May 29, 1997

OPINION NO. 97-031

The Honorable Amanda Spies Bornhorst
Tuscarawas County Prosecuting Attorney
125 East High Avenue
New Philadelphia, Ohio 44663

Dear Prosecutor Bornhorst:

You have submitted a request for an opinion on the following question, "[w]hether an individual that serves as a volunteer in a Big Brother or Big Sister organization is one of those persons required by Section 2151.421 of the Ohio Revised Code to report knowledge or suspicion of child abuse or neglect to the Children Services Board of the County Department of Human Services, or a Municipal or County peace officer."[1]

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[1] Big Brothers-Big Sisters of America was created under 36 U.S.C.A. § 881 (1988). The purposes of the organization are set forth in 36 U.S.C.A. § 883 (1988), as follows:

> The purposes of the corporation shall be to aid and assist individuals throughout the United States of America in the solution of their social and economic problems, and assist in their health, educational and character development; to promote the use of techniques of such assistance developed by the corporation, by other lay and professional agencies and workers, to receive, invest, and disburse funds and to hold property for the purposes of the corporation.

For auditing purposes, 36 U.S.C.A. § 1101 (1988 & 1997 Supp.) characterizes Big Brothers-Big Sisters of America as a "private [corporation] established under Federal law." There are organizations throughout the country that are chartered by the national corporation. Based upon information supplied by the Big Brothers-Big Sisters Association of Columbus and Franklin County, it is our understanding that Big Brothers and Big Sisters volunteer their time to serve as friends, role models, and mentors for the children with whom they are matched. This opinion will assume, therefore, that you are asking about persons who serve as Big Brothers and Big Sisters as described herein. Whether the persons about whom you ask are serving on this basis is a question of fact for those at the local level to determine.

We may begin by examining the specific requirements of R.C. 2151.421, which states in pertinent part:

> (A)(1) No attorney, physician, including a hospital intern or resident, dentist, podiatrist, practitioner of a limited branch of medicine or surgery as defined in section 4731.15 of the Revised Code, registered nurse, licensed practical nurse, visiting nurse, other health care professional, licensed psychologist, licensed school psychologist, speech pathologist or audiologist, coroner, administrator or employee of a child day-care center, administrator or employee of a certified child care agency or other public or private children services agency, school teacher, school employee, school authority, person engaged in social work or the practice of professional counseling, or person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion, *who is acting in an official or professional capacity and knows or suspects* that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report of [*sic*] that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.[2]
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> ....
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> (B) Anyone, who knows or suspects that a child under eighteen years of age or a mentally retarded, developmentally disabled, or physically impaired person under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child, *may* report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or to a municipal or county peace officer.
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> ....

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[2] R.C. 2151.421(A)(2) and (3) establish limited exceptions to the reporting requirements of subdivision (A)(1) for information obtained through certain communications made within the attorney-client relationship or physician-patient relationship.

> (G)(1) Except as provided in division (H)(3) of this section,[3] anyone or any hospital, institution, school, health department, or agency participating in the making of reports under division (A) of this section, anyone or any hospital, institution, school, health department, or agency participating in good faith in the making of reports under division (B) of this section, and anyone participating in good faith in a judicial proceeding resulting from the reports, shall be immune from any civil or criminal liability for injury, death, or loss to person or property that otherwise might be incurred or imposed as a result of the making of the reports or the participation in the judicial proceeding. (Emphasis and footnotes added.)

R.C. 2151.421(A)(1) thus lists various professions and occupations whose practitioners, when acting in an official or professional capacity, must immediately report known or suspected child abuse or neglect to one of the agencies or peace officers specified therein.[4] In addition to listing those who must report known or suspected child abuse or neglect, R.C. 2151.421 authorizes *any* person, regardless of occupation or profession, to report known or suspected child abuse or neglect to certain agencies or peace officers. R.C. 2151.421(B). Pursuant to R.C. 2151.421(G)(1), any entity or person who, acting in good faith, makes a report in accordance with R.C. 2151.421(A) or (B) is entitled to immunity from civil or criminal liability as described therein for injury, death, or loss to person or property that may result from such reporting.

Your question asks whether Big Brothers or Big Sisters are *required* by R.C. 2151.421 to report child abuse or neglect. It is, therefore, necessary to examine more closely R.C. 2151.421(A)(1), the mandatory reporting portion of the statute. Because R.C. 2151.421(A)(1) does not expressly include Big Brothers and Big Sisters as a category of persons who must comply with its reporting requirements, it appears that your concern is whether Big Brothers or Big Sisters may be considered to be practicing one of the listed professions or occupations while acting in their capacity as Big Brothers or Big Sisters. For the reasons that follow, I must conclude that the General Assembly did not include persons who volunteer as Big Brothers or Big Sisters within the group of persons subject to the mandatory reporting requirements of R.C. 2151.421(A)(1). *See generally State v. Hensley*, 59 Ohio St. 3d 136, 141, 571 N.E.2d 711, 716 (1991) ("for purposes of R.C. 2901.13(F), the corpus delecti of crimes involving child abuse or neglect is discovered when a responsible adult, as listed in R.C. 2151.421, has knowledge of both the act and the criminal nature of the act. We do not include parents; rather, we strictly adhere to those persons listed in R.C. 2151.421").

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[3] Pursuant to R.C. 2151.421(H)(3), "[a] person who knowingly makes or causes another person to make a false report under division (B) of this section that alleges that any person has committed an act or omission that resulted in a child being an abused child or a neglected child is guilty of a violation of [R.C. 2921.14]."

[4] Pursuant to R.C. 2151.99(A), anyone who violates R.C. 2151.421(A)(1) "is guilty of a misdemeanor of the fourth degree."

First, it is necessary to bear in mind that violation of R.C. 2151.421(A)(1) is a misdemeanor of the fourth degree. R.C. 2151.99(A). Consequently, its scope must be narrowly construed. *See generally State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919) (syllabus, paragraph one) ("[s]tatutes or ordinances of a penal nature ... will be strictly construed and their scope cannot be extended to include limitations not therein clearly prescribed; exemptions from such restrictive provisions are for like reasons liberally construed"). In this regard, it is significant that R.C. 2151.421(A)(1) identifies the persons subject to its terms solely by reference to their professions or occupations. The application of R.C. 2151.421(A)(1) is further narrowed by the limitation that a person engaged in any of the specified occupations or professions is subject to the reporting requirements of that provision only if the person acquires knowledge or suspicion of child abuse or neglect *while acting in an official or professional capacity*. *State v. Rosenberger*, 90 Ohio App. 3d 735, 739, 630 N.E.2d 435, 438 (Summit County 1993) ("[t]his statutory duty to report suspected sexual abuse, however, arises only if an individual listed in R.C. 2151.421 _is acting in his official or professional capacity._ The language in the statute is clear and unambiguous and establishes a condition precedent to the legal duty to report sexual abuse").

Clearly, acting as a Big Brother or Big Sister is not the practice of a profession or occupation, *see* note one, *supra*, but is instead a community service activity undertaken on a voluntary basis outside of one's profession or occupation. Thus, even though a Big Brother or Big Sister may also practice a profession listed in R.C. 2151.421(A)(1), that person is not acting in an official or professional capacity when engaged in Big Brother or Big Sister activities. Moreover, while one who acts as a Big Brother or Big Sister may well use skills that are associated with, for example, the practice of social work, service as a Big Brother or Big Sister is not the practice of social work. *See generally* R.C. Chapter 4757 (regulating the practice of social work and professional counseling). Similarly, acting as a Big Brother or Big Sister does not appear to constitute the practice of any of the other professions or occupations listed in R.C. 2151.421(A)(1). Big Brothers and Big Sisters are not, therefore, subject to the reporting requirements established by R.C. 2151.421(A)(1).

It is important to note that, although R.C. 2151.421(A)(1) does not impose upon Big Brothers or Big Sisters a mandatory duty to report known or suspected child abuse or neglect, R.C. 2151.421(B) authorizes "anyone" who knows of or suspects child abuse or neglect to report such knowledge or suspicion to the appropriate authorities, and so long as that person is acting in good faith in making such report, the person is entitled to immunity from civil and criminal liability as prescribed by R.C. 2151.421(G). Thus, should a Big Brother or Big Sister, in the course of his or her activities in that program, become aware of or suspect child abuse or neglect, R.C. 2151.421(B) clearly authorizes that person to report such knowledge or suspicion to the appropriate authorities, and, assuming that such report is made in good faith, the Big Brother or Big Sister would be entitled to the immunity prescribed by R.C. 2151.421(G).

I conclude, therefore, that a Big Brother or Big Sister is not subject to the child abuse or neglect reporting requirements of R.C. 2151.421(A)(1), but a Big Brother or Big Sister who, during the course of his or her activities as a Big Brother or Big Sister, learns of or suspects child abuse or neglect, may, in accordance with R.C. 2151.421(B), report such knowledge or suspicion to one of

the agencies or authorities described therein.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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SYLLABUS: 97-031

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