September 28, 1994

OPINION NO. 94-063

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
130 South Main, Court #6
Bellefontaine, Ohio 43311

Dear Prosecutor Heaton:

You have requested an opinion concerning the funding of shelters for victims of domestic violence with funds derived from the marriage license fee imposed for that purpose. Pursuant to R.C. 3113.34, proceeds of a seventeen-dollar fee charged for the issuance of each marriage license are retained in a special fund that may be expended only to provide financial assistance to shelters for victims of domestic violence pursuant to R.C. 3113.35-.39. R.C. 3113.34. Shelters for victims of domestic violence may apply for the money collected under R.C. 3113.34, and boards of county commissioners are authorized to allocate the money to shelters that meet the criteria established by statute. R.C. 3113.35; *see also* R.C. 3113.36-.38. Any money collected under R.C. 3113.34 that is not allocated to a shelter by a board of county commissioners is paid into the domestic violence shelters fund in the state treasury and is available for the Attorney General to distribute to domestic violence shelters. R.C. 3113.37-.38.

R.C. 3113.35

Your question relates to the language of R.C. 3113.35 defining the shelters that are eligible to receive domestic violence shelter funds from a particular county. R.C. 3113.35 states, in part:

> A shelter for victims of domestic violence may apply to the board of county commissioners of the county in which it is located or of *an adjoining county, the population of which is or will be served by the shelter*, for the release of funds to be collected as fees for the issuance of marriage licenses pursuant to section 3113.34 of the Revised Code and that are to be used for the funding of the shelter.

R.C. 3113.35(A) (emphasis added). You have asked which counties may be considered "adjoining" for purposes of domestic violence shelter funding.

Meaning of the Word "Adjoining"

The word "adjoining" is not expressly defined either in R.C. 3113.35 or elsewhere in R.C. Chapter 3113. As a matter of linguistic practice, however, the word "adjoining" can be used in more than one sense. The strict and technical meaning of "adjoining" requires that two objects be located in such proximity to one another that they are actually touching or that no third object intervenes. *Black's Law Dictionary* defines "[a]djoining" as follows: "The word in its etymological sense means touching or contiguous, as distinguished from lying near to or adjacent. To be in contact with; to abut upon." *Black's Law Dictionary* 41 (6th ed. 1990). *See generally Watson v. Doolittle*, 10 Ohio App. 2d 143, 147, 226 N.E. 2d 771, 774 (Williams County 1967) (for purposes of the annexation of land to a municipal corporation, the word "adjoining" is synonymous with "adjacent," "contiguous," "next to," immediate," "abutting," "neighboring," "bordering," "conterminous," "in conjunction with," and "end-to-end").

The word "adjoining," however, is also used in a broader sense to mean "in proximity to" or "nearby." One dictionary definition of the word is "near in space." *Webster's Third New International Dictionary* 27 (unabridged ed. 1971); *see also Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 514 (5th Cir. 1980) ("[a]lthough ‘adjoin’ can be defined as ‘contiguous to’ or ‘to border upon,’ it also is defined as ‘to be close to' or ‘to be near.' ‘Adjoining' can mean ‘neighboring’" (footnotes omitted)), *cert. denied*, 452 U.S. 905 (1981); *Welch v. Kai*, 4 Cal. App. 3d 374, 379, 84 Cal. Rptr. 619, 622 (1970) ("closeness" or "nearness" is an accepted meaning of "adjoining"). This broader meaning of "adjoining" that encompasses objects that are not literally touching has been adopted by courts in various circumstances when it appears consistent with legislative intent or a more practical application of the statutory language. *See, e.g., Motoviloff v. Director, Office of Workers' Compensation Programs, U.S. Department of Labor*, 692 F.2d 87, 89 (9th Cir. 1982) (for purposes of the Longshoremen's and Harbor Workers' Compensation Act, "[a]n area may be an ‘adjoining area’ even if not physically contiguous to navigable waters if it bears a ‘functional relationship’ to an activity on navigable waters"); *St. Marys Woolen Manufacturing Co. v. Bradford Glycerine Co.*, 14 Ohio C.C. 522, 527-28 (Hancock County Cir. Ct. 1897) (for purposes of determining liability for injury caused by explosion of nitroglycerin, the expression "adjoining premises" includes land that is directly affected by the explosion, even though it does not border on the site on which the explosion occurred), *aff'd*, 60 Ohio St. 560, 54 N.E. 528 (1899).

In addition, the General Assembly in another context has expressly adopted a definition of "adjoining" that does not require physical touching, as follows:

> For the purposes of this section [permitting the issuance of a single hazardous waste facility installation and operation permit to a person who operates two or more adjoining facilities where hazardous waste is stored, treated, or disposed of], "*adjoining*" means sharing a common boundary, separated only by a public road, or *in such proximity that* the director determines that *the issuance of a_single permit will not create a hazard* to the public health or safety or the environment.

R.C. 3734.05(F) (emphasis added). While this definition is not directly applicable to R.C. 3113.35, it provides evidence that the General Assembly recognizes that it may be sensible for the word "adjoining" to be given the broader meaning described above in some of its practical applications.

Construction of Ambiguous Statute

The fact that the word "adjoining" is capable of more than one meaning renders R.C. 3113.35 ambiguous. It is, accordingly, necessary to examine other relevant factors in order to determine which meaning should be given to that word as it is used in R.C. 3113.35. R.C. 1.49 specifies certain factors that may be considered in interpreting an ambiguous statute, as follows:

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
> (A) The object sought to be attained;
> (B) The circumstances under which the statue was enacted;
> (C)The legislative history;
> (D) The common law or former statutory provisions, including laws upon the same or similar subjects;
> (E) The consequences of a particular construction;
> (F) The administrative construction of the statute.

An examination of these factors leads to the conclusion that, as used in R.C. 3113.35, "adjoining" may most appropriately be read to mean "nearby, but not necessarily directly touching." By its terms, R.C. 3113.35 permits funds collected under R.C. 3113.34 to be allocated to a shelter for victims of domestic violence that is within the county or within "an adjoining county, the population of which is or will be served by the shelter." R.C. 3113.35. The evident purpose of this provision is to permit a county to direct funds collected under R.C. 3113.34 to a shelter for victims of domestic violence that is available for use by residents of the county. The facts that you have outlined indicate that a limited number of shelters serve the needs of victims in Ohio's eighty-eight counties, and that the residents of some counties do not have adequate shelters available in their home counties or in bordering counties. As a practical matter, it may well be the case that the population of those counties can only be served by a shelter located in a nearby county that does not physically border upon their home counties. In such circumstances, the purpose of R.C. 3313.34 and related provisions could not be served if a strict standard of physical contiguity were required. Instead, the intent of the statute would be satisfied only if a county were understood to be permitted to direct its domestic violence shelter money to any shelter that is accessible and available for actual

use by residents of the county. The important part of the relationship between the county and the shelter thus is not the contiguity of two counties but the functional relationship between the county and the shelter -- *i.e.*, that the shelter serves or will serve the population of the county that provides funds to the shelter. R.C. 3313.35.

The intent of the bill initially enacting R.C. 3113.35 and related provisions was, as stated in its title, "to provide financial assistance to shelters for victims of domestic violence." 1979-1980 Ohio Laws, Part I, 129 (Am. S.B. 46, eff. Jan. 18, 1980); *accord* Ohio Legislative Service Commission, *Summary of Enactments August, 1979 - December, 1980*, at 563 (1981). That intent is more effectively achieved by a functional interpretation of "adjoining" that includes nearby counties where services are available than it is by a strict interpretation that turns upon the precise physical relationship between the counties.

Your letter indicates that Logan County and other counties have, as a practical matter, provided money to shelters in counties that are not contiguous but are nearby and accessible enough to serve the residents of Logan County. Information from other sources confirms the fact that R.C. 3113.35 is regularly being applied to provide shelters with moneys from the counties that they actually serve, even if there is no contiguity. Thus, the practical construction given to the statutory scheme by those entities to which it applies supports the conclusion that the word "adjoining" should be read broadly to include a county that is nearby, even though it does not border directly upon the county that is allocating the funds.

In fact, there may be counties in Ohio that have no qualified shelters within their boundaries or within any bordering county. Thus, if the word "adjoining" is read narrowly, some counties may have no valid means for allocating the moneys collected under R.C. 3113.34. Accordingly, a broad reading of the word "adjoining" gives the statutory scheme practical effect for all of Ohio's counties.

The purpose of the statute, its history, and its actual application and effect thus support the broad construction of the word "adjoining." Therefore, it is appropriate in this instance to construe the term "adjoining county" to include a nearby county whose shelter is used by domestic violence victims of the county allocating funds, even though the two counties share no common boundaries. *See generally Osborne v. Commonwealth*, 296 Ky. 587, 593-94, 177 S.W.2d 896, 899 (1944) (for purposes of procuring an impartial jury, the words "adjoining county" must be construed to mean "near" or "in proximity to" in order to carry out the purpose of the statute); *In re Doll*, 47 Minn. 518, 520, 50 N.W. 607, 608 (1891) (for purposes of seeking a writ of habeas corpus, the words "in any adjoining county" "must be understood ...

as indicating the purpose that, if the writ cannot be obtained in the same county, then the application may be made to the nearest or most accessible county, though it may not be actually adjoining").

Restrictions on Discretion of County Commissioners

The conclusion that "adjoining" is to be construed broadly does not mean, however, that a board of county commissioners may arbitrarily select any shelter within the state to be the recipient of its domestic violence shelter funds. The word "adjoining" clearly imposes the requirement that the shelter be located in a county that is nearby, rather than in a county that is located in a distant part of the state. Further, R.C. 3113.35 permits the allocation of domestic violence shelter funds only to shelters that are readily able, as a practical matter, to serve the population of the county allocating the funds. Thus, to receive funds under R.C. 3113.35, a shelter must be generally accessible to those persons within the county who are in need of a shelter. A shelter that is located a great distance away or that is inaccessible to the population of a particular county is not eligible to receive funds from that county under R.C. 3113.35.

Conclusion

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

1. As used in R.C. 3113.35, the word "adjoining" is not restricted to counties that share common borders, but extends also to counties that are near one another even though their boundaries do not touch.

2. Pursuant to R.C. 3113.35, a board of county commissioners may allocate funds collected under R.C. 3113.34 to a qualified shelter for victims of domestic violence if the shelter is located within the county or if the shelter is located within a nearby county and serves or will serve the population of the county allocating the funds.

Respectfully,

LEE FISHER
Attorney General

September 28, 1994

The Honorable Gerald L. Heaton
Logan County Prosecuting Attorney
130 South Main, Court #6
Bellefontaine, Ohio 43311

SYLLABUS: 94-063

1. As used in R.C. 3113.35, the word "adjoining" is not restricted to counties that share common borders, but extends also to counties that are near one another even though their boundaries do not touch.

2. Pursuant to R.C. 3113.35, a board of county commissioners may allocate funds collected under R.C. 3113.34 to a qualified shelter for victims of domestic violence if the shelter is located within the county or if the shelter is located within a nearby county and serves or will serve the population of the county allocating the funds.