December 13, 1994

OPINION NO. 94-088

The Honorable James A. Philomena
Mahoning County Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503-1726

Dear Prosecutor Philomena:

You have requested an opinion on the following question: "Can a county-wide electrical licensing board institute a policy requiring individuals to take examinations before issuing electrical permits in light of Ohio Revised Code § 4740.01?" Your request also raises the more general question of whether the enactment of R.C. Chapter 4740, concerning the Ohio Construction Industry Examining Board, prevents counties from engaging in the licensing of electrical contractors.

Ohio Construction Industry Examining Board

In 1992 the General Assembly enacted Sub. H.B. 402, 119th Gen. A. (1992) (eff. July 31, 1992), creating the Ohio Construction Industry Examining Board, consisting of an administrative section, a plumbing section, an electrical section, and a heating, ventilating, air conditioning, and refrigeration section. R.C. 4740.02(A). Pursuant to R.C. 4740.04, the administrative section of the Board has certain duties in the administration of R.C. Chapter 4740, *e.g.*, scheduling, administering, and supervising examinations for those contractors subject to R.C. Chapter 4740 and issuing "qualification certificates"[1] to individuals who have successfully completed the examination in a particular contracting field. Each remaining section is required to adopt rules for its section, governing such matters as application procedures for examinations, issuing or refusing to issue qualification certificates to qualified individuals, and suspending or revoking qualification certificates of unqualified individuals. R.C. 4740.05.

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[1] As used in R.C. Chapter 4740, a "qualification certificate" means "a certificate issued by the Ohio construction industry examining board to an individual or business entity as a heating, ventilating, and air conditioning contractor, refrigeration contractor, electrical contractor, plumbing contractor, or hydronics contractor." R.C. 4740.01(A).

R.C. 4740.12, however, expressly provides for regulation of heating, ventilating, and air conditioning contractors, refrigeration contractors, electrical contractors, plumbing contractors, and hydronics contractors through licensing by local authorities. R.C. 4740.12 states:

> (A) Except as otherwise provided in this chapter, only a municipal corporation pursuant to [R.C. 715.27] or *a board of county commissioners pursuant to [R.C. 3781.102] shall regulate the licensing of* heating, ventilating, and air conditioning contractors, refrigeration contractors, *electrical contractors*,[2] plumbing contractors, and hydronics contractors.
> (B) *Nothing in this chapter shall be construed to limit the operation of any statute or rule of this state or any ordinance or rule of any political subdivision*, district, or agency of the state *that*:
> (1) Regulates the installation, repair, maintenance, or alteration of plumbing systems, electrical systems, heating, ventilating, and air conditioning systems, or refrigeration systems;
> (2) *Requires the registration and assessment of a registration or license fee of individuals who are engaged in the business of heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, or hydronics contracting*. (Emphasis and footnote added.)

According to R.C. 4740.12(A), except as otherwise provided in the chapter, a county, acting in accordance with R.C. 3781.102, may regulate the licensing of the businesses mentioned in R.C. 4740.12(A). In addition, pursuant to R.C. 4740.12(B), R.C. Chapter 4740 does not limit the operation of any statute or rule of a political subdivision that requires the registration and payment of a registration or license fee by any individual who is engaged in one of the businesses listed in R.C. 4740.12(B)(2).

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[2] For purposes of R.C. 4740.12, "electrical contractor" means:

> any individual who assumes responsible charge, supervision, or direction of persons engaged in electrical contracting, or who engages in, offers to engage in, advertises, or otherwise represents that he is permitted or qualified to engage in the design of, planning of, superintending of, contracting for, or responsible charge of electrical contracting. As used in this division, "electrical contracting" does not include the construction, installation, alteration, repair, maintenance, or service of any fire alarm or burglar alarm.

R.C. 4740.01(D).

Authority of Counties to License Electrical Contractors

The authority of a board of county commissioners to act under R.C. 4740.12(A) with respect to the licensing of electrical contractors is set forth in R.C. 3781.102, which states in pertinent part:

> (B) *Except as limited by division (C) of this section, each board of county commissioners may adopt*, by resolution, *rules* establishing standards and *providing for the licensing of electrical* and heating, ventilating, and air conditioning *contractors*.
> Rules adopted by a board of county commissioners pursuant to this division may be enforced within the unincorporated areas of the county and within any municipal corporation where the legislative authority of the municipal corporation has contracted with the board for the enforcement of the county rules within the municipal corporation pursuant to [R.C. 307.15]. The rules shall not conflict with rules adopted by the board of building standards pursuant to [R.C. 3781.10] or by the department of health pursuant to [R.C. Chapter 3703]....
> (C)(1) *Except as provided in division (C)(2)* of this section, *a board of county commissioners*, pursuant to division (B) of this section, *may require all electrical contractors* and heating, ventilating, and air conditioning contractors *to successfully complete an examination, test, or demonstration of technical skills* and may impose a fee and additional requirements for a license to engage in their respective occupations within the jurisdiction of the board's rules under division (B) of this section.
> (2) *No board of county commissioners shall require any electrical contractor* or heating, ventilating, and air conditioning contractor *who has a valid and unexpired qualification certificate to successfully complete an examination, test, or demonstration of technical skills in order to receive a license to engage in his respective business*, except that a board that has adopted, on or before the effective date of this section, a heating, ventilating, and air conditioning, or refrigeration, electrical, hydronics, or plumbing code which is not in conflict with [R.C. Chapter 3781 or R.C. Chapter 3791] or rules adopted thereunder, may require a contractor who holds a valid and unexpired qualification certificate to successfully complete an examination or test only in those areas that differ from requirements established under [R.C. Chapter 3781 and R.C. Chapter 3791] and rules adopted thereunder.
> (3) A board may impose a fee and additional requirements for licensure of an individual who holds a valid and unexpired qualification certificate, in order for that individual to engage in his respective business within the jurisdiction of the board's rules under division (B) of this section, provided that the fee and additional requirements are the same for all individuals who wish to engage in the business. If the board imposes such a fee or additional requirements, the board immediately shall permit an individual who presents proof of holding a valid and unexpired qualification certificate and who pays the required fee and satisfies all additional requirements imposed by the board to engage in his respective business within the jurisdiction of the board's rules under division (B) of this section.

> (D) As used in this section, "electrical contractor," "heating, ventilating, and air conditioning contractor," and "qualification certificate" have the same meanings as in [R.C. 4740.01]. (Emphasis added.)

R.C. 3781.102(B), therefore, expressly authorizes a board of county commissioners, acting by resolution, to adopt rules "establishing standards and providing for the *licensing* of electrical ... contractors" (emphasis added). The authority of the county commissioners to act pursuant to R.C. 3781.102(B) is restricted, however, by division (C) of that statute.

Pursuant to R.C. 3781.102(C)(1), a board of county commissioners, except as limited by R.C. 3781.102(C)(2), may "require all electrical contractors ... to successfully complete an examination, test, or demonstration of technical skills and may impose a fee and additional requirements for a license to engage in [that occupation] within the jurisdiction of the board's rules under [R.C. 3781.102(B)]." The limitation on the county commissioners' authority under R.C. 3781.102(C)(1), is that, with one exception,[3] the county commissioners may not require an electrical contractor who has a valid and unexpired qualification certificate, issued in accordance with R.C. Chapter 4740, successfully to complete an examination, test, or demonstration of technical skills in order to receive a license to engage in that business. R.C. 3781.102(C)(2).

You specifically question whether R.C. Chapter 4740 prevents a county from establishing a licensing board that would require persons to pass an examination in order to engage in business as an electrician. Your concern is that R.C. 4740.12 and R.C. 3781.102, which permit licensing by local authorities, contradict the other provisions of R.C. Chapter 4740. This is not the case, however. Sub. H.B. 402, which enacted R.C. Chapter 4740, also amended R.C. 3781.102, in part by adding division (C), which establishes the scheme governing the county commissioners' licensure of electrical contractors and heating, ventilating, and air conditioning contractors. Because Sub. H.B. 402 enacted R.C. Chapter 4740, including R.C. 4740.12, at the same time it added division (C) to R.C. 3781.102, the General Assembly clearly intended that boards of county commissioners retain their licensing authority under R.C. 3781.102, the provisions of R.C. Chapter 4740 notwithstanding. Although Sub. H.B. 402 created the Ohio Construction Industry Examining Board, which may issue "qualification certificates" to persons engaged in certain businesses, it also retained in municipalities and counties the authority to license those businesses. R.C. 4740.12(A).

Concerning the authority to create a county board to carry out the licensing duties of the county commissioners under R.C. 3781.102, R.C. 3781.102(B) expressly authorizes a board of county commissioners to adopt rules providing for the licensing of electrical contractors. Thus, it is

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[3] If a board of county commissioners has, on or before July 31, 1992, adopted "a heating, ventilating, and air conditioning, or refrigeration, electrical, hydronics, or plumbing code" that is not in conflict with R.C. Chapter 3781 or R.C. Chapter 3791 or rules adopted under either chapter, it may require a contractor who holds a valid and unexpired qualification certificate successfully to complete an examination or test *only in those areas that differ from requirements established under R.C. Chapter 3781 or R.C. Chapter 3791 or rules adopted thereunder*.

within the county commissioners' discretion to determine whether creation of a licensing board would be a reasonable method for carrying out the county commissioners' licensing authority, and to provide for such a board by rule.

Nonetheless, the extent of the county commissioners', and thus the licensing board's, authority under R.C. 3781.102(C)(1) to require passage of an examination in order to receive a license to engage in the business of an electrician is limited by R.C. 3781.102(C)(2). The limitation is that, with one exception, the county commissioners may not require an individual who holds a valid and unexpired qualification certificate as an electrical contractor successfully to complete such an examination, test, or demonstration in order to receive a license to engage in that business. R.C. 3781.102(C)(2). The sole exception to that general approach is that if a board of county commissioners has, on or before July 31, 1992, adopted a heating, ventilating, and air conditioning, or refrigeration, electrical, hydronics, or plumbing code that is not in conflict with R.C. Chapter 3781 or R.C. Chapter 3791 or rules adopted under either chapter, it may require a contractor who holds a valid and unexpired qualification certificate successfully to complete an examination or test, but only in those areas that differ from requirements established under R.C. Chapter 3781 or R.C. Chapter 3791 or rules adopted thereunder. *Id.*

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, pursuant to R.C. 3781.102(C)(2), a board of county commissioners may not require an electrical contractor who holds a valid and unexpired qualification certificate, issued in accordance with R.C. Chapter 4740, successfully to complete an examination, test, or demonstration of technical skills in order to obtain a license to engage in business as an electrical contractor in the area of the board's jurisdiction as described in R.C. 3781.102(B), unless, prior to July 31, 1992, the board adopted a heating, ventilating, and air conditioning, or refrigeration, electrical, hydronics, or plumbing code that is not in conflict with R.C. Chapters 3781 or 3791 and rules adopted under either chapter, in which case it may require the holder of such a certificate successfully to complete an examination or test in those areas that differ from the requirements established under R.C. Chapter 3781 or 3791 or rules adopted under either chapter.

Respectfully,

LEE FISHER
Attorney General

December 13, 1994

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SYLLABUS: 94-088

Pursuant to R.C. 3781.102(C)(2), a board of county commissioners may not require an electrical contractor who holds a valid and unexpired qualification certificate, issued in accordance with R.C. Chapter 4740, successfully to complete an examination, test, or demonstration of technical skills in order to obtain a license to engage in business as an electrical contractor in the area of the board's jurisdiction as described in R.C. 3781.102(B), unless, prior to July 31, 1992, the board adopted a heating, ventilating, and air conditioning, or refrigeration, electrical, hydronics, or plumbing code that is not in conflict with R.C. Chapters 3781 or 3791 and rules adopted under either chapter, in which case it may require the holder of such a certificate successfully to complete an examination or test in those areas that differ from the requirements established under R.C. Chapter 3781 or 3791 or rules adopted under either chapter.