August 28, 2012

The Honorable Ron O'Brien
Franklin County Prosecuting Attorney
Franklin County Courthouse
373 South High Street
Columbus, Ohio 43215

SYLLABUS: 2012-025

1. A majority vote of "no" on the question specified in R.C. 4301.356 affects the result of a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1) when the location that is subject to the site-specific local option election is within the community entertainment district.

2. A majority vote of "no" on the question specified in R.C. 4301.356 affects within a community entertainment district the result of a majority vote of "yes" in a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14.

3. A majority vote of "yes" on the question specified in R.C. 4301.356 affects an area of a community entertainment district that (1) is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor or (2) voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution.

4. An ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of a municipal corporation is valid when the legislative authority of the municipal corporation submits to the board of elections all the names and addresses of the liquor permit holders who sell beer or intoxicating liquor within the community entertainment district.

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August 28, 2012

OPINION NO. 2012-025

The Honorable Ron O'Brien
Franklin County Prosecuting Attorney
Franklin County Courthouse
373 South High Street
Columbus, Ohio 43215

Dear Prosecutor O'Brien:

You have requested an opinion concerning the effect the result of a local option election held pursuant to R.C. 4301.356 to authorize the sale of beer and intoxicating liquor at a community entertainment district (CED) has on the results of previously held local option elections. Specifically, you ask:

1. Does a majority vote of "no" on the question specified in R.C. 4301.356 affect the result of a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1)?

2. Does a majority vote of "no" on the question specified in R.C. 4301.356 affect the result of a majority vote of "yes" in a previously held precinct-wide local option election on the sale of beer or intoxicating liquor?

3. Does a majority vote of "yes" on the question specified in R.C. 4301.356 have any effect in an area of a CED that (1) is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor or (2) voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution?

4. Is an ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of a municipal corporation valid when the legislative authority of the municipal corporation submits to the board of elections all the names and addresses of the liquor permit holders who sell beer or intoxicating liquor within the CED, rather than only the names and addresses of the liquor permit holders who will be affected by the outcome of the election?

History and Purpose of Local Option Election Laws

On November 5, 1918, Article XV, § 9 of the Ohio Constitution was adopted. This amendment prohibited the sale and manufacture for sale of intoxicating liquors as a beverage in Ohio.

See also U.S. Const. amend. XVIII (stripping the states of their exclusive power to control the sale and manufacture of intoxicating liquors). This section of the Ohio Constitution also required the General Assembly to enact laws to put into effect the prohibition set forth therein. In accordance with this dictate, the General Assembly enacted H.B. 24 to "prohibit the liquor traffic and to provide for the enforcement of such prohibition, and to repeal all sections of the General Code [(now Revised Code)], and acts inconsistent herewith." 1919 Ohio Laws, Part I, 388 (H.B. 24, eff. May 27, 1919) (title).

In 1933, the General Assembly regained the authority to regulate the sale and manufacture of beer and intoxicating liquor with the repeal of the Eighteenth Amendment to the United States Constitution and Article XV, § 9 of the Ohio Constitution. *See* U.S. Const. amend. XXI; 1933-1934 Ohio Laws, Part II, 442 (setting forth the constitutional amendment to repeal Article XV, § 9 of the Ohio Constitution). And, pursuant to this authority, the General Assembly enacted what is commonly referred to as the Liquor Control Act, G.C. 6064-1 to G.C. 6064-61 (now set forth in R.C. Title 43), "[t]o provide a system of control of the manufacture and importation of and traffic in beer and intoxicating liquors in this state." 1933-1934 Ohio Laws, Part II, 118 (H.B. 1, filed Dec. 23, 1933) (title). As part of its plan to regulate the sale of beer and intoxicating liquor, the General Assembly in 1933 granted the people of this state the privilege to conduct local option elections to determine whether in a particular area the sale of beer or intoxicating liquor is to be permitted. *See id*. at 135-36, 145-48 (authorizing local option elections); 1957 Op. Att'y Gen. No. 597, p. 176, at 179 ("[t]he theory of local option is that the people of a political or governmental unit shall have the right to determine their own status and the correlative right to change it according to the provisions of law"). *See generally* Shelley Ross Saxer, *Article: "Down with Demon Drink!": Strategies for Resolving Liquor Outlet Overconcentration in Urban Areas*, 33 Santa Clara L. Rev. 123, 153 (1995) ("[a] local option law authorizes a state subdivision to determine whether to adopt a restrictive or prohibitive liquor licensing law within its locality. This determination is not made by traditional legislative enactment, but is instead carried out by a popular vote of the people").

Since 1933, the people of Ohio have continuously enjoyed this privilege. In fact, current law authorizes local option elections in a variety of circumstances. *See, e.g.*, R.C. 4301.35; R.C. 4301.351; R.C. 4301.352; R.C. 4301.353; R.C. 4301.354; R.C. 4301.355; R.C. 4301.356; R.C. 4303.29; R.C. 4305.14. Thus, for almost 80 years, the General Assembly has recognized that "the status of 'wet' or 'dry' is not created by an ordinance or by a regulation. It is the creature of a state enactment plus the will of the voters."[1] 1957 Op. Att'y Gen. No. 597, p. 176, at 178, *quoting In re Petition of Davis*, 4 Ohio N.P. (n.s.) 417, 422 (Prob. Ct. Cuyahoga County 1906). For this reason, court decisions and past Attorney General opinions "reflect a continuing concern to preserve the liquor sale status, decided upon in a community through a local option election." 1971 Op. Att'y Gen. No. 71-064 at 2-219; *see Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, 242 N.E.2d 566 (1968); *In re Petition of Davis*; 1957 Op. Att'y Gen. No. 597, p. 176; 1950 Op. Att'y Gen. No. 1882,

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[1] In liquor law, the term "wet" denotes an area of the state in which the sale of beer or intoxicating liquor is permitted, while the term "dry" indicates that the sale of beer and intoxicating liquor is not permitted in an area.

p. 354. *See generally* 1957 Op. Att'y Gen. No. 1153, p. 563, at 566 ("a status once achieved is usually considered to attach to the territory which was originally affected by the local option vote, and to remain operative unless lawfully changed, notwithstanding changes for other purposes in the designation, boundaries, or organization of the unit").

Sale of Beer and Intoxicating Liquor within a CED

In your particular situation, you are concerned with the effect the result of a vote in a local option election held to authorize the sale of beer and intoxicating liquor within a CED has on previously held local option elections. R.C. 4301.324 states that the electors of a municipal corporation may exercise the privilege of local option on the sale of beer and any intoxicating liquor at a particular location within the municipal corporation if the use of the location is as a community facility. For purposes of R.C. Chapter 4301, the term "community facility" includes an area designated as a CED pursuant to R.C. 4301.80. R.C. 4301.01(A)(19)(b).

R.C. 4301.80 authorizes a municipal corporation to establish a CED when an owner of property located in the municipal corporation files an application with the mayor of the municipal corporation seeking to have that property, or that property and other surrounding property, designated as a CED.[2] The application must include, among other things, the applicant's name and address, a map or survey of the proposed CED in sufficient detail to identify the boundaries of the CED and the property owned by the applicant, and a general statement of the nature and types of establishments that are or will be located within the proposed CED. R.C. 4301.80(B).

The mayor of the municipal corporation submits the application and his recommendation to the legislative authority of the municipal corporation for approval. R.C. 4301.80(C). Upon receiving the approval of the legislative authority of the municipal corporation, the area constitutes a CED, and "a local option election may be conducted in the district, as a type of community facility, under [R.C. 4301.356]." *Id.*

At a local option election conducted under R.C. 4301.356, the following question is submitted to the electors of the municipal corporation:

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[2] As used in R.C. 4301.80, a community entertainment district (CED) is "a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the [CED], or other types of establishments similar to these: (1) Hotels; (2) Restaurants; (3) Retail sales establishments; (4) Enclosed shopping centers; (5) Museums; (6) Performing arts theaters; (7) Motion picture theaters; (8) Night clubs; (9) Convention facilities; (10) Sports facilities; (11) Entertainment facilities or complexes; [or] (12) Any combination of the establishments described in division (A)(1) to (11) of this section that provide similar services to the community." R.C. 4301.80(A).

> "Shall the sale of beer and intoxicating liquor be permitted on days of the week other than Sunday and between the hours of …….. (insert "ten a.m." or "eleven a.m.") and midnight on Sunday, at ……. (insert name of community facility), a community facility as defined by [R.C. 4301.01], and located at …….. (insert the address of the community facility and, if the community facility is a [CED], the boundaries of the [CED], as set forth in the petition)?"

R.C. 4301.356. *See generally* R.C. 4301.334 (petition for a local option election concerning a CED).

Pursuant to R.C. 4301.366, if a majority of the electors of a municipal corporation voting on the question specified in R.C. 4301.356 vote "yes," the sale of beer and intoxicating liquor shall be allowed at the CED "on days of the week other than Sunday and during the hours on Sunday specified in [R.C. 4303.182(A)], for the use specified in the question, subject only to this chapter and [R.C. Chapter 4303]." However, if a majority of the electors of a municipal corporation voting on the question specified in R.C. 4301.356 vote "no," no sales of beer or intoxicating liquor shall be made at or within the CED during the period the election is in effect as defined in R.C. 4301.37. R.C. 4301.366.

Effect of a CED Local Option Election on a Site-specific Local Option Election

Your first question asks whether a majority vote of "no" on the question specified in R.C. 4301.356 affects the result of a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1). Pursuant to R.C. 4301.333, the electors of a precinct may exercise the privilege conferred by R.C. 4301.323 of local option at a particular location by presenting a petition to the board of elections of the county in which the precinct is situated. *See* R.C. 4301.355(A). At the local option election, the following question may be submitted to the electors of the precinct:

> "Shall the sale of …….. (insert beer, wine and mixed beverages, or spirituous liquor) be permitted by ……. (insert name of applicant, liquor permit holder, or liquor agency store, including trade or fictitious name under which applicant for, or holder of, liquor permit or liquor agency store either intends to do, or does, business at the particular location), an …… (insert "applicant for" or "holder of" or "operator of") a …….. (insert class name of liquor permit or permits followed by the words "liquor permit(s)" or, if appropriate, the words "liquor agency store for the State of Ohio"), who is engaged in the business of ……. (insert general nature of the business in which applicant or liquor permit holder is engaged or will be engaged in at the particular location), as described in the petition) at …… (insert address of the particular location within the precinct as set forth in the petition) in this precinct?"

R.C. 4301.355(B)(1).

If a majority of the electors of a precinct voting on the question specified in R.C. 4301.355(B)(1) vote "yes," the sale of beer, wine and mixed beverages, or spirituous liquor, whichever was the subject of the election, shall be allowed at the particular location and for the use

specified in the question presented to the electors. R.C. 4301.365(A)-(B). Further, the result of the election shall be effective at the particular location designated in the petition until (1) another election is held pursuant to R.C. 4301.355 or (2) such time as an election is held pursuant to R.C. 4301.352, provided no election is held under R.C. 4301.355 "regarding the same use at that particular location for a period of at least four years from the date of the most recent election on that question." R.C. 4301.37(E); *see* R.C. 4301.365(F). Also, the result of the election shall not prohibit, and shall be affected by the results of, a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14. R.C. 4301.37(E); *see* R.C. 4301.365(F).

Thus, pursuant to R.C. 4301.37(E), a majority vote of "yes" on the question specified in R.C. 4301.355(B)(1) is affected by a local option election subsequently held under the following statutes: R.C. 4301.35, R.C. 4301.351, R.C. 4301.52, R.C. 4301.353, R.C. 4301.354, R.C. 4301.355, R.C. 4303.29, and R.C. 4305.14.[3] As R.C. 4301.356 is not expressly listed among the statutes set forth in R.C. 4301.37(E), it has been suggested that the General Assembly did not intend for a majority vote of "no" in a local option election held under R.C. 4301.356 to affect a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1). *See generally Thomas v. Freeman*, 79 Ohio St. 3d 221, 224-25, 680 N.E.2d 997 (1997) (under the maxim *expressio unius est exclusio alterius*, which means the expression of one thing is the exclusion of the other, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded).

The legislative intent, as expressed in R.C. 4301.366 and R.C. 4301.37(F)-(H), does not, however, support this assertion. *See generally State ex rel. Wolfe v. Delaware County Bd. of Elections*, 88 Ohio St. 3d 182, 184, 724 N.E.2d 771 (2000) (when addressing issues of statutory meaning, "[l]egislative intent is the preeminent consideration in construing a statute"). *See generally also Baltimore Ravens, Inc. v. Self-Insuring Emp. Evaluation Bd.*, 94 Ohio St. 3d 449, 455, 764 N.E.2d 418 (2002) (the Ohio Supreme Court "has long recognized that the canon '*expressio unius est exclusio alterius*' is not an interpretive singularity but merely an aid to statutory construction, which must yield whenever a contrary legislative intent is apparent"). R.C. 4301.366 states that, if a majority of the electors of a municipal corporation voting on the question specified in R.C. 4301.356 vote "no," no sales of beer or intoxicating liquor shall be made at or *within* the CED during the period the election is in effect as defined in R.C. 4301.37.

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[3] R.C. 4301.365(F) provides that the result of a local option election held pursuant to R.C. 4301.355(B)(1) "shall apply to the particular location notwithstanding the results of the election held on the question … set forth in [R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14]." This provision applies when a local option election is held pursuant to R.C. 4301.355(B)(1) *after* a local option election is held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14. Because R.C. 4301.37(E) applies to a situation in which a local option election is held pursuant to R.C. 4301.355(B)(1) *before* a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14, there is no conflict between R.C. 4301.365(F) and R.C. 4301.37(E).

In addition, R.C. 4301.37(F)-(H) further provide:

> (F) When a local option election is held in a municipal corporation … under [R.C. 4301.356], *the results of the election shall be effective at the community facility* that was the subject of the election until another such election is held regarding that community facility….
>
> (G) If a community facility is located in an election precinct in which a previous local option election in the precinct resulted in approval of the sale of beer or intoxicating liquor in the precinct, the community facility shall sell beer or intoxicating liquor only to the extent permitted by the previous local option election *until* an election is held pursuant to [R.C. 4301.356].
>
> (H) A community facility *shall not be affected* by a local option election held on or after March 30, 1999, *unless the election is held under* [*R.C. 4301.356*]."[4] (Emphasis and footnote added.)

The language of R.C. 4301.366 and R.C. 4301.37(F)-(H) expresses a clear legislative intent that, when a CED is created after March 30, 1999, the sale of beer and intoxicating liquor within the CED may continue to the extent permitted by previous local option elections until an election is held pursuant to R.C. 4301.356. Once a local option election is held under R.C. 4301.356, the results of that election control the sale of beer and intoxicating liquor within the entire territory of the CED. For this reason, when the sale of beer or intoxicating liquor is authorized at a location within a CED pursuant to a site-specific local option election held under R.C. 4301.355(B)(1), the sale of beer or intoxicating liquor may continue at the location until a majority vote of "no" in a local option election held under R.C. 4301.356 is received.[5]

Moreover, as R.C. 4301.366 and R.C. 4301.37(F)-(H) plainly and unequivocally state the effect that a local option election held under R.C. 4301.356 has on all other local option elections authorizing the sale of beer or intoxicating liquor in a CED, it was unnecessary for the General Assembly to include R.C. 4301.356 in the list of statutes in R.C. 4301.37(E) that affect the result of a local option election held under R.C. 4301.355(B)(1). That this was the intent of the General

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[4] According to information on file with the Secretary of State, the site-specific local option election in your particular situation was held after March 30, 1999, but before the creation of the CED in question. *See generally* 1997-1998 Ohio Laws, Part II, 3310 (Am. Sub. H.B. 402, eff. Mar. 30, 1999) (enacting R.C. 4301.355 to grant the privilege of local option on the sale of beer or intoxicating liquor at a particular location and R.C. 4301.356 to grant the privilege of local option on the sale of beer and intoxicating liquor at a community facility).

[5] Since the site-specific local option election in question occurred prior to the creation of the CED, *see* note 4 *supra*, the sale of beer or intoxicating liquor may continue at the particular location that was the subject of the election until a majority vote of "no" in a local option election held under R.C. 4301.356 is received. *See* R.C. 4301.366; R.C. 4301.37(F)-(H).

Assembly is further supported by the legislative history of R.C. 4301.356. *See generally* R.C. 1.49(C) (the legislative history of a statute may be considered to determine legislative intent).

In 1989, the General Assembly enacted former R.C. 4301.355, which was similar to current R.C. 4301.356, to grant the privilege of local option on the sale of beer and intoxicating liquor at a convention center. 1989-1990 Ohio Laws, Part III, 5333 (Am. H.B. 481, eff. July 1, 1989). For purposes of R.C. 4301.355, as enacted by Am. H.B. 481, a "convention center" means "any convention, sports, or *entertainment facility*, or any combination of these, with a seating capacity of five thousand or more that is used by and accessible to the general public." *Id*. at 5335 (emphasis added). Although former R.C. 4301.355, as enacted by Am. H.B. 481, authorized a local option election on the sale of beer or intoxicating liquor at an entertainment facility, no provision in former R.C. 4301.355, as enacted by Am. H.B. 481, or elsewhere in Am. H.B. 481, contained authority that approximates the kind of authority set forth in current R.C. 4301.355.

In 1995, the General Assembly repealed former R.C. 4301.355, as enacted in Am. H.B. 481. 1995-1996 Ohio Laws, Part V, 8806 (Am. Sub. S.B. 149, eff. Nov. 21, 1995). Then, in 1999, the General Assembly enacted the predecessors to current R.C. 4301.355 and R.C. 4301.356. 1997-1998 Ohio Laws, Part II, 3310 (Am. Sub. H.B. 402, eff. Mar. 30, 1999).

The legislative history of current R.C. 4301.355 and R.C. 4301.356 demonstrates that since March 30, 1999, the General Assembly has provided separate statutes to govern the sale of beer and intoxicating liquor at a community facility and at a particular location that is not a community facility. Prior to March 30, 1999, except as provided in R.C. 4301.352,[6] there was no authority for conducting a local option election to allow or prohibit the sale of beer or intoxicating liquor at a particular location that was not a convention center. However, since March 30, 1999, R.C. 4301.355(B)(1) provides authority for conducting a local option election to allow or prohibit the sale of beer or intoxicating liquor at a particular location that is not a community facility. In a municipal corporation, there may be multiple locations that are authorized to sell beer or intoxicating liquor pursuant to the result of a local option election held under R.C. 4301.355(B)(1).

Further, since March 30, 1999, R.C. 4301.356 provides specific authority for conducting a local option election to allow or prohibit the sale of beer and intoxicating liquor at a community facility. The result of a local option election held under R.C. 4301.356 applies to any location that is within the community facility. The result of such a local option election does not, however, apply to a location that is (1) allowed to sell beer or intoxicating liquor in the municipal corporation pursuant to a local option election held under R.C. 4301.355(B)(1) and (2) outside the territorial boundaries of the community facility. Instead, the result of a local option election held under R.C. 4301.355(B)(1) applies to the location. As R.C. 4301.356 does not apply to a location that is (1) allowed to sell beer or intoxicating liquor in the municipal corporation pursuant to the result of a local option election held

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[6] R.C. 3501.352 authorizes a local option election to allow or prohibit the sale of beer and intoxicating liquor at a particular liquor permit premises that has been adjudged to be a nuisance to the public by a court.

under R.C. 4301.355(B)(1) and (2) outside the territorial boundaries of the community facility, R.C. 4301.356 cannot be included in the list of statutes in R.C. 4301.37(E) that affect the result of a local option election held under R.C. 4301.355(B)(1).

In addition, a determination that the result of a local option election held under R.C. 4301.356 does not affect the result of a local option election held under R.C. 4301.355 would mean that the result of a local option election held under R.C. 4301.355, as enacted by Am. H.B. 481 and repealed by Am. Sub. S.B. 149, could never be changed. As explained previously, except as provided in R.C. 4301.356, a local option election may not be held under current R.C. 4301.355 or any other statute to allow or prohibit the sale of beer and intoxicating liquor at a community facility. *See* R.C. 4301.37(H). Thus, insofar as the General Assembly has for the past 80 years conferred the privilege of local option to the people of this state, it is reasonable to presume that, notwithstanding R.C. 4301.37(E), a local option election may be held under R.C. 4301.356 to allow or prohibit the sale of beer and intoxicating liquor at a community facility that is affected by the result of a local option election held under R.C. 4301.355, as enacted by Am. H.B. 481 and repealed by Am. Sub. S.B. 149. *See generally Canton v. Imperial Bowling Lanes, Inc.* (syllabus, paragraph 4) ("[t]he General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences" and "if the language of a statute fairly permits or unless restrained by the clear language thereof," the statute must be construed so as to avoid unreasonable or absurd consequences).

In light of the foregoing reasons, we conclude that R.C. 4301.37(E) does not prohibit the result of a local option election held under R.C. 4301.356 from taking effect at a location that is (1) allowed to sell beer or intoxicating liquor in the municipal corporation pursuant to the result of a local option election held under R.C. 4301.355(B)(1) and (2) within the territorial boundaries of the CED. In such a situation, R.C. 4301.366 and R.C. 4301.37(F)-(H) expressly provide that the result of the local option election held under R.C. 4301.355(B)(1) does not control the sale of beer and intoxicating liquor at the location after a local option election is held pursuant to R.C. 4301.356. Accordingly, a majority vote of "no" on the question specified in R.C. 4301.356 affects the result of a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1) when the location that is subject to the site-specific local option election is within the CED.

Effect of a CED Local Option Election on a Precinct-wide Local Option Election

Your second question asks whether a majority vote of "no" on the question specified in R.C. 4301.356 affects the result of a majority vote of "yes" in a previously held precinct-wide local option election on the sale of beer or intoxicating liquor. The questions submitted at the precinct-wide local option elections with which you are concerned are set forth in R.C. 4301.35 (general authority to sell beer and intoxicating liquor); R.C. 4301.351 (Sunday sales of beer and intoxicating liquor); R.C. 4301.353 (sale of beer and intoxicating liquor in a portion of a precinct to achieve consistency within the precinct); R.C. 4301.354 (Sunday sales of beer and intoxicating liquor in a portion of a precinct to achieve consistency within the precinct); R.C. 4303.29 (sale of spirituous liquors in a precinct that voted against the repeal of Article XV, § 9 of the Ohio Constitution); and R.C. 4305.14 (sale of beer by holders of C or D permits).

The effect of the result of a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 is set forth in R.C. 4301.37. Except as provided in R.C. 4301.39(G)-(H), when a precinct-wide local option election is held pursuant to R.C. 4301.35, R.C. 4303.29, or R.C. 4305.14 the result of the election shall be effective in the precinct until another election is called and held pursuant to R.C. 4301.32-.36.[7] R.C. 4301.37(A); *see* R.C. 4301.36; R.C. 4305.14(D). Pursuant to R.C. 4301.37(B), except as provided in R.C. 4301.39(G)-(H), when a precinct-wide local option election is held pursuant to R.C. 4301.351 the result of the election shall be effective in the precinct until another election is called and held pursuant to R.C. 4301.32-.361. *See* R.C. 4301.361. And, R.C. 4301.37(D) provides further that, "[w]hen a local option election is held in a precinct under [R.C. 4301.353 or R.C. 4301.354], except as provided in [R.C. 4301.39(G)-(H)], the results of the election shall be effective until another election is held under that section on the same question." *See* R.C. 4301.363; R.C. 4301.364. Thus, the result of a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 remains effective within a precinct until a subsequent local option election requires otherwise. *See Canton v. Imperial Bowling Lanes, Inc.*; *In re Petition of Davis*; 1971 Op. Att'y Gen. No. 71-064 at 2-219; 1957 Op. Att'y Gen. No. 597, p. 176; 1950 Op. Att'y Gen. No. 1882, p. 354; *see also* 1957 Op. Att'y Gen. No. 1153, p. 563, at 566.

This principle finds additional support in R.C. 4301.366 and R.C. 4301.37(F)-(H). As determined above, these provisions of law declare that, when a CED is created after March 30, 1999, the sale of beer and intoxicating liquor within the CED may continue to the extent permitted by previous local option elections until an election is held pursuant to R.C. 4301.356. Once a local option election is held under R.C. 4301.356, the results of that election control the sale of beer and intoxicating liquor within the entire territory of the CED. Reading the various provisions of R.C. 4301.366 and R.C. 4301.37 together, therefore, indicates that, when the sale of beer or intoxicating liquor is allowed within a CED pursuant to a precinct-wide local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14, the sale of beer or intoxicating liquor may continue within the CED until a majority vote of "no" in a local option election held under R.C. 4301.356 is received. *See generally State v. Moaning*, 76 Ohio St. 3d 126, 128, 666 N.E.2d 1115 (1996) ("[i]t is a well-settled rule of statutory interpretation that statutory provisions be construed together and the Revised Code be read as an interrelated body of law"); *State v. Parks*, 13 Ohio App. 3d 85, 86, 468 N.E.2d 104 (Franklin County 1983) (sections of a statute that relate to the same subject are to be construed together so as to give full force and effect to the legislative intent).

It has been suggested, however, that language in R.C. 4301.37(F) compels the conclusion that the result of a local option election held under R.C. 4301.356 does not affect the result of a previously held precinct-wide local option election on the sale of beer or intoxicating liquor. In this regard, R.C. 4301.37(F) provides, in part, that the results of a local option election held under R.C. 4301.356 "shall

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[7] For the purpose of this opinion, the exceptions set forth in R.C. 4301.39(G)-(H) are not pertinent.

not prohibit the holding of, or affect or be affected by the results of, a local option election held under [R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14]." For the reasons that follow, we are not persuaded that this language requires us to conclude that the result of a local option election held under R.C. 4301.356 does not affect the result of a previously held precinct-wide local option election on the sale of beer or intoxicating liquor.

First, as delineated above, the language of R.C. 4301.37(F)-(H) demonstrates a clear legislative intent that the result of a local option election held under R.C. 4301.356 applies within a CED. And, it unequivocally states that the result of a local option election that is in effect on the date that a CED is created controls the sale of beer and intoxicating liquor within the district *until* a local option election is held pursuant to R.C. 4301.356. In other words, after a local option election is held under R.C. 4301.356, the plain language of R.C. 4301.37(F)-(H) provides that the result of a precinct-wide local option election is no longer in effect within the CED. Consequently, a majority vote of "no" on the question specified in R.C. 4301.356 controls over a majority vote of "yes" in a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 within a CED. *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph 5) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

That this is the intent of the General Assembly is also plainly manifested in the language of R.C. 4301.366. This statute states, in part, that, "[i]f a majority of the electors voting on the question specified in [R.C. 4301.356] vote 'no,' no sales of beer or intoxicating liquor shall be made at or *within* the community facility during the period the election is in effect as defined in [R.C. 4301.37]." (Emphasis added.) The use of the term "within" in R.C. 4301.366 evinces a clear legislative intent that the result of a "no" vote in a local option election held under R.C. 4301.356 applies to all of the territory inside the CED. *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370 (1948) ("the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"); *Merriam-Webster's Collegiate Dictionary* 1439 (11th ed. 2005) (defining "within" to mean "in or into the scope or sphere of").

In addition, it seems reasonable to presume that the General Assembly did not intend for R.C. 4301.37(F) to be used to prevent applying the result of a local option election held under R.C. 4301.356 within a CED when a precinct-wide local option election is in effect. To conclude otherwise would lead to unreasonable consequences and render R.C. 4301.356 ineffective.

For example, if a majority vote of "no" on the question specified in R.C. 4301.356 does not affect the result of a majority vote of "yes" in a previously held precinct-wide local option election, the result of the "no" vote in the election held under R.C. 4301.356 would be rendered meaningless as to the sale of beer and intoxicating liquor within the CED. Similarly, if a majority vote of "yes" on the question specified in R.C. 4301.356 does not affect the result of a majority vote of "no" in a previously held precinct-wide local option election, the result of the "yes" vote in the election held

under R.C. 4301.356 would be rendered meaningless as to the sale of beer and intoxicating liquor within the CED.

Because statutes are to be given effect and interpreted in a manner that avoids unreasonable or absurd consequences, R.C. 4301.37(F) should not be interpreted in a manner that renders R.C. 4301.356 ineffective and the results of a local option election conducted under that statute meaningless. *See* R.C. 1.47; *Canton v. Imperial Bowling Lanes, Inc.* (syllabus, paragraph 4). This is especially applicable in light of the fact that (1) election laws are "to be construed liberally, so as to preserve the will of the people, if possible, and not to defeat their choice as expressed by an election," and (2) the General Assembly has emphatically declared in R.C. 4301.366 and R.C. 4301.37 that the result of a local option election held under R.C. 4301.356 controls within a CED. *In re South Charleston Election Contest*, 3 Ohio N.P. (n.s.) 373, 384 (Prob. Ct. Clark County 1905); *see In re Election Contest of December 14, 1999 Special Election for the Office of Mayor of the City of Willoughby Hills*, 91 Ohio St. 3d 302, 308, 744 N.E.2d 745 (2001); *Copeland v. Tracy*, 111 Ohio App. 3d 648, 654-55, 676 N.E.2d 1214 (Franklin County 1996).

Finally, it is possible to give effect to all of the language of R.C. 4301.37(F) even though the result of a "no" vote in a local option election held under R.C. 4301.356 affects the result of a previously held precinct-wide local option election. A local option election held under R.C. 4301.356 does not affect the territory located outside a CED. Instead, a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 remains in effect with respect to that territory. Also, if a CED that is the subject of a local option election held under R.C. 4301.356 ceases to function as a CED, *see* R.C. 4301.80, liquor permit premises located within the defunct CED are subject to the results of a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14. *See* R.C. 4301.366; R.C. 4301.37(G). The language of R.C. 4301.37(F) indicating that the result of a local option election held under R.C. 4301.356 does not affect a precinct-wide local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14, thus, was intended to prohibit the result of a local option election held under R.C. 4301.356 from applying in the two situations described in this paragraph.

Accordingly, the language of R.C. 4301.37(F) stating that the result of a local option election held under R.C. 4301.356 does not affect a local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 does not persuade us to conclude that a majority vote of "no" on the question specified in R.C. 4301.356 does not affect within a CED the result of a majority vote of "yes" in a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14. Instead, for the reasons set forth above, a majority vote of "no" on the question specified in R.C. 4301.356 affects within a CED the result of a majority vote of "yes" in a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14.

Effect of a CED Local Option Election in an Area of a CED that Does Not Authorize the Sale of Beer and Intoxicating Liquor

Your third question asks whether a majority vote of "yes" on the question specified in R.C. 4301.356 has any effect in an area of a CED that (1) is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor or (2) voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution.[8] The reasoning used to address your second question applies equally to this question.

Put simply, a majority vote of "no" on the question specified in R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 in a precinct remains effective until a subsequent election authorizes the sale of beer or intoxicating liquor in the precinct. And, in your particular situation, the General Assembly has expressly provided in R.C. 4301.366 and R.C. 4301.37(F)-(H) that, after a local option election is held under R.C. 4301.356, the result of a precinct-wide local option election held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14 is no longer in effect within a CED. For this reason, a majority vote of "yes" on the question specified in R.C. 4301.356 affects an area of a CED that is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor.

In addition, while no statute addresses the effect a majority vote in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution is to be given, it is reasonable to presume that the result of that election remains effective until a subsequent election alters the status of the precinct as to the sale of beer and intoxicating liquor. *See* R.C. 4303.29(C); *Canton v. Imperial Bowling Lanes, Inc.*; *In re Petition of Davis*; 1971 Op. Att'y Gen. No. 71-064 at 2-219; 1957 Op. Att'y Gen. No. 597, p. 176; 1950 Op. Att'y Gen. No. 1882, p. 354; *see also* 1957 Op. Att'y Gen. No. 1153, p. 563, at 566. Again, in your particular situation, R.C. 4301.366 states unequivocally:

> If a majority of the electors voting on the question specified in [R.C. 4301.356] vote "yes," the sale of beer and intoxicating liquor *shall be allowed at the community facility* on days of the week other than Sunday and during the hours on Sunday specified in [R.C. 4303.182(A)], for the use specified in the question, subject only to this chapter and [R.C. Chapter 4303]. (Emphasis added.)

See R.C. 4301.37(G).

As there are no express statutory exceptions to the mandatory language of R.C. 4301.366, no such exceptions may be read into R.C. 4301.366. *See Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76

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[8] Article XV, § 9 of the Ohio Constitution prohibited the sale of beer and intoxicating liquor in Ohio. However, if in 1933 a majority of the voters in a precinct voted against the repeal of Article XV, § 9 of the Ohio Constitution, no sales of beer or intoxicating liquor by a person holding a D-3, D-4, D-5, or D-5a liquor permit are allowed in the precinct until a majority of voters at an election held pursuant to R.C. 4301.35 or R.C. 4303.29 authorize such sales. R.C. 4303.29(C).

N.E. 945 (1906) (syllabus, paragraph 1); 1997 Op. Att'y Gen. No. 97-056 at 2-340. Thus, absent a clear and unequivocal expression on the part of the General Assembly providing an exception, a variance from the terms of R.C. 4301.366 may not be implied and a majority vote of "yes" on the question specified in R.C. 4301.356 affects an area of a CED that voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution.[9] *See* 1997 Op. Att'y Gen. No. 97-056 at 2-340. Accordingly, in response to your third question, a majority vote of "yes" on the question specified in R.C. 4301.356 affects an area of a CED that (1) is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor or (2) voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution.

Validity of a Municipal Ordinance that Sets Forth All the Names and Addresses of the Liquor Permit Holders within a CED

Your final question asks whether an ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of a municipal corporation is valid when the legislative authority of the municipal corporation submits to the board of elections all the names and addresses of the liquor permit holders who sell beer or intoxicating liquor within the CED, rather than only the liquor permit holders who will be affected by the outcome of the election. R.C. 4301.356 states that the legislative authority of a municipal corporation "shall submit the name and address of any permit holder who would be affected by the results of the election to the board of elections at the same time it submits" to the board an ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of the municipal corporation. *See* R.C. 4301.334(B). *See generally* 1997 Op. Att'y Gen. No. 97-056 at 2-339 ("[t]he responsibility for notifying permit holders who would be affected by the outcome of a local option election is conferred upon the petitioner who files the petition for the local option election"). The board of elections, within 5 days of receiving the name and address, "shall give notice by certified mail to each permit holder that it has received the ordinance." R.C. 4301.356; *accord* R.C. 4301.334(B). If the legislative authority of a municipal corporation fails to supply the name and address of each permit holder to the board of elections, the ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of the municipal corporation is invalid. R.C. 4301.356; R.C. 4301.334(B).

R.C. 4301.334 and R.C. 4301.356 require the legislative authority of a municipal corporation to submit to the board of elections the name and address of any liquor permit holder who would be affected by the results of a local option election held under R.C. 4301.356. *See generally* 1997 Op. Att'y Gen. No. 97-056 at 2-339 n.1 ("permit holders are statutorily entitled to notice of the filing of a local option election petition"). Under this requirement, the name and address of every liquor permit holder who sells beer or intoxicating liquor within the CED must be submitted to the board of elections since, as discussed earlier, a local option election held under R.C. 4301.356 affects each and

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[9] This opinion does not consider which liquor permits may be issued in an area of a CED that originally voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution, and then subsequently authorized the sale of beer and intoxicating liquor under a local option election held under R.C. 4301.356.

every one of them. There are no instances in which a liquor permit holder who sells beer or intoxicating liquor within a CED will not be affected by the results of a vote on a local option election held under R.C. 4301.356. Therefore, an ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of a municipal corporation is valid when the legislative authority of the municipal corporation submits to the board of elections all the names and addresses of the liquor permit holders who sell beer or intoxicating liquor within the CED.

Conclusions

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

1. A majority vote of "no" on the question specified in R.C. 4301.356 affects the result of a majority vote of "yes" in a site-specific local option election previously held under R.C. 4301.355(B)(1) when the location that is subject to the site-specific local option election is within the community entertainment district.

2. A majority vote of "no" on the question specified in R.C. 4301.356 affects within a community entertainment district the result of a majority vote of "yes" in a precinct-wide local option election previously held under R.C. 4301.35, R.C. 4301.351, R.C. 4301.353, R.C. 4301.354, R.C. 4303.29, or R.C. 4305.14.

3. A majority vote of "yes" on the question specified in R.C. 4301.356 affects an area of a community entertainment district that (1) is subject to a previously held precinct-wide local option election prohibiting the sale of beer and intoxicating liquor or (2) voted in the November 1933 election against the repeal of Article XV, § 9 of the Ohio Constitution.

4. An ordinance requesting the submission of the question set forth in R.C. 4301.356 to the electors of a municipal corporation is valid when the legislative authority of the municipal corporation submits to the board of elections all the names and addresses of the liquor permit holders who sell beer or intoxicating liquor within the community entertainment district.

Very respectfully yours,

MICHAEL DEWINE
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