November 29, 1994

OPINION NO. 94-075

David D. Sturtz
Inspector General
77 South High Street
Columbus, Ohio 43215

Dear Inspector General Sturtz:

You have requested an opinion clarifying the application of R.C. 4503.35, which exempts certain motor vehicles from the specific identification plate requirements set forth in R.C. 4503.23.[1] R.C. 4503.23 reads as follows:

> No motor vehicle designed to carry passengers owned or leased by the state, or any of its departments, bureaus, commissions, or institutions supported in whole or in part by funds provided by the state, shall be operated or driven by any person unless it has displayed, in a prominent position on both the front and rear of the vehicle, identification plates which shall be the same size, shape, and treated for increased visibility in the same manner as those issued by the registrar of motor vehicles for private vehicles. Such identification plates shall be attached to the vehicle in the same manner as provided by statute for the illumination and attachment of license plates on private vehicles. The registrar shall designate the colors of the license tags which shall be used on state owned cars; such colors shall be other than those used on privately owned motor vehicles, and shall apply only to license plates used on state owned motor vehicles. Said plates shall bear a special serial number, and the words "Ohio State Car."

R.C. 4503.35, which is the focus of your inquiry, further provides the following:

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[1] You will recall that as a result of a prior discussion you had with a member of my staff, it was agreed that issuance of a formal opinion in response to your questions would be deferred for the purpose of proposing an amendment of R.C. 4503.35 to the General Assembly. Such an amendment was enacted recently by the General Assembly in Am. Sub. S.B. 116, 120th Gen. A. (1994) (eff. Sept. 29, 1994).

> The motor vehicles furnished by the state for use by the elective state officials, and motor vehicles owned and operated by political subdivisions of the state, are exempt from section 4503.23 of the Revised Code.
> The motor vehicles operated by troopers of the state highway patrol, and motor vehicles operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed, are exempt from section 4503.23 of the Revised Code.

Pursuant to R.C. 4503.23, therefore, no motor vehicle designed to carry passengers, which is owned or leased by the state, or owned or leased by any of the state's departments, bureaus, commissions, or institutions supported in whole or in part by funds provided by the state, shall be operated or driven by any person unless that motor vehicle displays identification plates as described therein. In particular, such identification plates' colors shall be other than those used on identification plates issued for privately owned vehicles, and such identification plates shall bear a special serial number and the words "Ohio State Car." *Id.* R.C. 4503.35 exempts from the foregoing requirements, however, motor vehicles that are (1) furnished by the state for use by the elective state officials; (2) owned and operated by political subdivisions of the state; (3) operated by troopers of the State Highway Patrol; or, (4) operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed. Although it is not expressly stated within R.C. 4503.35 or any other provision in R.C. Chapter 4503 (licensing of motor vehicles), the practical effect of R.C. 4503.35 is that motor vehicles thereby exempted from R.C. 4503.23 may display identification plates having the same appearance in color and numerical designation as those issued by the Registrar of Motor Vehicles for use on privately owned motor vehicles.[2]

In your letter, you have asked about the precise scope of the exemption provided by R.C. 4503.35 in the case of "motor vehicles furnished by the state for use by the elective state officials," and the extent to which that exemption may apply to motor vehicles furnished by the state for use by any individuals who serve within the executive branch of state government, state university employees, and members of state boards and commissions. Additionally, you wish to know whether that exemption applies only to those motor vehicles used by the elective state official, or whether that exemption also applies to motor vehicles that are furnished by the state for use by members of the elective state official's staff.

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[2] You have referred to those identification plates, when issued for use on state owned vehicles that are exempted under R.C. 4503.35, as "cover plates."

Statutory Exemptions

The enactment of an exemption from, or exception to, a particular statutory provision is, by definition, intended to remove from that provision's coverage or operation that which would otherwise be subject thereto. *Florida Gulf Coast Building & Const. Trades v. N.L.R.B.*, 796 F.2d 1328 (11th Cir. 1986) (headnote nine) ("[t]rue statutory exceptions exist only to exempt something which would otherwise be covered"), *affirmed*, 485 U.S. 568 (1988); *Gatliff Coal Co. v. Cox*, 142 F.2d 876 (6th Cir. 1944) (headnote thirteen) ("[t]he office of an _exception_ in a statute is to except something from the operative effect of a statute or to qualify or restrain the generality of the substantive enactment to which it is attached"). The Ohio courts generally have endorsed the principle that a statutory exemption or exception shall be strictly construed whenever questions are raised regarding the likely scope of the exemption or exception at issue. *State ex rel. Keller v. Forney*, 108 Ohio St. 463, 467, 141 N.E. 16, 17 (1923) ("[t]he rule is well and wisely settled that exceptions to a general law must be strictly construed. They are not favored in law, and the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law"); *State ex rel. Menning v. Zangerle,* 95 Ohio St. 1, 7, 115 N.E. 498, 500 (1916); *Kroff v. Amrhein*, 94 Ohio St. 282, 286, 114 N.E. 267, 268 (1916); *Haynay v. Board of Liquor Control,* 98 Ohio App. 419, 422, 129 N.E.2d 841, 843 (Franklin County 1954). In practice, this means that the specific language of an exemption should be interpreted in such a way that any doubt regarding the exemption's coverage is resolved in favor of limiting, narrowing, or otherwise restricting the class of persons or activities within the exemption's purview.

In this instance, your inquiry concerns the exemption enacted by the General Assembly in R.C. 4503.35. To reiterate, R.C. 4503.35 provides, *inter alia*, that motor vehicles furnished by the state for use by the elective state officials are exempt from R.C. 4503.23. The presumption, therefore, is that, but for this exemption, those motor vehicles would be subject to the identification plate requirements of R.C. 4503.23 described previously.[3] Pursuant to the express language of R.C. 4503.23, one may further presume that such requirements apply to those vehicles either because they are owned or leased by the state, or because they are owned or leased by any of the state's departments, bureaus, commissions, or institutions supported in whole or in part by funds provided by

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[3] It is questionable whether a similar presumption would apply to the second category of motor vehicles described in the first sentence of R.C. 4503.35. In that regard, the first sentence of R.C. 4503.35 also exempts from R.C. 4503.23 "motor vehicles owned and operated by political subdivisions of the state." However, R.C. 4503.23 makes no express mention of motor vehicles owned and operated by political subdivisions of the state, and nothing appears within R.C. 4503.23 from which one may conclude that the identification plate requirements of that section apply to motor vehicles owned and operated by political subdivisions of the state by implication. Thus, it is uncertain whether the General Assembly intended R.C. 4503.35's reference to motor vehicles owned and operated by political subdivisions of the state to represent an "exemption" in the absolute sense, or rather, whether it merely wished to emphasize explicitly that such motor vehicles do not, in the first instance, come within the purview of R.C. 4503.23.

the state. Thus, it is assumed that the specific motor vehicles with which you may be concerned are, in fact, owned or leased by the state, or any of the state's departments, bureaus, commissions, or institutions supported in whole or in part by funds provided by the state.

Your letter makes it clear that you are concerned primarily with the application of R.C. 4503.35's exemption to motor vehicles that are furnished by the state to persons who hold positions or are employed within the executive branch of state government. Accordingly, the examination that follows shall be limited to the application of R.C. 4503.35's exemption in the case of motor vehicles that are furnished by the state for use by officials and other personnel within the state government's executive branch.

"Elective State Officials" for Purposes of R.C. 4503.35

Applying the principle of strict construction to the exemption contained in R.C. 4503.35, it appears that those persons serving within the executive branch of state government who may fairly be described as "elective state officials" are relatively few in number. The most significant limitation in that regard is imposed by the General Assembly's use of the term "elective" as a qualifier of "state officials." The term "elective," as used in R.C. 4503.35, has not been separately defined within R.C. Chapter 4503, or by any other provision of the Revised Code. With respect to words or phrases left undefined by the statutory scheme in which they appear, the rule often followed is that any such term "is to be accorded its common, everyday meaning." *State v. Dorso,* 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). R.C. 1.42 also provides that "[w]ords and phrases that have acquired a *technical* or *particular meaning*, whether by legislative definition or *otherwise,* shall be construed accordingly." (Emphasis added.) *Webster's New World Dictionary* 449 (2d college ed. 1978) defines the term "elective," when used as an adjective, by the following entries:

> 1. *a*) filled by election [an *elective* office] *b*) chosen by election; elected 2. of or based on election 3. having the power to choose 4. that may be chosen but is not required; optional. (Emphasis in original.)

Black's Law Dictionary 519 (6th ed. 1990) also states that this term means "[d]ependent upon choice; bestowed or passing by election. Also pertaining or relating to elections; conferring the right or power to vote at elections." Additionally, the transitive verb "elect," which serves as the root for both "elective" and the correlative derivatives "election," "elector," and "electorate," means "to select for some office by voting." *Webster's New World Dictionary* at 449.

Accordingly, the use of the term "elective" in R.C. 4503.35, conjoined with the plural noun "officials," denotes individuals who have been selected by the casting of votes to hold a particular position or serve within a particular office, or who thereafter exercise the various powers, duties, and responsibilities attendant upon such position or office. In other words, the elective state officials to whom R.C. 4503.35 refers are those officials who serve in positions or offices that are typically and regularly filled through selection made by qualified electors, as defined in Ohio Const. art. V, §1 and R.C. 3503.01, at elections held in accordance with the substantive and procedural requirements set forth in Ohio Const. articles V (elective franchise) and XVII (elections), and in the pertinent chapters

of R.C. Title 35 (elections).[4] *See, e.g.,* Ohio Const. art. V, §2 (all elections to be by ballot); §2a (ballot rotation); §4 (forfeiture of elective franchise); §7 (primary elections); art. XVII, §1 (time for holding elections); §2 (terms of officers, vacancies); R.C. Chapters 3501 (election procedure; election officials); 3503 (voter qualification; registration); 3505 (general and special election ballots); 3513 (primaries; nominations).

The individuals serving within the executive branch of state government who thus qualify as "elective state officials" under R.C. 4503.35 fall into two categories. Pursuant to Ohio Const. art. III, §1, the first such group comprises the executive department of state government, which consists of the Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General. The second category of individuals who similarly qualify as "elective state officials," for purposes of R.C. 4503.35, comprises the members of the elective State Board of Education. Article VI, §4 of the Ohio Constitution provides, in part, that "[t]here shall be a state board of education which shall be selected in such manner and for such terms as shall be provided by law." R.C. 3301.01 creates a State Board of Education "consisting of eleven members with one member *elected* in accordance

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[4] As thus used in R.C. 4503.35, "elective state official[ ]" includes an individual who is appointed in accordance with applicable constitutional or statutory provisions to fill a vacancy in, or who, by virtue of such vacancy, otherwise succeeds to, a position or office that is typically and regularly filled through selection made by qualified electors. *See generally* Ohio Const. art. XVII, §2 (any vacancy that may occur in any elective state office created by Ohio Const. articles II or III or created by or pursuant to Ohio Const. art. IV shall be filled only if and as provided in those articles; any vacancy that may occur in any elective state office not so created shall be filled by appointment by the Governor until the disability is removed, or a successor elected and qualified). *See also* Ohio Const. art. III, §15 (filling vacancy in the office of Governor); §17 (filling vacancy that occurs in both the office of Governor and Lieutenant Governor); §17a (filling vacancy in the office of Lieutenant Governor); §18 (filling vacancy in the office of Auditor of State, Treasurer of State, Secretary of State, or Attorney General); R.C. 3.02(A) ("[w]hen an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified").

with [R.C. 3301.03] from each of the districts established in accordance with [R.C. 3301.01(B)]" (emphasis added). R.C. 3301.01(A). *See* R.C. 3301.03 (each voting member of the State Board of Education "shall be nominated and elected to office as provided by [R.C. Title 35]"). Members of the State Board of Education are, therefore, "elective state officials" for purposes of R.C. 4503.35.

Other than the six officeholders who, pursuant to Ohio Const. art. III, §1, constitute the executive department of the state, and the eleven members of the State Board of Education, it does not appear that there are any other persons who serve within the executive branch of state government in offices, positions, or employments that are typically and regularly filled by a vote of the qualified electorate at elections held in accordance with the provisions of Ohio Const. articles V and XVII and R.C. Title 35.

You have specifically asked whether R.C. 4503.35's exemption applies to motor vehicles furnished by the state for use by state university employees. R.C. 4503.35's exemption does not apply to those motor vehicles. Provisions within R.C. Chapter 3345 (state universities; general powers) and the individual chapters of R.C. Title 33 (education; libraries) that address the governance of each state institution of higher education authorize the trustees of the various state colleges and universities to hire and fix the compensation of professors, teachers, administrative personnel, and such other employees as may be necessary for the accomplishment of the colleges' and universities' educational missions. *See, e.g.,* R.C. 3344.03 ("[t]he board of trustees of Cleveland state university shall employ, fix the compensation of, and remove the president and such number of professors, teachers, and other employees as may be deemed necessary"); R.C. 3350.03 (Medical College of Ohio at Toledo, same); R.C. 3352.03 (Wright State University, same); R.C. 3359.03 (University of Akron, same). Individuals in the employ of a state university or college thus hold their positions as a result of being hired by the board of trustees of that college or university. Because those positions are not typically and regularly filled by popular election in the manner described previously, those individuals do not, in any sense, qualify as "elective state officials" for purposes of R.C. 4503.35.

You have also asked whether R.C. 4503.35's exemption applies to motor vehicles furnished by the state for use by members of boards and commissions. You have not indicated that you have in mind any particular boards or commissions. It is presumed, therefore, that you mean any board or commission within the executive branch that is established by the Ohio Constitution or enactment of the General Assembly for the purpose of performing any function or undertaking for which state government is responsible. Whether R.C. 4503.35's exemption is applicable in the case of such boards and commissions will again depend upon whether the members thereof are "elective state officials."

To determine whether the members of a state board or commission are "elective state officials," one must examine the constitutional or statutory provisions that address the organization and operation of the board or commission in question. *See, e.g.*, R.C. 102.05 (creating the Ohio Ethics Commission, which consists of six members who are appointed by the Governor with the advice and consent of the Senate); R.C. 3304.12(A) (creating the Rehabilitation Services Commission, which consists of seven members who are appointed by the Governor with the advice and consent of the Senate); R.C. 3745.02 (creating the Environmental Board of Review, which consists of three members who are appointed by the Governor with the advice and consent of the Senate); R.C. 5703.02, R.C.

5703.03 (Board of Tax Appeals, same). If that examination discloses that the members of a particular board or commission serve in positions that are typically and regularly filled through selection by qualified electors at elections held in accordance with the substantive and procedural requirements of Ohio Const. articles V and XVII and R.C. Title 35, then it is very likely that those board or commission members are "elective state officials" for purposes of R.C. 4503.35. Conversely, should the examination indicate that the members of a state board or commission serve in positions that are typically and regularly filled by any method or process other than popular election (*e.g.,* by gubernatorial appointment), then one must conclude that the members of that state board or commission are not "elective state officials" for purposes of R.C. 4503.35.

Finally, you have asked whether R.C. 4503.35's exemption applies only to those motor vehicles furnished by the state for use by the elective state official, or whether that exemption also applies to motor vehicles furnished by the state for use by an elective state official's staff. R.C. 4503.35's exemption applies only to motor vehicles furnished by the state for use by the elective state official, and does not apply to motor vehicles furnished by the state for use by the elective state official's staff. First, R.C. 4503.35 makes no mention of motor vehicles furnished by the state for use by members of the elective state official's staff. Second, nothing appears elsewhere in the statutes from which to infer that R.C. 4503.35's exemption should apply to such vehicles. Third, the rule of strict construction that must be applied to statutory exemptions, *see, e.g., State ex rel. Keller v. Forney*; *Kroff v. Amrhein*, does not permit R.C. 4503.35 to be given an expansive reading that would encompass motor vehicles other than those actually used by an elective state official.

Persons Whose Responsibilities Include Involvement in Authorized Civil or Criminal Investigations

At the time you submitted your opinion request, R.C. 4503.35 exempted from the identification plate requirements of R.C. 4503.23 motor vehicles furnished by the state for use by the elective state officials; motor vehicles owned and operated by political subdivisions; and motor vehicles operated by officers[5] of the State Highway Patrol. Those three categories of motor vehicles continue to be exempt under R.C. 4503.35. In addition, the General Assembly recently amended R.C. 4503.35 in Am. Sub. S.B. 116, 120th Gen. A. (1994) (eff. Sept. 29, 1994) for the purpose of specifying a fourth category of motor vehicles that is exempt from the identification plate requirements of R.C. 4503.23 -- motor vehicles operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed. Accordingly, motor vehicles furnished by the state for use by state university or college employees, members of state boards and commissions, or an elective state official's staff are exempt from R.C. 4503.23's identification plate requirements if those motor vehicles

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[5] The term "troopers" has been substituted for the term "officers" in R.C. 4503.35. *See* Am. Sub. S.B. 116, 120th Gen. A. (1994) (eff. Sept. 29, 1994).

are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

Conclusion

It is therefore, my opinion, and you are advised that:

1. Pursuant to R.C. 4503.35, motor vehicles furnished by the state for use by the elective state officials are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

2. Pursuant to R.C. 4503.35, motor vehicles owned and operated by political subdivisions of the state are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

3. Pursuant to R.C. 4503.35, motor vehicles operated by troopers of the State Highway Patrol are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

4. Pursuant to R.C. 4503.35, motor vehicles operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

5. Within the executive branch of state government, the phrase "elective state officials," as used in R.C. 4503.35, refers to those individuals who hold offices or positions that are typically and regularly filled through selection made by qualified electors, as defined in Ohio Const. art. V, §1 and R.C. 3503.01, at elections held in accordance with the substantive and procedural requirements of Ohio Const. articles V and XVII and R.C. Title 35.

6. The Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General are "elective state officials" for purposes of R.C. 4503.35.

7. The eleven members of the State Board of Education constituted pursuant to R.C. 3301.01(A) are "elective state officials" for purposes of R.C. 4503.35.

8. Employees of a state university or college are not "elective state officials" for purposes of R.C. 4503.35.

9.The determination of whether the members of a state board or commission are "elective state officials" for purposes of R.C. 4503.35 requires an examination of the constitutional or statutory provisions that address the establishment and organization of the board or commission in question.

10.R.C. 4503.35's exemption for motor vehicles furnished by the state for use by the elective state officials does not apply to motor vehicles furnished by the state for use by the staff members of an elective state official.

11.Motor vehicles furnished by the state for use by state university or college employees are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

12.Motor vehicles furnished by the state for use by members of state boards and commissions are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

13.Motor vehicles furnished by the state for use by an elective state official's staff are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

Respectfully,

LEE FISHER
Attorney General

November 29, 1994

David D. Sturtz
Inspector General
77 South High Street
Columbus, Ohio 43215

SYLLABUS: 94-075

1. Pursuant to R.C. 4503.35, motor vehicles furnished by the state for use by the elective state officials are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

2. Pursuant to R.C. 4503.35, motor vehicles owned and operated by political subdivisions of the state are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

3. Pursuant to R.C. 4503.35, motor vehicles operated by troopers of the State Highway Patrol are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

4. Pursuant to R.C. 4503.35, motor vehicles operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed are exempt from the motor vehicle identification plate requirements of R.C. 4503.23.

5. Within the executive branch of state government, the phrase "elective state officials," as used in R.C. 4503.35, refers to those individuals who hold offices or positions that are typically and regularly filled through selection made by qualified electors, as defined in Ohio Const. art. V, §1 and R.C. 3503.01, at elections held in accordance with the substantive and procedural requirements of Ohio Const. articles V and XVII and R.C. Title 35.

6. The Governor, Lieutenant Governor, Secretary of State, Auditor of State, Treasurer of State, and Attorney General are "elective state officials" for purposes of R.C. 4503.35.

7. The eleven members of the State Board of Education constituted pursuant to R.C. 3301.01(A) are "elective state officials" for purposes of R.C. 4503.35.

8. Employees of a state university or college are not "elective state officials" for purposes of R.C. 4503.35.

9. The determination of whether the members of a state board or commission are "elective state officials" for purposes of R.C. 4503.35 requires an examination of the constitutional or statutory provisions that address the establishment and organization of the board or commission in question.

10. R.C. 4503.35's exemption for motor vehicles furnished by the state for use by the elective state officials does not apply to motor vehicles furnished by the state for use by the staff members of an elective state official.

11. Motor vehicles furnished by the state for use by state university or college employees are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

12. Motor vehicles furnished by the state for use by members of state boards and commissions are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.

13. Motor vehicles furnished by the state for use by an elective state official's staff are exempt from the motor vehicle identification plate requirements of R.C. 4503.23 if those motor vehicles are operated by or on behalf of any person whose responsibilities include involvement in authorized civil or criminal investigations requiring that the presence and identity of the vehicle occupants be undisclosed.