested comments dealing with the extent of the meaning of "installation." *See, e.g.*, 70 Fed. Reg. 21,499 (Apr. 26, 2005) (as part of its proposal to adopt Model Installation Standards, "HUD is soliciting comments on the distinction between standards for the construction and assembly of manufactured homes and the standards for the installation of manufactured homes"); 70 Fed. Reg. 21,505 to 21,506 (Apr. 26, 2005) ("HUD has proposed a distinction between construction and installation work for the purposes of this proposed rule. Traditionally, work necessary to join the sections of a multi-section home has not been fully enforced by HUD or State or local agencies as part of the construction and assembly process or the installation process. Through this proposed rule, HUD would continue to recognize the current practice that installers accomplish certain work, limited to the joining of sections, as installation work completed at the installation site because of the impracticality of completing the work at the factory. However, home manufacturers would be accountable and responsible to

address existing provisions of federal and state law that are currently in effect – in particular the provisions of the Federal Act and the provisions of R.C. Chapter 4781 – to determine what authority the Commission has to adopt rules governing the installation of manufactured housing that will comply with the federal model standards that will be adopted. The Federal Act was in existence when R.C. Chapter 4781 was enacted, and references in R.C. 4781.04(A)(1) to HUD model standards refer to the model standards that HUD is authorized to adopt under the Federal Act. The provisions of the Federal Act thus prescribe and restrict the form and contents of the model standards to be adopted by HUD pursuant to the Federal Act.

The definition of "installation" appearing in the Revised Code and applicable to the statutory provisions governing the Ohio Manufactured Homes Commission reads as follows:

(B) "Installation" means any of the following:

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furnish with each new home, adequate instruction on the completion of these joining and crossover aspects. The installer or retailer would be accountable and responsible to complete the work in accordance with the instructions provided and/or instructions developed by registered professional engineers or architects in instances indicated in the Model Installation Standards"); 70 Fed. Reg. 21,508 (Apr. 26, 2005) (HUD seeks comments concerning site preparation requirements). For example, 70 Fed. Reg. 21,499 (Apr. 26, 2005) states, in part:

> HUD would like to receive comments, in particular from installers, retailers, and manufactured home owners, on the legal and practical effect of these proposals. Since close-up consists of the work and activities for completing the assembly of the home, is it consistent with the rest of the Act to consider such work as construction and therefore the responsibility of the manufacturer? Or is it too difficult for manufacturers to control and monitor the close-up done by installers so that it would be more appropriate to classify close up as part of installation? Will consumers be adequately protected if close-up is classified as part of installation?
>
> HUD would also very much appreciate receiving comments from the States and local governments on this subject. How do the States and municipalities presently treat close up activities? Do their inspectors review close up activities as part of installation inspections? If there were requirements for inspection of close up work as part of HUD's certification of a State installation program, would there be difficulties with the expertise or work load of the State or local inspectors with respect to close ups, such that State installation laws could not be certified as covering inspection of close up work? Finally, HUD is very interested in hearing from States concerning whether the Model Installation Standards proposed in this rule would work well with the present installation programs in the States.

> (1) The temporary or permanent construction of stabilization, support, and anchoring systems for manufactured housing;
>
> (2) The placement and erection of a manufactured housing unit or components of a unit on a structural support system;
>
> (3) The supporting, blocking, leveling, securing, anchoring, underpinning, or adjusting of any section or component of a manufactured housing unit;
>
> (4) The joining or connecting of all sections or components of a manufactured housing unit.

R.C. 4781.01. The definition of "installation" applicable to the Ohio Manufactured Homes Commission thus includes four components: (1) the construction of stabilization, support, and anchoring systems; (2) placement and erection on a structural support system; (3) supporting, blocking, leveling, securing, anchoring, underpinning, or adjusting any section or component; and (4) joining or connecting all sections or components.

There is no express definition of "installation" in the Federal Act. The Federal Act does, however, define "installation standards" to mean "reasonable specifications for the installation of a manufactured home, at the place of occupancy, to ensure proper siting, the joining of all sections of the home, and the installation of stabilization, support, or anchoring systems." 42 U.S.C.A. § 5402(19) (West 2003).

This federal definition of "installation standards" contains essentially the same elements set forth in the Ohio definition of "installation." The federal definition provides for specifications governing the installation of stabilization, support, or anchoring systems (governed by divisions (B)(1) and (3) of Ohio's definition), for proper siting (governed by divisions (B)(2) and (3) of Ohio's definition), and for the joining of all sections of the home (governed by division (B)(4) of Ohio's definition). This federal definition does not appear to require the inclusion of any elements that are not included in a reasonable reading of R.C. 4781.01(B).

HUD's authority to adopt model standards is established by the Federal Act, and any model standards that HUD may adopt must be consistent with and authorized by the Federal Act. 42 U.S.C.A. § 5404 (West 2003). Ohio's definition of "installation" was enacted in legislation intended to provide for an installation program consistent with the Federal Act and, appropriately, contains essentially the same elements set forth in the federal definition of "installation standards." Because of these intentional similarities between the Federal Act and the Ohio statutes, it appears that model standards that come within a reasonable interpretation of the scope of the Federal Act will also fit within the general categories outlined in R.C. 4781.01(B). *See* 42 U.S.C.A. § 5402(19) (West 2003).

This conclusion is consistent with the evident intent of the legislation enacting R.C. Chapter 4781 which, as discussed above, was to permit Ohio to establish a manufactured housing installation program that complies with federal standards. R.C. 4781.04(A)(1) requires the Ohio

Manufactured Homes Commission to adopt rules establishing installation standards, and to amend those standards as necessary to be consistent with, and not less stringent than, model standards that HUD adopts. The General Assembly clearly intended for the Commission to have authority to carry out this mandate. A reasonable construction of Ohio's definition of "installation" supports the conclusion that it is consistent with corresponding language in the Federal Act, and the adoption of this reasonable construction serves the purposes of the legislation. *See also* R.C. 4781.04(B)(7) (requiring the Commission to "[r]eview the design and plans for manufactured housing installations, foundations, and support systems"); R.C. 4781.11(C) ("[n]o person shall install any manufactured housing foundation or manufactured housing support system unless that foundation or support system complies with the standards the manufactured homes commission establishes and receives all approvals and inspections that the commission requires").

On its face, the Ohio law thus appears to conform to the Federal Act and to permit the Ohio Manufactured Homes Commission to adopt rules establishing uniform standards governing the installation of manufactured housing that will be consistent with, and not less stringent than, the model installation standards adopted by HUD in accordance with the Federal Act. As discussed above, it is not possible to determine whether Ohio law encompasses particular components of the federal standards until rules of HUD governing model installation standards are finally adopted. *See* note 6, *supra*.

We conclude, accordingly, that, as expressed in R.C. 4781.04(A)(1), the General Assembly enacted R.C. Chapter 4781 in order to grant the Ohio Manufactured Homes Commission authority to establish a manufactured housing installation program that complies with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, codified at 42 U.S.C.A. §§ 5401-5426 (West 2003). To achieve this intent, the term "installation," as defined in R.C. 4781.01(B), may reasonably be interpreted to be consistent with the term "installation standards," as defined in 42 U.S.C.A. § 5402(19) (West 2003), and to encompass, in general, the same factors included in model installation standards established by HUD in accordance with 42 U.S.C.A. § 5404 when those standards are validly adopted and made part of federal law. Whether Ohio law encompasses particular components of the federal standards cannot be determined until rules of HUD governing model installation standards are finally adopted.

Question 2: Does the Commission have the authority to adopt HUD standards in their entirety (or create comparable standards) thereby allowing the Commission to comply with R.C. 4781.04?

This second question expands the scope of the first question. It asks, in a broader sense, whether the Commission is authorized to adopt any and all installation-related standards adopted by HUD, as necessary to allow the Commission to comply with the mandate of R.C. 4781.04(A)(1) that the Commission establish standards that are consistent with, and not less stringent than, the model standards adopted by HUD.

The analysis set forth above answers this question as well. The General Assembly enacted R.C. Chapter 4781 in order to grant the Ohio Manufactured Homes Commission authority to establish a manufactured housing installation program that meets federal requirements. Thus, Ohio's definition of "installation" was enacted to be consistent with the Federal Act and to enable the Ohio Manufactured Homes Commission to comply with the Federal Act. Therefore, because any model installation standards adopted by HUD must comply with the definition of "installation standards" appearing in 41 U.S.C.A. §5402(19), it may be anticipated that the standards will also come within the general definition of "installation" that appears in R.C. 4781.01(B) and is applied throughout R.C. Chapter 4781.

Hence, the term "installation," as defined in R.C. 4781.01(B), may reasonably be interpreted to be consistent with the term "installation standards," as defined in 42 U.S.C.A. § 5402(19) (West 2003), and to encompass, in general, the same factors included in model installation standards established by HUD in accordance with 42 U.S.C.A. § 5404 when those standards are validly adopted and made part of federal law. As discussed above, it is not possible to determine whether Ohio law encompasses particular components of the federal standards until rules of HUD governing model installation standards are finally adopted.

Question 3: Does the Ohio Manufactured Homes Commission have authority to make certain that the Ohio Department of Health properly complies with the rules promulgated by the Commission?

The third question concerns the relative authority of two agencies of state government. It asks whether the Ohio Manufactured Homes Commission has authority to make certain that the Ohio Department of Health properly complies with the rules promulgated by the Commission. Our review of the relevant statutes discloses that the Commission and the Department are separate agencies of state government, each created pursuant to statute and organized to carry out duties prescribed by statute. *See* R.C. 3701.02; R.C. Chapter 3733; R.C. Chapter 4781. *See generally* R.C. 1.60; R.C. 121.01(C); 1996 Op. Att'y Gen. No. 96-064; 1996 Op. Att'y Gen. No. 96-032; 1994 Op. Att'y Gen. No. 94-016. No provision of statute grants the Commission express authority to assure that the Department of Health complies with rules adopted by the Commission. The functions of the two state entities are, however, related in various ways, as discussed more fully below.

The question regarding the Commission's authority with respect to the Department of Health has arisen because of statutory provisions governing the inspection of various aspects of the installation of manufactured housing. Ohio statutory provisions require that, in adopting rules to implement R.C. Chapter 4781, the Commission must provide for the Ohio Department of Health to make certain inspections in manufactured home parks. In this regard, R.C. 4781.04 states, in part:

> (A) The manufactured homes commission shall adopt rules pursuant to Chapter 119. of the Revised Code to do all of the following:

. . . .

(2) Govern the inspection of the installation of manufactured housing. *The rules shall specify that the department of health* or a licensor, as determined by the director of health, *shall conduct all inspections of the installation of manufactured housing located in manufactured home parks to determine compliance with the uniform installation standards the commission establishes pursuant to this section*. The rules shall specify that all installation inspections in a manufactured home park the department of health or the licensor conducts shall be conducted by a person who has completed an installation training course approved by the commission pursuant to division (B) of section 4781.04 of the Revised Code.

As used in division (A)(2) of this section, "licensor" has the same meaning as in section 3733.01 of the Revised Code.

(3) Govern the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing. *The rules shall specify that the department of health* or the licensor, as determined by the director of health, *shall conduct all inspections of the installation, foundations, and base support systems of manufactured housing located in manufactured home parks to determine compliance with the uniform installation standards and foundation and base support system design the commission establishes pursuant to this section*. The rules shall specify that all foundation and base support system inspections in a manufactured home park the department of health or the licensor conducts shall be conducted by a person who has completed an installation training course approved by the commission pursuant to division (B) of section 4781.04 of the Revised Code.

As used in division (A)(3) of this section, "licensor" has the same meaning as in section 3733.01 of the Revised Code.[7] (Emphasis and footnote added.)

The statute thus provides that the Commission is empowered to adopt rules governing the inspection of the installation of manufactured housing and rules governing the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing. The statute also provides, however, that the Department of Health, or a licensor determined by the Director of Health, must be given the responsibility of conducting all inspections of manufactured housing located in manufactured home parks to determine

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[7] R.C. 3733.01(C) states:

"Licensor" means either the board of health of a city or general health district, or the authority having the duties of a board of health in any city as authorized by section 3709.05 of the Revised Code, or the director of health, when required under division (B) of section 3733.031 [3733.03.1] of the Revised Code. "Licensor" also means an authorized representative of any of those entities or of the director.

compliance with uniform installation standards, and with foundation and base support system design, established by the Commission.

The provisions of R.C. 4781.04 are consistent with the Department of Health's responsibility for regulation of manufactured home parks. The Department of Health is created as an administrative department of the State of Ohio, consisting of the Director of Health and the Public Health Council. R.C. 121.01(A); R.C. 121.02; R.C. 121.07; R.C. 3701.02. Over the course of many years, the Public Health Council has regulated manufactured home parks for the purpose of protecting the public health and safety in these communities. *See, e.g.*, 1951 Ohio Laws 77 (Am. H.B. 113, filed May 9, 1951) (enacting G.C. 1235-1, predecessor to R.C. 3733.02). Under current law, the Public Health Council is responsible for adopting rules governing the review of plans and issuance of licenses for manufactured home parks, their location, layout, construction, and operation, and matters concerning flood plain management. R.C. 3733.02(A); *see also* R.C. 3701.02; R.C. 3701.33-.34. The Director of Health is given responsibility for implementing these rules. R.C. 3733.02-.08; *see* 6 Ohio Admin. Code Chapter 3701-27.

The Director of Health is permitted to authorize boards of health of city or general health districts to serve as licensors of manufactured home parks, and then to survey the health districts to determine whether they are in substantial compliance with R.C. 3733.01 to R.C. 3733.08 and rules adopted thereunder. R.C. 3733.02(B); R.C. 3733.031; note 7, *supra*. Any health district that is not in substantial compliance must be removed from the approved list, and the Director must administer and enforce the applicable provisions until the Director determines that the health district is eligible to resume those responsibilities. R.C. 3733.031.

Among the Department of Health's responsibilities with regard to the regulation of manufactured home parks are the following duties set forth in R.C. 3733.02(A)(3):

> *The department of health shall determine compliance with the installation, blocking, tiedown, foundation, and base support system standards* for manufactured housing located in manufactured home parks *adopted by the manufactured homes commission* pursuant to section 4781.04 of the Revised Code. All inspections of the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a manufactured home park that the department of health or a licensor conducts shall be conducted by a person who has completed an installation training course approved by the manufactured homes commission pursuant to division (B)(12) of section 4781.04 of the Revised Code. (Emphasis added.)

The Department of Health is thus empowered to determine that the installation of manufactured housing in manufactured home parks complies with the installation, blocking, tiedown, foundation, and base support system standards adopted by the Commission. The inspections must be conducted by persons who have completed an installation training course approved by

the Commission pursuant to R.C. 4781.04(B)(12). The Commission thus is authorized to adopt rules and approve installation training courses, but the responsibility for determining compliance with manufactured housing standards is given to the Department of Health.

The provisions of R.C. 4781.04 confirm the power of the Department to determine compliance, stating plainly that, under the Commission's rules, the Department of Health, or a licensor that it names, must have authority to "*conduct all inspections* of the installation of manufactured housing located in manufactured home parks *to determine compliance* with the uniform installation standards" adopted by the Commission, and to "*conduct all inspections* of the installation, foundations, and base support systems of manufactured housing located in manufactured home parks *to determine compliance* with the uniform installation standards and foundation and base support system design" established by the Commission. R.C. 4781.04(A)(2) and (3) (emphasis added). Use of the word "all" is inclusive, indicating that the Department has exclusive authority to make the named inspections in manufactured home parks.

Thus, the grant of authority for the Department of Health to "determine compliance" of manufactured housing installed in manufactured home parks appears in both R.C. 3733.02(A) and R.C. 4781.04(A)(2) and (3). Similarly, provisions of R.C. 4781.14 preempt local regulation of manufactured home installers, installation, and inspection, and provide the Commission with exclusive regulatory authority except as provided in R.C. 3733.02(A)(3) – the provision granting the Department of Health regulatory authority over manufactured housing installed in manufactured home parks.[8] Within manufactured home parks, therefore, the authority to make

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[8] R.C. 4781.14 states:

> (A) *Except as provided in division (A)(3) of section 3733.02 of the Revised Code, the state, through the manufactured homes commission, has exclusive authority to regulate manufactured home installers, the installation of manufactured housing, and manufactured housing foundations and support systems in the state*. By enacting this chapter, it is the intent of the general assembly to preempt municipal corporations and other political subdivisions from regulating and licensing manufactured housing installers and regulating and inspecting the installation of manufactured housing and manufactured housing foundations and support systems.
>
> (B) *Except as provided in division (A)(3) of section 3733.02 of the Revised Code, the manufactured homes commission has exclusive power to adopt rules of uniform application throughout the state governing installation of manufactured housing, the inspection of manufactured housing foundations and support systems, the inspection of the installation of manufactured housing*, the training and licensing of manufactured housing installers, and the investigation of complaints concerning manufactured housing installers.
>
> (C) *Except as provided in division (A)(3) of section 3733.02 of the Revised Code, the rules the commission adopts pursuant to this chapter are the*

inspections, determine compliance, and enforce the standards adopted by the Commission rests with the Department of Health and any health districts that it names as licensors.[9]

The General Assembly evidently intended that the authority given to the Department of Health to make inspections in manufactured home parks and the authority given to the Ohio Manufactured Homes Commission to make inspections in other locations would be complementary and would provide a comprehensive program for the inspection of manufactured housing installation throughout the state. Hence, it would be appropriate for the Commission and the Department to cooperate and work together to achieve a comprehensive and consistent system for inspecting the installation of manufactured homes. *See generally, e.g.,* R.C. 121.17 ("[u]nder the direction of the governor, the directors of departments shall devise a practical and

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> *exclusive rules governing the installation of manufactured housing, the design, construction, and approval of foundations for manufactured housing,* the licensure of manufactured home installers, and the fees charged for licensure of manufactured home installers. No political subdivision of the state or any department or agency of the state may establish any other standards governing the installation of manufactured housing, manufactured housing foundations and support systems, the licensure of manufactured housing installers, or fees charged for the licensure of manufactured housing installers.
>
> (D) Nothing in this section limits the authority of the attorney general to enforce Chapter 1345. of the Revised Code or to take any action permitted by the Revised Code against manufactured housing installers, retailers, or manufacturers. (Emphasis added.)

This provision grants the Commission exclusive authority to regulate the installation of manufactured housing, foundations, and support systems in Ohio, with exceptions for regulatory authority granted to the Department of Health.

[9] The Legislative Service Commission's analysis of the legislation creating the Ohio Manufactured Homes Commission states that the legislation vests the Commission with the exclusive authority to regulate manufactured housing installers, the installation of manufactured housing, and manufactured housing and support systems, but goes on to state:

> As provided in the act, . . . the Department of Health inspects the installation of manufactured housing in manufactured home parks and must determine compliance with the installation, blocking, tiedown, foundation, and base support system standards for manufactured housing located in manufactured home parks (sec. 3733.02(A)(3) and 4781.04(A)(2) and (3)).

Ohio Legisl. Serv. Comm'n, Final Analysis at 3, 125th Gen. A., Sub. S.B. 102 (As Passed by the General Assembly).

working basis for co-operation and co-ordination of work and for the elimination of duplication and overlapping functions"); 1993 Op. Att'y Gen. No. 93-029 at 2-146 (governmental bodies with related duties "should strive to reach a mutually agreeable and workable arrangement" pursuant to which they "will be able to function together in executing their respective duties"); 1989 Op. Att'y Gen. No. 89-108 at 2-537 (it would be appropriate for public bodies "to coordinate their efforts and to cooperate in carrying out their respective activities"); 1987 Op. Att'y Gen. No. 87-039 at 2-264; 1986 Op. Att'y Gen. No. 86-057 at 2-316 to 2-317.

In comments presented to us after the submission of your opinion request, you have inquired about particular provisions that the Commission is considering adopting as part of its rules. We are not addressing those issues at this time. We note, generally, that the Commission is given authority by R.C. 4781.04(A)(1), (2), and (3) to adopt rules that establish uniform standards that govern the installation of manufactured housing, to adopt rules that govern the inspection of the installation of manufactured housing, and to adopt rules that govern the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing. Divisions (A)(2) and (3) of R.C. 4781.04 authorize the Commission to adopt rules that reasonably implement its statutory authority, and require that the rules provide for the Department of Health or a licensor to conduct all inspections of the installation of manufactured housing, and of the installation, foundations, and base support systems of manufactured housing, located in manufactured home parks to determine compliance with the standards adopted by the Commission. In exercising its rule-making powers, the Commission has discretion to determine the contents of its rules in any reasonable manner that is consistent with constitutional limitations and provisions of the Revised Code. *See, e.g., Northwestern Ohio Bldg. and Constr. Trades Council v. Conrad*, 92 Ohio St. 3d 282, 287, 750 N.E.2d 130 (2001) ("[a] court must give due deference to the agency's reasonable interpretation of the legislative scheme"); 2005 Op. Att'y Gen. No. 2005-008 at 2-86; 1998 Op. Att'y Gen. No. 98-035 at 2-208 ("[t]he standard for the promulgation of rules is that an administrative body with rulemaking authority may adopt such rules as it deems appropriate to carry out its powers and duties, provided that the rules are not unreasonable or in clear conflict with statutory enactments and do not add to statutorily-delegated powers"); 1994 Op. Att'y Gen. No. 94-059 at 2-289 to 2-290; note 4, *supra*.

We are unable at this time to provide further definition of the type of rules the Commission may adopt, or to attempt to define the limits of the Commission's discretion in adopting rules, especially in light of the fact that federal model standards have not yet been adopted. An important part of the rulemaking process involves the consideration of comments from the public and from other governmental entities, and the making of careful and reasoned judgments regarding the adoption of rules, so that the legislative purpose may be accomplished and statutory powers may be implemented in an effective manner. *See* R.C. 119.01-.04; *Ohio Nurses Ass'n v. State Bd. of Nursing Educ. & Nurse Registration*, 44 Ohio St. 3d 73, 77, 540 N.E.2d 1354 (1989) (rule-making procedures set forth in R.C. Chapter 119 "provide the fullest and fairest analysis of the impact and validity of proposed rules or regulations"); 1998 Op. Att'y Gen. No. 98-035 at 2-209 ("[q]uestions of reasonableness may be raised and deliberated through

the statutorily-established rulemaking process"); *see also, e.g.,* 2001 Op. Att'y Gen. No. 2001-032 at 2-193 ("[t]he Attorney General is not empowered, in rendering opinions, to exercise discretion on behalf of other public officials, nor do we find it appropriate to advise one public body on matters concerning the powers and duties of another public body"); 1989 Op. Att'y Gen. No. 89-008 at 2-33 (the Attorney General is not authorized to exercise on behalf of another governmental entity discretion that the General Assembly has granted to that entity). Should you subsequently encounter questions of law that cannot be resolved by application of these general principles, you may request another opinion at that time, and we will be pleased to consider your request.

General enforcement authority

The General Assembly has provided the Commission with various means of enforcing its duties regarding the inspection of the installation of manufactured homes.[10] The Commission is responsible for licensing manufactured housing installers and may determine appropriate disciplinary actions for their violations of R.C. Chapter 4781. *See* R.C. 4781.04(A)(4)-(9); R.C. 4781.04(B)(9)-(11); R.C. 4781.09. The Commission is required to "[i]nvestigate complaints concerning violations of [R.C. Chapter 4781] or the rules adopted pursuant to it, or the conduct of any manufactured housing installer," R.C. 4781.04(B)(9), and is authorized to adopt rules to implement that duty, R.C. 4781.04(A)(9). The Commission is empowered to apply to an appropriate court to enjoin any violation of R.C. Chapter 4781 or rules adopted pursuant to it, and the courts are permitted to grant any appropriate relief, including an injunction or restraining order. R.C. 4781.12(A). The Commission is also empowered to take complaints to a county prosecuting attorney, a city law director, or the Attorney General for prosecution or an action for an injunction. R.C. 4781.12(B). Thus, if there are concerns about violations of R.C. Chapter 4781 or rules adopted by the Commission, the Commission may inspect, investigate, and then seek enforcement in accordance with its statutory authority.

The Department of Health is responsible for the licensing of manufactured home parks and is empowered to make certain that there is substantial compliance with R.C. 3733.01 to R.C. 3733.08 and rules adopted thereunder. *See, e.g.,* R.C. 3733.02-.022; R.C. 3733.03; R.C. 3733.031; R.C. 3733.05. The Director of Health or a licensor has statutory authority to submit a complaint to a county prosecuting attorney, a city law director, or the Attorney General, seeking

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[10] With regard to installations over which the Commission has inspection authority, the Commission has the mandate to inspect a sample of homes, as the Commission deems appropriate, to determine whether the standards it has adopted have been properly implemented. R.C. 4781.04(B)(8) (requiring the Commission to "[i]nspect a sample of homes at a percentage the commission determines to evaluate the construction and installation of manufactured housing installations, foundations, and support systems to determine compliance with the standards the commission adopts"). This authority does not extend to installations in manufactured home parks, where the exclusive duty to inspect and determine compliance has been given to the Department of Health. R.C. 3733.02(A)(3); R.C. 4781.04(A)(2) and (3); R.C. 4781.14.

prosecution or injunction against any person who violates R.C. 3733.01 to R.C. 3733.08 or rules adopted thereunder. R.C. 3733.08. Rules adopted by the Commission are not adopted under R.C. 3733.01 to R.C. 3733.08, but they are expressly referenced in R.C. 3733.02(A)(3) and, thus, are included within the provisions that the Department is authorized to enforce. Hence, both the Department and the Commission are empowered to seek enforcement of such manufactured housing standards as the Commission may adopt pursuant to R.C. 4781.04.

In summary, we conclude that the Ohio Manufactured Homes Commission and the Ohio Department of Health are separate agencies of state government, and that no provision of statute grants the Commission express authority to assure that the Department of Health complies with rules adopted by the Commission. The Ohio Manufactured Homes Commission has authority under R.C. 4781.04(A)(1), (2), and (3) to adopt rules that establish uniform standards that govern the installation of manufactured housing, to adopt rules that govern the inspection of the installation of manufactured housing, and to adopt rules that govern the design, construction, installation, approval, and inspection of foundations and the base support systems for manufactured housing. The Ohio Department of Health has authority under R.C. 3733.02(A)(3) to determine compliance with the installation, blocking, tiedown, foundation, and base support system standards for manufactured housing located in manufactured home parks adopted by the Ohio Manufactured Homes Commission pursuant to R.C. 4781.04. As discussed above, both the Commission and the Department have general authority to enforce the provisions they administer.

Conclusions

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. As expressed in R.C. 4781.04(A)(1), the General Assembly enacted R.C. Chapter 4781 in order to grant the Ohio Manufactured Homes Commission authority to establish a manufactured housing installation program that complies with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, codified at 42 U.S.C.A. §§ 5401-5426 (West 2003). To achieve this intent, the term "installation," as defined in R.C. 4781.01(B), may reasonably be interpreted to be consistent with the term "installation standards," as defined in 42 U.S.C.A. § 5402(19) (West 2003), and to encompass, in general, the same factors included in model installation standards established by the Department of Housing and Urban Development (HUD) in accordance with 42 U.S.C.A. § 5404 when those standards are validly adopted and made part of federal law. Whether Ohio law encompasses particular components of the federal standards cannot be determined until rules of HUD governing model installation standards are finally adopted.

2. The Ohio Manufactured Homes Commission and the Ohio Department of Health are separate agencies of state government, and no provision of statute grants the Commission express authority to assure that the Department of Health complies with rules adopted by the Commission.

Respectfully,

JIM PETRO
Attorney General