April 9, 2003

Ronald L. Grout, EMTP
Executive Director
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1952 W. Broad Street
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SYLLABUS: 2003-011

1. Pursuant to the test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus), the provisions contained in R.C. Chapter 4766, authorizing limited municipal licensing as part of the statewide scheme under which the Ohio Ambulance Licensing Board licenses emergency medical service organizations, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation may not, pursuant to its home rule powers under Ohio Const. art. XVIII, § 3, adopt police regulations that conflict with R.C. Chapter 4766.

2. Pursuant to Ohio Const. art. XVIII, § 3 and R.C. 4766.10, a municipal corporation is empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business located within the limits of the municipal corporation, as long as the licensure standards meet or exceed the standards established pursuant to R.C. Chapter 4766 and rules adopted thereunder. A municipal corporation is not empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business outside the limits of the municipal corporation, because municipal licensure of those organizations would conflict with R.C. Chapter 4766.

3. A municipal ordinance that uses a licensing scheme to ban from doing business within the municipal corporation an emergency medical service organization that has its principal place of business outside the limits of the municipal corporation and is licensed by the Ohio Ambulance Licensing Board conflicts with R.C. Chapter 4766. Therefore, a municipal corporation is not empowered to adopt an ordinance of this type pursuant to its home rule powers under Ohio Const. art. XVIII, § 3.

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OPINION NO. 2003-011

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Dear Executive Director Grout:

We have received your request for an opinion regarding the application of R.C. 4766.10, which pertains to a municipality's authority to license emergency medical service organizations. You have asked whether R.C. 4766.10 stands for the proposition that, if an emergency medical service organization has its principal place of business outside the limits of a municipal corporation, is licensed by the Ohio Ambulance Licensing Board, and meets or exceeds the municipal standards, then the municipal corporation does not have the authority to ban the emergency medical service organization from doing business in the municipality.

The portion of R.C. 4766.10 to which your question relates reads as follows:

> This chapter *does not invalidate any ordinance or resolution* adopted by a municipal corporation *that establishes standards for the licensure of emergency medical service organizations* as basic life-support, intermediate life-support, or advanced life-support service organizations *that have their principal places of business located within the limits of the municipal corporation*, as long as the licensure standards meet or exceed the standards established in this chapter and the rules adopted thereunder.

R.C. 4766.10 (emphasis added). This provision, by its terms, does not grant authority to a municipal corporation. Instead, it states that it "does not invalidate" certain types of ordinances or resolutions adopted by a municipal corporation. The reason for this phrasing, and the key to the interpretation of R.C. 4766.10, are found in the Ohio Constitution.

Although the analysis of your question begins with an examination of R.C. 4766.10, the essential issue you have raised concerns the home rule powers that are granted to municipal corporations under Ohio Const. art. XVIII, § 3. In order to interpret and apply R.C. 4766.10, it is

necessary to examine the constitutional power of a municipality to enact local police regulations that do not conflict with general law, and to determine the manner and extent to which this power is affected by the statutory scheme for the licensure of emergency medical service organizations that is established by R.C. Chapter 4766. As the discussion that follows makes clear, the interpretation and application of R.C. 4766.10 depend upon the nature of the municipality's home rule powers and the extent to which these powers are limited by the statutory scheme providing for licensure by the Ohio Ambulance Licensing Board.

State scheme for licensure of emergency medical service organizations under R.C. Chapter 4766

We begin with an examination of R.C. 4766.10. R.C. 4766.10 is included in R.C. Chapter 4766, which creates the Ohio Ambulance Licensing Board and gives the Board authority to license emergency medical service organizations and issue permits for their vehicles. R.C. 4766.02(A); R.C. 4766.03-.04; R.C. 4766.07. Emergency medical service organizations are defined as organizations that use "EMTs-basic, EMTs-I, or paramedics, or a combination thereof, to provide medical care to victims of illness or injury." R.C. 4766.01(E). They include, but are not limited to, commercial ambulance service organizations, hospitals, and funeral homes. *Id.*[1]

State law prohibits the operation of an emergency medical service organization without a license. It states that, subject to certain exceptions,[2] "no person shall furnish, operate, conduct,

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[1] While, as discussed in this opinion, the Ohio Ambulance Licensing Board regulates emergency medical service organizations and the vehicles that they use, the individuals who provide emergency medical services (first responders, EMTs-basic, EMTs-I, and paramedics) are subject to licensure under R.C. Chapter 4765 by the State Board of Emergency Medical Services, within the Division of Emergency Medical Services of the Department of Public Safety. *See, e.g.*, R.C. 4765.02; R.C. 4765.11. In addition to its licensing functions, the State Board of Emergency Medical Services is authorized to prepare recommendations for the operation of emergency medical service organizations, concerning such matters as the design, equipment, staffing, and communications systems for the operation of ambulances, and to investigate complaints concerning emergency medical service organizations. R.C. 4765.09-.10.

[2] Exceptions to R.C. Chapter 4766's licensing requirements are provided by R.C. 4766.09. The exceptions include various types of public and volunteer emergency medical service organizations and fire departments, persons operating outside of Ohio unless they receive a person within Ohio for transportation to a location within Ohio, and persons rendering services in disaster situations. R.C. 4766.09; *see also* 1992 Op. Att'y Gen. No. 92-019.

Public bodies operating emergency medical service organizations that are not required to be licensed under R.C. Chapter 4766 may choose to have the Ohio Ambulance Licensing Board

maintain, advertise, engage in, or propose or profess to engage in the business or service of transporting persons who are seriously ill, injured, or otherwise incapacitated in this state" unless the person is licensed as a basic life-support, intermediate life-support, or advanced life-support service organization pursuant to R.C. 4766.04. R.C. 4766.04(A); *see* also R.C. 4766.99 (imposing criminal penalty for violation of R.C. 4766.04(A)). To obtain a license, an emergency medical service organization must secure a permit for each ambulance and nontransport vehicle it uses and meet applicable requirements pertaining to such matters as equipment, communications systems, staffing, level of care, and insurance. R.C. 4766.04(B). Licensure requires that vehicles be inspected by the Ohio Ambulance Licensing Board and the State Highway Patrol and makes the licensee subject to continuing operational requirements, including record maintenance requirements. R.C. 4766.03; R.C. 4766.04(G); R.C. 4766.07(C); 11 Ohio Admin. Code Chapters 4766-4 and 4766-6.

The Ohio Ambulance Licensing Board is responsible for establishing and enforcing standards for ambulances and emergency medical service organizations. R.C. 4766.03; R.C. 4766.08. The Board has authority to investigate complaints, suspend or revoke licenses, and impose monetary penalties. R.C. 4766.08; R.C. 4766.11; 11 Ohio Admin. Code Chapter 4766-11. Further, the Board is designated as the "sole supervisory body regarding the licensing of private ambulance service organizations in this state." R.C. 4766.02(E).

In addition to the portion of R.C. 4766.10 quoted above, R.C. 4766.10 includes a second paragraph, which states:

> Emergency medical service organizations licensed by a municipal corporation are subject to the jurisdiction of the Ohio ambulance licensing board, but the fees they pay to the board for licenses, permits, and renewals thereof shall not exceed fifty per cent of the fee amounts established by the board pursuant to section 4766.03 of the Revised Code. The board may choose to waive the vehicle inspection requirements and inspection fees, but not the permit fees, for the vehicles of organizations licensed by a municipal corporation.

This statutory language incorporates municipal licensing programs into the state licensing scheme by specifying that emergency medical service organizations licensed by a municipal corporation are subject to the jurisdiction of the Ohio Ambulance Licensing Board, but are charged fees at a reduced rate. *See also* 11 Ohio Admin. Code 4766-3-02(D). Further, this provision permits the Board to waive vehicle inspection requirements and inspection fees (but not permit fees) for the vehicles of organizations licensed by a municipal corporation. R.C. 4766.10.

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license their organizations, and thus subject the organizations and their vehicles to regulation as provided in R.C. Chapter 4766. R.C. 4766.09(C); R.C. 4766.12; *see also* R.C. 307.051 (county); R.C. 307.055(G) (joint emergency medical services district); R.C. 505.37(F) (township); R.C. 505.375(B) (fire and ambulance district); R.C. 505.72(B)(3) (joint ambulance district).

R.C. Chapter 4766 thus establishes a statewide licensing program for emergency medical service organizations. To understand the application of this program to the operation of a municipality, it is necessary to consider the municipality's constitutional powers.

Constitutional home rule power of a municipal corporation to adopt licensing regulations as an exercise of police power

Pursuant to the Ohio Constitution, municipal corporations have authority "to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." Ohio Const. art. XVIII, § 3. This home rule provision permits a municipal corporation to adopt ordinances that provide for the self-government of the municipality. *See generally Village of Beachwood v. Bd. of Elections*, 167 Ohio St. 369, 148 N.E.2d 921 (1958) (syllabus, paragraph one) ("[t]he power of local self-government granted to municipalities by Article XVIII of the Ohio Constitution relates solely to the government and administration of the internal affairs of the municipality"). The home rule provision of Ohio Const. art. XVIII, § 3 also permits a municipality to enact local police regulations, provided that the police regulations do not conflict with general laws of the state. *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph one) ("[m]unicipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws").[3]

Licensing requirements have been found to constitute police regulations. The Ohio Supreme Court has recognized that the power to license is part of the power to regulate and has concluded that "any municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation within the meaning of Section 3 of Article XVIII of the Ohio Constitution." *Auxter v. City of Toledo*, 173 Ohio St. 444, 446, 183 N.E.2d 920 (1962); *see also Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 244, 602 N.E.2d 1147 (1992). Therefore, a municipal corporation may adopt

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[3] In addition to the home rule powers granted to a municipality by Ohio Const. art. XVIII, § 3, a municipality is authorized to adopt a charter for its government and, subject to the provisions of § 3, "exercise thereunder all powers of local self-government." Ohio Const. art. XVIII, § 7. The existence of a charter does not affect the limitation that a police regulation may not conflict with general laws and, therefore, is not discussed in this opinion. *See generally* 2000 Op. Att'y Gen. No. 2000-022, at 2-141 n.8; 1985 Op. Att'y Gen. No. 85-101, at 2-431.

Pursuant to R.C. Chapter 504, townships are granted the option of adopting a limited home rule government. Because your question does not concern townships, this opinion does not address the authority of townships, whether derived pursuant to R.C. Chapter 504 or from another source.

licensing requirements, provided that the licensing requirements do not conflict with general laws of the state.

It is evident that the intent behind the licensing of emergency medical service organizations and the requirement that their ambulances and nontransport vehicles have permits is to protect the public health and safety. *See generally State ex rel. McElroy v. City of Akron*, 173 Ohio St. 189, 191-93, 181 N.E.2d 26 (1962) (state licensing of watercraft is based on the police power for the preservation of public safety and welfare); *Williams v. Scudder*, 102 Ohio St. 305, 131 N.E. 481 (1921) (syllabus paragraphs one and two) (public health is one of the most vital subjects for the exercise of the police power of the state). Licensing requirements impose safety, training, and insurance standards, and thus provide protection for vulnerable persons who need to obtain transportation services when they are ill, injured, or incapacitated. Such regulations serve to protect the public safety and welfare and, therefore, constitute police regulations as contemplated by Ohio Const. art. XVIII, § 3. Accordingly, the licensing of emergency medical service organizations is a police power that a municipal corporation may exercise, subject to the restriction of Ohio Const. art. XVIII, § 3 that action taken by the municipal corporation may not conflict with general laws.

Test for determining when a state statute is a general law for purposes of home-rule analysis

The Ohio Supreme Court has recently set forth the following test for determining whether a statute is a general law for purposes of Ohio Const. art. XVIII, § 3:

> To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

City of Canton v. State, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus). *See generally City of Dublin v. State*, 118 Ohio Misc. 2d 18, 2002-Ohio-2431, 769 N.E.2d 436, ¶223 (C.P. Franklin County) ("[t]he term 'general law' is a term of art that does not include every law that the General Assembly enacts"); 2002 Op. Att'y Gen. No. 2002-036, at 2-229 n.4.

To determine whether the state law in question constitutes a general law, we consider R.C. Chapter 4766 as a whole. You have inquired about R.C. 4766.10, but that section is meaningful only when read and applied in conjunction with the licensing requirement of R.C. 4766.04 and the licensure standards adopted pursuant to R.C. Chapter 4766 and referenced in R.C. 4766.10. Hence, the entire licensing scheme of R.C. Chapter 4766 is implicated in your question.

Prong 1: To constitute a general law for purposes of home-rule analysis, a statute must be part of a statewide and comprehensive legislative enactment

Our analysis indicates that R.C. Chapter 4766 is a general law pursuant to the test established in *City of Canton v. State*. It satisfies the first prong of the test because it was adopted as a statewide and comprehensive legislative enactment. The provisions establishing the Ohio Ambulance Licensing Board as the licensing body for emergency medical service organizations throughout the state were initially adopted in 1990 as a thorough and detailed legislative scheme for protecting the public health and safety by providing standards for ambulances and the operation of emergency medical service organizations. 1989-1990 Ohio Laws, Part III, 4333 (Am. Sub. H.B. 319, eff. July 2, 1990). *See generally State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 192 ("[d]ue to our changing society, many things which were once considered a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control"). The provisions have been amended from time to time and were moved to R.C. Chapter 4766 in 1992. *See* 1991-1992 Ohio Laws, Part I, 343, 505-13 (Am. Sub. S.B. 98, eff. Nov. 12, 1992). They continue to provide a comprehensive program for the issuance of licenses to emergency medical service organizations and the issuance of permits for their vehicles.

In this regard, the provisions of R.C. Chapter 4766 are similar to those under consideration in two cases cited favorably in *City of Canton v. State.* In the *City of Canton* case, the court cited *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982), which concluded that a statute that was part of a comprehensive statutory scheme to regulate state control of the disposal of hazardous waste was a general law. *City of Canton v. State* at ¶17, 22. The *Clermont Environmental* case found that municipalities were subject to statutory provisions that prohibited any political subdivision of the state from requiring any additional zoning or other approval for the construction and operation of a hazardous waste facility authorized by a state permit. *Clermont Envtl. Reclamation Co. v. Wiederhold* (syllabus).[4]

City of Canton also cited *Ohio Association of Private Detective Agencies, Inc. v. City of North Olmsted*, in which the court found that the provisions of R.C. Chapter 4749 constituted general laws of the state because they provided for statewide uniformity in the regulation of private investigators. *City of Canton v. State* at ¶18, 22. In the *Private Detective* case, the court found that a municipal ordinance attempting to charge a fee for the registration or licensure of private investigators was invalid under Ohio Const. art. XVIII, § 3 because it conflicted with the

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[4] *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982), was later construed by *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986), which held that the statutory prohibition upheld in *Clermont* did not extend to a municipal police power ordinance that did not alter, impair or limit the operation of a state-licensed hazardous waste facility. The *Fondessy* court concluded that a city ordinance imposing a monthly permit fee and record-keeping requirements upon state-licensed hazardous waste landfills located within the city did not conflict with the state licensing scheme.

statewide regulatory program, which included a statute specifically prohibiting the imposition of such fees. *Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted* (syllabus).

In contrast with the statewide and comprehensive enactments considered in the *Clermont Environmental* and *Private Detective* cases, the court found that the statute at issue in *City of Canton* was not part of a statewide and comprehensive zoning plan. Rather, the statute there in question simply referred to federal standards regulating the construction of manufactured homes and purported to restrict the authority of municipal corporations to regulate the placement of manufactured homes. *City of Canton v. State* at ¶23, 24.

In *City of Canton v. State*, the Ohio Supreme Court indicated that it continues to be appropriate "to view statutory schemes in their entirety, rather than a single statute in isolation" to determine whether the statutes are part of a statewide and comprehensive legislative scheme, as required of a general law. *City of Canton v. State* at ¶18. Viewed *in pari materia* with other sections of R.C. Chapter 4766, R.C. 4766.10 is part of a comprehensive statutory scheme to regulate emergency medical service organizations. R.C. Chapter 4766 as a whole enacts a statewide and comprehensive legislative scheme, as did the statutes at issue in *Clermont Environmental Reclamation Co. v. Wiederhold* and *Ohio Association of Private Detective Agencies, Inc. v. City of North Olmsted*. In accordance with R.C. Chapter 4766, ambulance services provided throughout Ohio must meet the standards established by the Ohio Ambulance Licensing Board to protect the welfare of the people of Ohio. The statutes in R.C. Chapter 4766 thus establish a comprehensive statewide system of regulation, thereby satisfying the first prong of the *City of Canton* test for a general law.

Prong 2: To constitute a general law for purposes of home-rule analysis, a statute must apply to all parts of the state alike and operate uniformly throughout the state

The second prong of the *City of Canton* test requires the statute to apply to all parts of the state alike and to operate uniformly throughout the state. R.C. Chapter 4766 meets this requirement, providing for uniform licensing throughout the state, subject to the exceptions provided in R.C. 4766.09 and the municipal regulation permitted under R.C. 4766.10.

The provisions establishing exceptions and authorizing municipal regulation are included in R.C. Chapter 4766 and foster the goal of R.C. Chapter 4766 to provide a comprehensive system for licensing emergency medical service organizations and regulating their vehicles, in order to ensure the health and safety of persons in need of the services they provide. The exceptions and municipal provisions are incorporated into the state regulatory scheme and are applied uniformly throughout the state to organizations and vehicles that come within their terms. *See Garcia v. Siffrin Residential Ass'n*, 63 Ohio St. 2d 259, 271, 407 N.E.2d 1369 (1980) (general laws "operate with general uniform application throughout the state under the same circumstances and conditions"); *Miller v. Korns*, 107 Ohio St. 287, 301-02, 140 N.E. 773 (1923) (a statute does not fail to be uniform because it creates classifications, provided that the classifications are not unreasonable or arbitrary and the law operates uniformly within each classification).

The fact that, under R.C. 4766.10, municipal corporations are permitted to enact licensure standards for emergency medical service organizations based within their boundaries does not render the statutory scheme something other than uniform. The Ohio Supreme Court has stated that general laws "apply to all parts of the state alike. Municipalities may adopt and enforce local regulations covering the same subject so long and so far as the same are not in conflict with general laws." *Schneiderman v. Sesanstein*, 121 Ohio St. 80, 83, 167 N.E.2d 158 (1929); *see City of Canton v. State* at ¶25. Further, as noted in *City of Canton v. State*, the requirement of uniform operation throughout the state does not prohibit treating different classes differently, but prohibits only classification that is arbitrary, unreasonable, or capricious. *City of Canton v. State* at ¶30. The classification set forth by the General Assembly in R.C. 4766.10 that permits municipalities to impose licensure standards only upon emergency medical service organizations that have their principal places of business located within the limits of the municipality reflects the legislative judgment of the General Assembly and appears to establish a reasonable distinction.

The statutes contained in R.C. Chapter 4766 thus provide for statewide uniformity in the regulation of emergency medical service organizations and permit municipal corporations to participate in the statewide program by adopting state standards (at a minimum) and licensing organizations based within their boundaries. Therefore, the provisions of R.C. Chapter 4766 apply to all parts of the state alike and operate uniformly throughout the state, thereby satisfying the second prong of the test.

Prong 3: To constitute a general law for purposes of home-rule analysis, a statute must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations

We consider now the third prong of *City of Canton* – namely, that to be a general law the statute must set forth police, sanitary, or similar regulations, rather than purporting only to grant or limit the legislative power of a municipal corporation. R.C. Chapter 4766 meets this requirement because it requires emergency medical service organizations to obtain licenses and permits, establishes procedures they must follow, provides for an administrative body to adopt rules establishing standards for compliance, and provides for the enforcement of the statutes and rules. *See* R.C. 4766.02-.08; R.C. 4766.11; R.C. 4766.99.

A statute is a valid exercise of the state's police powers if it bears a real and substantial relationship to the public health, safety, or general welfare of the public and is not unreasonable or arbitrary. *Bd. of County Comm'rs v. Village of Marblehead*, 86 Ohio St. 3d 43, 44-46, 711 N.E.2d 663 (1999); *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 68, 337 N.E.2d 766 (1975). The statutory scheme set forth in R.C. Chapter 4766 establishes standards for the transportation and care of victims of illness and injury. It promotes the public health and safety and thus constitutes a police regulation.

State statutes establishing programs for licensing types of occupations or activities have been found to be police regulations constituting general laws of statewide application. *See City*

of Canton v. State; *Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245 (R.C. Chapter 4749, which provides for uniform statewide regulation of security personnel, "must be considered a general law of statewide application"). The statutory scheme enacted by R.C. Chapter 4766 provides for the establishment of police regulations, requiring (with certain exceptions) that persons seeking to operate ambulances comply with statutory licensing requirements. Thus, R.C. Chapter 4766 appears to constitute a general law establishing a police regulation.

It is clear, however, that R.C. 4766.10 addresses the authority of a municipal corporation to establish standards for the licensure of emergency medical service organizations, and it is necessary to consider this provision in light of the test set forth in *City of Canton*. It might be argued that R.C. 4766.10 purports only to limit the legislative power of a municipal corporation to set forth police regulations, and thus does not constitute a general law. *See City of Canton v. State; Village of Linndale v. State*, 85 Ohio St. 3d 52, 706 N.E.2d 1227 (1999). When R.C. 4766.10 is read in conjunction with other provisions in R.C. Chapter 4766, however, this argument must be rejected. Rather than limiting the power of a municipal corporation, R.C. 4766.10 defines the power reserved to the municipal corporation as part of the statewide licensing scheme.

In R.C. 4766.10, the General Assembly addresses the effect of the statewide ambulance-licensing program upon the authority of municipal corporations. R.C. 4766.10 specifies that the statewide licensing requirements do not invalidate a municipal ordinance or resolution that establishes standards for the licensure of emergency medical service organizations "that have their principal places of business located within the limits of the municipal corporation, as long as the licensure standards meet or exceed the standards established in this chapter and the rules adopted thereunder." R.C. 4766.10. Thus, even as the General Assembly has adopted a general law that takes precedence over any action by a municipality, the General Assembly has included as part of that general law provisions permitting a municipal corporation to adopt licensure standards that are at least as stringent as the state standards, but only for emergency medical service organizations that have their principal places of business located within the municipal corporation.[5]

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[5] When initially enacted, this provision stated that the state ambulance licensing provisions did "not invalidate any municipal ordinance or resolution that establishes standards for the licensure of basic life-support, intermediate life-support, or advanced life-support services that meet or exceed" the state standards. 1989-1990 Ohio Laws, Part III, 4333, 4347-48 (Am. Sub. H.B. 319, eff. July 2, 1990) (enacting R.C. 3303.60, now R.C. 4766.10). When it was amended in 1998, the reference to municipal ordinances or resolutions was limited to emergency medical service organizations that have their principal places of business located within the municipal corporation. 1997-1998 Ohio Laws, Part III, 6202, 6226 (Am. Sub. S.B. 30, eff. May 6, 1998); *see* Ohio Legislative Service Commission, 122-SB30 LSC Analysis, at 4 (stating that the act retains the municipal ordinance provision but "limits it" to municipal ordinances establishing

R.C. 4766.10 is not a statute that purports only to limit a municipal corporation's constitutional power. By its terms it recognizes and retains municipal police power, rather than restricting that power. *Cf. Village of Linndale v. State* (finding that statute prohibiting local law enforcement officers from issuing speeding and excess weight citations in certain circumstances was not a general law).

When viewed in conjunction with the legislative scheme of which it is a part, R.C. 4766.10 clarifies the extent to which municipal corporations may participate in the statewide program for regulation of emergency medical service organizations. The effect of a statutory provision of this nature was recently described by the Franklin County Court of Common Pleas, as follows:

> Such a statutory provision identifying what a municipality is permitted to continue to require does not independently limit municipal power, but, rather, by clarifying the scope of the statutory permission, state permit, or state license, it merely identifies the limit on municipal power that is entailed by the combination of the statutory permission, state permit, or state license on the one hand, and the constitutional requirement that municipalities may not enact police, sanitary, and similar regulations that conflict with statutory permission, state permit, or state license.

City of Dublin v. State at ¶328.

The provisions of R.C. Chapter 4766, including R.C. 4766.10, thus serve an overriding state interest in providing a statewide system for licensing emergency medical service organizations. *See City of Canton v. State* at ¶32; *Clermont Envtl. Reclamation Co. v. Wiederhold,* 2 Ohio St. 3d at 48 (" a statute which prohibits the exercise by a municipality of its home rule powers without such statute serving an overriding statewide interest would directly contravene the constitutional grant of municipal power"). Accordingly, R.C. Chapter 4766 satisfies the third prong of the *City of Canton* test for constituting a general law.

Prong 4: To constitute a general law for purposes of home-rule analysis, a statute must prescribe a rule of conduct upon citizens generally

The forth prong of *City of Canton* requires that the statute prescribe a rule of conduct upon citizens generally. *City of Canton v. State* at ¶34-36. R.C. Chapter 4766 clearly satisfies

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standards for emergency medical service organizations that have their principal places of business located within the municipality). It is thus evident that the General Assembly was aware of restricting a municipality's licensing authority to organizations based within the municipality and intended to impose that restriction.

this prong, imposing licensure requirements generally upon persons who provide ambulance services.

The provisions of R.C. Chapter 4766 are directed to persons seeking to engage in the business or service of operating as emergency medical service organizations and apply generally to all citizens who undertake this activity, requiring that they meet certain standards designed for the protection of the public. R.C. 4766.02(E); R.C. 4766.04. Provisions for enforcement similarly have general application. R.C. 4766.08; R.C. 4766.11; R.C. 4766.99. As discussed above, the language of R.C. 4766.10 that is addressed to municipal corporations defines the extent of the state licensing program and incorporates municipal regulations into the overall regulatory scheme that applies to citizens generally. Accordingly, the fourth and final prong of the *City of Canton* test is met.

Thus, pursuant to the test set forth in *City of Canton v. State*, the provisions contained in R.C. Chapter 4766, authorizing limited municipal licensing as part of the statewide scheme under which the Ohio Ambulance Licensing Board licenses emergency medical service organizations, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation may not, pursuant to its home rule powers under Ohio Const. art. XVIII, § 3, adopt police regulations that conflict with R.C. Chapter 4766.

Test for determining when municipal regulation conflicts with a general law of the state

The test for determining when a state statute takes precedence over a municipal ordinance was set forth in *City of Canton v. State,* as follows:

> A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.

City of Canton v. State at ¶9. It has been determined, as discussed above, that R.C. Chapter 4766 is a general law. Further, even as the adoption of an emergency medical service organization licensing program by the state constitutes an exercise of police power, so also the adoption of an emergency medical service organization licensing program by a municipality constitutes the exercise of police power. *See, e.g., Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted,* 6 Ohio St. 3d at 244 (regulation of private employment is the exercise of police power and is not the exercise of a power of local self-government); *Auxter v. City of Toledo,* 173 Ohio St. at 446. Therefore, the remaining question to be decided, in determining whether a municipality has authority to impose licensing restrictions upon an emergency medical service organization that has its principal place of business outside the limits of the municipal corporation and is licensed by the Ohio Ambulance Licensing Board, is whether a municipal regulation of this type would conflict with R.C. Chapter 4766.

The standard test for determining whether a municipal ordinance is in conflict with a general law is "whether the ordinance permits or licenses that which the statute forbids and

prohibits, and vice versa." *Village of Struthers v. Sokol* (syllabus, paragraph two). With respect to state licensing requirements, it has been found that, when a state statute licenses persons to perform an activity throughout the state, a municipal ordinance that imposes additional requirements to perform that activity prohibits that which the statute permits and thus conflicts with the statute. *See Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245 ("inasmuch as the local ordinance restricts an activity which a state license permits, the ordinance is in conflict with a general law of the state and violates Section 3, Article XVIII of the Ohio Constitution"); *Auxter v. City of Toledo*. Thus, the existence of a statewide licensing scheme may preclude a municipality from adopting licensing restrictions of its own.

R.C. Chapter 4766 is not as clear as it might be with regard to the effect of a license issued pursuant to its provisions. R.C. 4766.04(A) prohibits the operation of a business or service of transporting ill, injured, or incapacitated persons without a license from the Ohio Ambulance Licensing Board, and R.C. 4766.02(E) designates the Board as the sole supervisory body regarding the licensing of private ambulance service organizations in Ohio. R.C. Chapter 4766 nowhere states expressly that a license issued under its provisions authorizes a person to operate throughout the state. It is implicit in the statutory provisions, however, that compliance with the licensing procedure provides authority for an emergency medical service organization to operate throughout the state, subject only to additional licensure requirements that may be imposed by a municipality upon emergency medical service organizations based within its boundaries.

This is the manner in which other statutory prohibitions have been read. For example, in *Schneiderman v. Sesanstein*, the Ohio Supreme Court considered a state statute imposing speed limits and stated:

> When the law of the state provides that a rate of speed greater than a rate therein specified shall be unlawful, it is equivalent to stating that driving at a less rate of speed shall not be a violation of law; and therefore an ordinance of a municipality which attempts to make unlawful a rate of speed which the state by general law has stamped as lawful would be in conflict therewith.

Schneiderman v. Sesanstein, 121 Ohio St. at 86. Similarly, when the law of the state provides that it is unlawful to operate a business or service of transporting people who are ill, injured, or incapacitated unless one has a license, it is equivalent to stating that operation with a license is permitted and a municipality may not adopt additional regulations to interfere with that operation except as permitted by the state law.

That statewide rights of operation are granted by a license issued under R.C. Chapter 4766 is evident from the fact that license renewal under R.C. Chapter 4766 is subject to the standard renewal procedures of R.C. Chapter 4745. *See* R.C. 4766.04(F). R.C. 4745.01 defines a license as "a license, certificate, permit, card, or other authority issued or conferred by a licensing agency by authority of which the licensee has or claims the privilege to engage in the profession, occupation, or occupational activity, or to have control of and operate certain specific

equipment, machinery, or premises, over which the licensing agency has jurisdiction." R.C. 4745.01(C); *see also State ex rel. Zugravu v. O'Brien*, 130 Ohio St. 23, 25, 196 N.E. 664 (1935) ("[a] license is a permission granted by some competent authority to do some act which, without such permission, would be illegal").

State law requires that an application for licensure as an emergency medical service organization include the location and description of each place from which the organization will operate and a description of the geographic area to be served. R.C. 4766.04(C)(5) and (6); *see also* 11 Ohio Admin. Code 4766-3-01. The application, however, must be approved or denied based upon compliance with the requirements of R.C. Chapter 4766 and applicable rules. R.C. 4766.04(D); 11 Ohio Admin. Code 4766-11-02. No provision of statute or rule makes the area to be served a factor to be considered in granting the license or forbids the provision of services outside that area. *See* R.C. Chapter 4766; 11 Ohio Admin. Code Chapters 4766-1 to 4766-11. Thus, the licensing procedure does not restrict the area within the state in which a licensee may operate.

The Ohio Ambulance Licensing Board has authority to investigate complaints, to suspend or revoke licenses, and to impose penalties for violations of applicable requirements. R.C. 4766.08; R.C. 4766.11; 11 Ohio Admin. Code 4766-11-02. Further, a violation of the licensing requirement constitutes a criminal offense. R.C. 4766.99. Thus, it is apparent that licensure pursuant to R.C. Chapter 4766 is mandatory for the operation of an emergency medical service organization in Ohio. The mandatory nature of the statewide scheme provides additional support for the conclusion that a licensee in compliance with the provisions of R.C. Chapter 4766 is granted the right to operate throughout the state.

Because a license under R.C. Chapter 4766 grants a licensee authority to operate throughout the state, subject only to municipal licensure of organizations based within the municipality, municipal regulation limiting this right would conflict with the general law of R.C. Chapter 4766. *See, e.g., Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*; *Auxter v. City of Toledo*; *State ex rel. McElroy v. City of Akron.* Therefore, municipal ordinances imposing additional requirements upon emergency medical service organizations that do not have their principal places of business located within the municipality would conflict with the state statutes and, accordingly, are not authorized under Ohio Const. art. XVIII, § 3.

We conclude, accordingly, that pursuant to Ohio Const. art. XVIII, § 3 and R.C. 4766.10, a municipal corporation is empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business located within the limits of the municipal corporation, as long as the licensure standards meet or exceed the standards established pursuant to R.C. Chapter 4766 and rules adopted thereunder. A municipal corporation is not empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business outside the limits of the municipal corporation, because municipal licensure of those organizations would conflict with R.C. Chapter 4766.

Authority of a municipal corporation to ban operations of an emergency medical service organization not based within the municipal corporation

Your precise question is whether a municipal corporation has authority to ban an emergency medical service organization from doing business in the municipality if the emergency medical service organization has its principal place of business outside the limits of the municipality, is licensed by the Ohio Ambulance Licensing Board, and meets or exceeds the municipal standards. Concluding, as discussed above, that the statewide licensing program established pursuant to R.C. Chapter 4766 is a general law, we conclude also that a municipality is not empowered to take action that conflicts with that general law. R.C. 4766.10, as part of the general law, permits a municipal corporation to impose licensing requirements on emergency medical service organizations that have their principal places of business located within the limits of the municipal corporation. Neither R.C. 4766.10 nor any other portion of R.C. Chapter 4766 permits a municipal corporation to interfere with the statewide licensing scheme by prohibiting emergency medical service organizations based outside their boundaries from doing business within their boundaries.[6] We conclude that such action would be in conflict with the general law enacted in R.C. Chapter 4766 and thus exceeds the authority granted to a municipal corporation by Ohio Const. art. XVIII, § 3. *See generally Frecker v. City of Dayton,* 88 Ohio App. 52, 59, 85 N.E.2d 419 (Montgomery County 1949) ("[i]f a city cannot even require a license from certain vendors [under the relevant statute] … it should be apparent that it does not possess the far greater power of completely destroying such a business"), *aff'd,* 153 Ohio St. 14, 90 N.E.2d 851 (1950).[7]

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[6] R.C. 715.66 states that "[a]ny municipal corporation may license the owners of vehicles used for the transportation of persons or property, for hire, and all undertakers and owners of hearses." It also provides that the owners may be made liable for the breach of any ordinance regulating the conduct of the drivers, and provides for the payment of moneys and receipts into the public service street repair fund. R.C. 715.66.

It is not clear whether this provision applies to transportation provided by an emergency medical service organization, which is focused on medical services rather than simply the function of carrier. In any event, this provision predates R.C. Chapter 4766 and is more general than R.C. Chapter 4766. Therefore, to the extent that it may conflict with R.C. Chapter 4766, the more recent and more specific provisions of R.C. Chapter 4766 prevail. *See* R.C. 1.51. R.C. 715.66 thus cannot be read to authorize any licensing requirements that conflict with R.C. Chapter 4766. Further, the authority of R.C. 715.66 to license does not appear to encompass the authority to ban. *See generally Frecker v. City of Dayton*, 88 Ohio App. 52, 85 N.E.2d 419 (Montgomery County 1949), *aff'd,* 153 Ohio St. 14, 90 N.E.2d 851 (1950).

[7] As part of your question, you assume that the emergency medical service organization in question has its principal place of business outside the municipality, is licensed by the Ohio Ambulance Licensing Board, and meets or exceeds the municipal standards. Whether the

As discussed above, the general licensing scheme adopted in R.C. Chapter 4766 prevents a municipal corporation from imposing licensing requirements on emergency medical service organizations that are based outside its boundaries, and thus prevents the municipal corporation from using a licensing scheme to ban from operation within the municipal corporation organizations that are based outside the municipality and licensed under the state law. We conclude, accordingly, that a municipal ordinance that uses a licensing scheme to ban from doing business within the municipal corporation an emergency medical service organization that has its principal place of business outside the limits of the municipal corporation and is licensed by the Ohio Ambulance Licensing Board conflicts with R.C. Chapter 4766. Therefore, a municipal corporation is not empowered to adopt an ordinance of this type pursuant to its home rule powers under Ohio Const. art. XVIII, § 3.

We note, however, that emergency medical service organizations remain subject to municipal regulations that do not conflict with the general law of R.C. Chapter 4766 governing the licensing of emergency medical service organizations. *See Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986) (city ordinance imposing a monthly permit fee and record-keeping requirements upon hazardous waste landfills located within the city did not conflict with state licensing scheme under R.C. Chapter 3734); *Weir v. Rimmelin*, 15 Ohio St. 3d 55, 472 N.E.2d 341 (1984) (syllabus) ("[w]here state and local regulations concerning unlawful conduct do not conflict, the state and municipality have concurrent authority under the police power to enforce their respective directives inside the corporate limits of the city"); *State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 195-96 (with respect to the operation of watercraft, finding that under the state licensing scheme an operator "having procured the state license needs no other;" but "[a]s long as the charge imposed by the political subdivision is not in the nature of a license for the right or privilege of operating watercraft upon its waters, it is valid"); *City of Youngstown v. Evans*, 121 Ohio St. 342, 346, 168 N.E. 844 (1929) ("[n]ecessarily the conflict which limits the municipal local self-government must relate to a conflict with state legislation on the same subject matter"); 1985 Op. Att'y Gen. No. 85-101. Thus, emergency medical service organizations are subject to municipal regulations that are not in conflict with the provisions of R.C. Chapter 4766.

The discussion and conclusions set forth in this opinion reflect our studied analysis of current statutes and applicable case law. It is important to remember, however, that the

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organization meets or exceeds the municipal standards is not relevant to our conclusion. We conclude that an emergency medical service organization licensed by the Ohio Ambulance Licensing Board may operate throughout the state, subject to municipal regulation in accordance with R.C. 4766.10, and that a municipal corporation is not empowered to regulate emergency medical service organizations based outside its boundaries. Accordingly, without being concerned about municipal licensure, an emergency medical service organization licensed by the Ohio Ambulance Licensing Board may operate in any municipality in which it does not have its principal place of business, regardless of whether it meets standards established by that municipality.

interpretation of the Ohio Constitution rests ultimately with the judiciary. *Beagle v. Walden*, 78 Ohio St. 3d 59, 62, 676 N.E.2d 506 (1997) ("[i]nterpretation of the state and federal Constitutions is a role exclusive to the judicial branch"). Questions of municipal home rule are complex and subject to varying interpretations. We cannot predict with certainty what conclusion might be reached if this issue were presented to the courts.

Therefore, it is my opinion, and you are advised, as follows:

1. Pursuant to the test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus), the provisions contained in R.C. Chapter 4766, authorizing limited municipal licensing as part of the statewide scheme under which the Ohio Ambulance Licensing Board licenses emergency medical service organizations, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation may not, pursuant to its home rule powers under Ohio Const. art. XVIII, § 3, adopt police regulations that conflict with R.C. Chapter 4766.

2. Pursuant to Ohio Const. art. XVIII, § 3 and R.C. 4766.10, a municipal corporation is empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business located within the limits of the municipal corporation, as long as the licensure standards meet or exceed the standards established pursuant to R.C. Chapter 4766 and rules adopted thereunder. A municipal corporation is not empowered to adopt standards for the licensure of emergency medical service organizations that have their principal places of business outside the limits of the municipal corporation, because municipal licensure of those organizations would conflict with R.C. Chapter 4766.

3. A municipal ordinance that uses a licensing scheme to ban from doing business within the municipal corporation an emergency medical service organization that has its principal place of business outside the limits of the municipal corporation and is licensed by the Ohio Ambulance Licensing Board conflicts with R.C. Chapter 4766. Therefore, a municipal corporation is not empowered to adopt an ordinance of this type pursuant to its home rule powers under Ohio Const. art. XVIII, § 3.

Respectfully,

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