

**OPINION NO. 2008-010****Syllabus:**

2008-010

A foster home certified under R.C. 5103.03 is not by virtue of its status as a foster home made subject to R.C. Chapter 3794, the Smokefree Workplace Act. Rather, a foster home certified under R.C. 5103.03 is a private residence that, under R.C. 3794.03(A), is exempt from the provisions of the statewide smoking ban set forth in R.C. Chapter 3794 unless activities occurring within a particular foster home bring the home within the exceptions to the private residence exemption.

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**To: Amanda K. Spies, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio**

**By: Marc Dann, Attorney General, April 10, 2008**

We have received a request for a formal opinion, submitted by your assistant on your behalf. The question is whether the statewide smoking ban set forth in R.C. Chapter 3794 applies to foster homes.

For the reasons set forth below, we conclude that a foster home certified under R.C. 5103.03 is not by virtue of its status as a foster home made subject to R.C. Chapter 3794, the Smokefree Workplace Act. Rather, a foster home certified under R.C. 5103.03 is a private residence that, under R.C. 3794.03(A), is exempt from the provisions of the statewide smoking ban set forth in R.C. Chapter 3794 unless activities occurring within a particular foster home bring the home within the exceptions to the private residence exemption.

### **Background information**

We base our analysis on the following information provided by your office, which we have modified slightly for purposes of clarity:

We have reviewed R.C. Chapter 3794 and Ohio Administrative Code Chapter 3701-52. These provisions do not seemingly address the issue of foster homes and foster parents. The foster parents are being paid by the local Job and Family Services Agency to take care of children. Arguably, the parents may fit within the definition of a business. However, R.C. 3794.03 exempts private residences from the smoking ban except during times they are being operated as a child care or adult care facility. R.C. 5104.01 defines a child care facility as one where thirteen or more children are being given care. This seemingly may eliminate these foster homes from the prohibition contained in the smoking ban statute. Additionally, Administrative Code Section 3701-52-04(D) exempts from the smoking ban a private residence licensed by the state or federal government to provide overnight accommodations and supervision to unrelated individuals. This would seem to make these foster homes exempt from the smoking ban.

This opinion considers only the applicability of R.C. Chapter 3794 and does not consider whether there may be other regulatory provisions that affect smoking in a foster home. *See* R.C. 3794.04 (nothing in R.C. Chapter 3794 “shall be construed to permit smoking where it is otherwise restricted by other laws or regulations”); *see also, e.g.*, 6 Ohio Admin. Code 3701-52-04(D) (finding that certain licensed or certified private residences are not subject to R.C. Chapter 3794 or accompanying rules and adding: “Notwithstanding this paragraph, smoking may be prohibited by other applicable laws or rules”).<sup>1</sup>

<sup>1</sup> For example, under rules adopted by the Ohio Director of Job and Family Services, foster homes must meet certain safety and fire prevention standards and all members of a foster household must satisfy certain health standards. No existing

### Foster Homes

In order to answer your question, it is necessary to determine the meaning of “foster home.” Your letter refers to foster homes provided by the county department of job and family services. Under Ohio law, each county must have a public children services agency (PCSA) to provide children services, including the securing of foster care for children who are in need of public care. R.C. 5153.02; R.C. 5153.16(A)(8) (a public children services agency shall “[f]ind certified foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county”). A county department of job and family services is one of the entities that may serve as a public children services agency and perform the function of finding certified foster homes. R.C. 5153.02.<sup>2</sup>

The placement of children in foster homes by a PCSA is governed by R.C. Chapters 5103 and 5153. For purposes of these provisions, “foster home” is defined in R.C. 5103.02 as follows:

(D) “*Foster home*” means a *private residence* in which children are received apart from their parents, guardian, or legal custodian, by an

rules of the Ohio Department of Job and Family Services that govern foster homes currently regulate tobacco use in foster homes; however, such regulation is possible. *See generally, e.g.*, R.C. 5103.03(A) (rulemaking authority); 13 Ohio Admin. Code 5101:2-5-20(E) (requiring a medical statement that a foster caregiver and all members of the household “are free from any physical, emotional, or mental condition which would endanger children or seriously impair the ability of the household members to care for a foster child”); 13 Ohio Admin. Code 5101:2-5-20(J), (K) (foster home safety and fire inspection requirements); 13 Ohio Admin. Code 5101:2-7-12 (safety requirements for foster home); *cf., e.g.*, R.C. 5104.015 (smoking prohibitions for child care facilities (not foster homes), enacted prior to R.C. Chapter 3794); *see note 7, infra; see also* 13 Ohio Admin. Code 5101:2-5-13(A)(27) (requiring an agency that is certified to operate a residential facility to have a written policy on the use of alcohol, tobacco and tobacco products by staff and children); 13 Ohio Admin. Code 5101:2-9-06(E) (smoking requirements applicable to residential facilities).

In addition, a public children services agency, including a county department of job and family services, *see* R.C. 5153.02, is authorized, after consultation with its executive director, to “adopt rules of general application, not inconsistent with law or with the rules adopted by the director of job and family services.” R.C. 5153.10. Thus, a county department of job and family services may adopt rules that regulate tobacco use in foster homes, provided that the rules are not inconsistent with R.C. Chapter 3794 or other statutes or with rules adopted by the Ohio Department of Job and Family Services.

<sup>2</sup> The other entities that may serve as a public children services agency are a county children services board and a private or governmental entity designated under R.C. 307.981. R.C. 5153.02.

individual reimbursed for providing the children nonsecure care, supervision, or training *twenty-four hours a day*. “Foster home” does not include care provided for a child in the home of a person other than the child’s parent, guardian, or legal custodian while the parent, guardian, or legal custodian is temporarily away. Family foster homes and specialized foster homes are types of foster homes.<sup>3</sup> (Emphasis and footnote added.)

See also R.C. 5153.01(B)(1). Thus, a foster home is a private residence in which an individual receives reimbursement for making a full-time home for children who are separated from their parents, guardian, or legal custodian. R.C. 5103.02(D); see also R.C. 5101.141 (county payments to children eligible for foster care maintenance, and federal financial participation); 13 Ohio Admin. Code Chapter 5101:2-47 (“Title IV-E Foster Care Maintenance”).

The Ohio Department of Job and Family Services is responsible for certifying institutions and associations that receive and care for children or place children in private homes and is authorized to delegate by rule the duties of inspecting and approving foster homes. R.C. 5103.03(B)(1) and (2), (D), (G). Foster homes are certified by the Ohio Department of Job and Family Services under R.C. 5103.03 through compliance with requirements of statute and rule, including requirements for the training of foster caregivers and the participation of a recommending agency. See R.C. 5103.031-.0316; 13 Ohio Admin. Code 5101:2-1-01(VV) (“[c]ertified foster home’ means a foster home operated by persons holding a certificate in force, issued under section 5103.03 of the Revised Code”); 13 Ohio Admin. Code 5101:2-1-01(RRRRRRRRR) (a “[r]ecommending agency” is a public children services agency, private child placing agency, or private noncustodial agency that recommends that ODJFS take action under R.C. 5103.03 to issue, deny, renew, revoke, or deny renewal of a certificate regarding a foster home); 13 Ohio Admin. Code 5101:2-5-03, -13, -20 to -28; 13 Ohio Admin. Code Chapter 5101:2-7; see also R.C. 2151.011(B)(4) (for purposes of statutes governing juvenile courts “[c]ertified foster home” means a foster home as defined in R.C. 5103.02 and certified under R.C. 5103.03).

Except in limited circumstances, a certified foster home may not receive more than five foster children, and not more than a total of ten children, including the children of a foster caregiver, may reside in a foster home at any one time. R.C. 5103.0317; 13 Ohio Admin. Code 5101:2-5-32(C), (D). There cannot be more than one foster home in a household. 13 Ohio Admin. Code 5101:2-5-20(C)(3). A certified foster home is considered a residential use of property for purposes of local zoning. R.C. 5103.0318.

<sup>3</sup> A “[f]amily foster home” is a foster home “that is not a specialized foster home.” R.C. 5103.02(B). Specialized foster homes include medically fragile foster homes, which provide specialized medical services designed to meet the needs of children with intensive health care needs, and treatment foster homes, which care for children who are emotionally or behaviorally disturbed, chemically dependent, mentally retarded, developmentally disabled, or otherwise in need of special rehabilitative services. R.C. 5103.02(E), (G), (H).

Because your question refers to foster homes provided by the county department of job and family services, this opinion addresses only foster homes certified under R.C. 5103.03 by the Ohio Department of Job and Family Services. Similar types of arrangements may also be provided by other types of agencies, and children may be placed in facilities other than foster homes.<sup>4</sup> Whether the state smoking ban applies to living arrangements other than foster homes certified under R.C. 5103.03 must be considered in light of the statutes and rules applicable to each such living arrangement. The analysis set forth in this opinion may serve as a guide, but each situation must be considered separately.

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<sup>4</sup> For example, a “[g]roup home” (which is not a foster home) is defined as “a public or private facility which provides placement services for children and is licensed, regulated, approved, operated under the direction of, or otherwise *certified as a group home* by the department of job and family services, the department of education, a local board of education, the department of youth services, the department of mental health, a county board of mental health, the department of mental retardation and developmental disabilities, a county board of mental retardation and developmental disabilities, or a political subdivision.” 13 Ohio Admin. Code 5101:2-1-01(PPPPP) (emphasis added); *see also, e.g.*, 13 Ohio Admin. Code 5101:2-5-22(A) (an applicant cannot be certified as a foster home by the Ohio Department of Job and Family Services if the residence “is licensed, regulated, approved, or operated under the direction of, or otherwise certified as a facility to provide overnight substitute care for unrelated persons, by the department of youth services, the department of mental health, the department of alcohol and drug addiction services, a community alcohol, drug addiction and mental health board, the department of mental retardation and developmental disabilities, a county board of mental retardation and developmental disabilities, the department of health or a juvenile court”); *accord* 13 Ohio Admin. Code 5101:2-7-13; *see also* R.C. 5123.19 (residential facilities for persons with mental retardation or developmental disabilities). Further, R.C. 5153.161 provides that a public children services agency may provide care for abused, neglected, or dependent children “in the child’s own home, in the home of a relative, or in a certified foster home, any other home approved by the court, receiving home, school, hospital, convalescent home, or other public or private institution within or outside the county or state.” *See also, e.g.*, R.C. 2151.312, R.C. 2151.331, R.C. 2151.353, and R.C. 2151.354 (places where a child alleged or adjudicated to be unruly, neglected, abused, dependent, or a juvenile traffic offender may or may not be held or placed); Ohio R. Juv. P. 34(D) (permissible orders of disposition of an adjudicated abused, neglected, or dependent child, including among several alternatives placement in a certified foster home or approved foster care); 13 Ohio Admin. Code 5101:2-42-05 (selection of a placement setting, including the home of a suitable relative or nonrelative, a foster home, an independent living arrangement, a group home, a maternity home, an emergency shelter care facility, a children’s residential center, and a medical or educational facility).

With an understanding of the foster homes to which this opinion relates, we turn now to consideration of the applicability of the statewide smoking ban.

### **R.C. Chapter 3794, the Smokefree Workplace Act**

R.C. Chapter 3794, known as the Smokefree Workplace Act, was adopted by an initiative petition that was approved by a vote of the electorate on November 7, 2006, and became effective on December 7, 2006. The Act declares that “it is in the best interests of public health that smoking of tobacco products be prohibited in public places and places of employment and that there be a uniform statewide minimum standard to protect workers and the public from the health hazards associated with exposure to secondhand smoke from tobacco.” R.C. 3794.04. The Smokefree Workplace Act specifies that it “shall be liberally construed so as to further its purposes of protecting public health and the health of employees,” and that it “shall prevail over any less restrictive state or local laws or regulations.” R.C. 3794.04; *see note 1, supra*. The Director of Health is given the responsibility of promulgating rules to implement and enforce R.C. Chapter 3794. R.C. 3794.07; *see also* 6 Ohio Admin. Code Chapter 3701-52.

The Smokefree Workplace Act provides that, except for statutory exemptions, “[n]o proprietor of a public place<sup>5</sup> or place of employment<sup>6</sup> . . . shall permit smoking in the public place or place of employment” or in areas immediately adjacent to the entrances and exits. R.C. 3794.02(A) (footnotes added). The exemptions are set forth in R.C. 3794.03 and include limited numbers of smoking rooms in lodging facilities, certain family-owned and operated businesses, limited areas of nursing homes, retail tobacco stores, outdoor patios, and certain private clubs.

Of interest to our discussion is the exemption set forth in division (A) of R.C. 3794.03, as follows:

The following shall be *exempt* from the provisions of this chapter:

(A) *Private residences, except during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.* (Emphasis added.)

Private residences are thus exempted from the smoking ban, subject to specified exceptions.

As discussed above, a foster home is defined as a private residence. R.C.

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<sup>5</sup> A “[p]ublic place” is “an enclosed area to which the public is invited or in which the public is permitted and that is not a private residence.” R.C. 3794.01(B).

<sup>6</sup> A “[p]lace of employment” is “an enclosed area under the direct or indirect control of an employer that the employer’s employees use for work or any other purpose,” including such areas as offices, meeting rooms, storage areas, restrooms, stairways, garages, and vehicles. R.C. 3794.01(C).

5103.02(D). Therefore, under R.C. 3794.03(A) a foster home certified under R.C. 5103.03 is exempt from the provisions of the statewide smoking ban set forth in R.C. Chapter 3794 (the Smokefree Workplace Act) unless activities occurring within a particular foster home bring the home within the exceptions to the private residence exemption. Under R.C. 3794.03(A), the exceptions apply “during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.” To fully address your concerns, it is necessary to consider these various exceptions.

**Exception to Private Residence Exemption for Operation as a Child Care or Adult Care Facility for Compensation**

We consider first whether a foster home is removed from the private-residence exemption “during the hours of operation as a child care . . . facility for compensation” and conclude that this exception does not apply to a foster home by virtue of its status as a foster home because a “foster home” is not a “child care facility” as those terms are used in the Ohio Revised Code. The Ohio Revised Code contains numerous terms that describe various types of arrangements that may be provided for the care of children. As discussed above, a foster home is a private residence governed by R.C. Chapter 5103 in which a child is placed for care on a twenty-four hour per day basis. R.C. 5103.02(D). In contrast, the term “child care” is used in R.C. Chapter 5104 to describe arrangements in which children receive care for any part of the twenty-four-hour day in a place or residence other than their own homes. R.C. 5104.01(K). Under this definition, child care may be provided in family day-care homes, child day-care centers, or child day camps. R.C. 5104.01(B), (F), (J), (L), (O), (P), (FF), (MM), (RR), (SS); R.C. 5104.31; *see, e.g.*, R.C. 5104.011; R.C. 5104.02; R.C. 5104.08; R.C. 5104.11; R.C. 5104.22; *cf.* R.C. 5104.12 and R.C. 5104.31(A)(4) (an in-home aide may provide child care in a child’s own home).<sup>7</sup>

The placement of a child in a foster home provides each child with his or

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<sup>7</sup> R.C. 5104.015 was enacted prior to the adoption of R.C. Chapter 3794 to impose restrictions upon smoking in certain places where child care was provided, as follows:

(A) Except as otherwise provided in division (C) of this section, no child day-care center shall permit any person to smoke in any indoor or outdoor space that is part of the center.

The administrator of a child day-care center shall post in a conspicuous place at the main entrance of the center a notice stating that smoking is prohibited in any indoor or outdoor space that is part of the center, except under the conditions described in division (C) of this section.

(B) Except as otherwise provided in division (C) of this section, no type A family day-care home or certified type B family day-care home shall permit any

her own home and is not a part-time arrangement for care away from home in a child care facility. Thus, a foster home is not a child care facility and does not by virtue of its status as a foster home come within the exception for child care facilities.

It is possible, however, that a foster home may also be used as a child care facility and may thus be subject to the statewide smoking ban as provided in the exception for child care facilities contained in R.C. 3794.03(A). For example, 13 Ohio Admin. Code 5101:2-7-02(S) states that “[a]ny foster caregiver that is an approved or certified type B family day care home provider shall follow the requirements for approval or certification as a type B family day care home.” A type B

person to smoke in any indoor or outdoor space that is part of the home during the hours the home is in operation. Smoking may be permitted during hours other than the hours of operation if the administrator or authorized provider of the home has provided to a parent, custodian, or guardian of each child *receiving child care at the home* notice that smoking occurs or may occur at the home when it is not in operation.

The administrator of a type A family day-care home or authorized provider of a certified type B family day-care home shall post in a conspicuous place at the main entrance of the home a notice *specifying the hours the home is in operation and stating that smoking is prohibited during those hours* in any indoor or outdoor space that is part of the home, except under the conditions described in division (C) of this section.

(C) A child day-care center, type A family day-care home, or certified type B family home may allow persons to smoke at the center or home during its hours of operation if those persons cannot be seen smoking by the children being cared for and if they smoke in either of the following:

(1) An indoor area that is separately ventilated from the rest of the center or home;

(2) An outdoor area that is so far removed from the children being cared for that they cannot inhale any smoke.

(D) The director of job and family services, in consultation with the director of health, shall adopt rules in accordance with Chapter 119. of the Revised Code to implement the requirements of this section. These rules may prohibit smoking in a child day-care center, type A family day-care home, or certified type B family home if its design and structure do not allow persons to smoke under the conditions described in division (C) of this section or if repeated violations of division (A) or (B) of this section have occurred there. (Emphasis added.)

The inclusion of child care facilities within the statewide smoking ban during their hours of operation for compensation reflects a policy similar to the policy expressed in R.C. 5104.015. *Cf.* R.C. 3794.04 (the Smokefree Workplace Act prevails over any less restrictive state or local laws or regulations and does not permit smoking where it is otherwise restricted by other laws or regulations).

family day care home is included as a child care facility. *See* 13 Ohio Admin. Code 5101:2-1-01(E) (“Type B family day-care home,” “type B home,” and “home” means a permanent residence of the provider in which child day care or child day-care services are provided for one to six children at one time and in which no more than three children may be under two years of age at one time”). Under R.C. 3794.03(A) a foster home that is also a type B family day care home provider is subject to the statewide smoking ban during the hours of operation as a child care facility for compensation.

Like the exception for child care facilities, the exception in division (A) of R.C. 3794.03 for adult care facilities does not apply to foster homes by virtue of their status as foster homes. Foster homes are designed for the care of children and cannot be considered adult care facilities. *See, e.g.*, R.C. 3722.01(A)(9) (defining “[a]dult care facility” to include any facility “that provides accommodations and supervision to three to sixteen unrelated adults, at least three of whom are provided personal care services”); *cf.* 13 Ohio Admin. Code 5101:2-7-02(Q) (“[a] foster caregiver shall not operate a foster home as an adult boarding or rooming house”). However, if there is a situation in which a foster home is used as an adult care facility within the meaning of R.C. 3794.03(A), the foster home will come within the exception and will be subject to the smoking ban during the hours of operation as an adult care facility for compensation.

### **Exception to Private Residence Exemption for Operation of a Business**

The business exception to the private residence exemption applies under R.C. 3794.03(A) “during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.” It does not appear that the act of providing care for a child in a certified foster home constitutes the operation of a business for purposes of R.C. 3794.03(A).

A foster home is the private residence of a foster caregiver and is not ordinarily operated as a business by a person other than a person residing in the private residence.<sup>8</sup> Further, the care of foster children is the responsibility of foster caregivers and is not conducted as a business with outside employees.

Applicable rules state that “[a] foster caregiver shall be responsible for the

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<sup>8</sup> R.C. 5101.141(C)(3), which concerns payments to children eligible for foster care maintenance, states:

With respect to a child who is in a child-care institution, including any type of group home designed for the care of children or any privately operated program consisting of two or more certified foster homes operated by a common administrative unit, the foster care maintenance payments made by the county on behalf of the child shall include the reasonable cost of the administration and operation of the institution, group home, or program, as necessary to provide the items described in divisions (C)(1) and (2) of this section.

full-time care of a foster child.” 13 Ohio Admin. Code 5101:2-7-08(A). A foster caregiver is, however, permitted to work outside the home. *Id.* Alternative arrangements for the care of a foster child may be made with the approval of the recommending agency. 13 Ohio Admin. Code 5101:2-7-08(B); 13 Ohio Admin. Code 5101:2-47-17(B) (payments may be provided for employment-related child care for a child in a certified foster home). To the extent that child care services might be needed within the foster home, they would come within the exception for private residences not operating an adult or child care facility for compensation or a business. R.C. 3794.03(A); *see* 6 Ohio Admin. Code 3701-52-04(B) (“[i]n accordance with [R.C. 3794.03(A)], a private residence in which an individual is employed only on an intermittent basis is not subject to [R.C. Chapter 3794] or this chapter. This includes, but is not limited to, situations where individuals perform services for the owner of the residence or individuals residing in the residence such as those services performed by plumbers, electricians, remodelers, and housekeepers”).

Thus, it does not appear that a traditional foster home, by virtue of its status as a certified foster home, is a business for purposes of the exceptions in R.C. 3794.03(A). It is possible, however, that activities occurring within a particular foster home may constitute business activities that come within the business exceptions of R.C. 3794.03(A). For example, division (R) of 13 Ohio Admin. Code 5101:2-7-02 requires a foster caregiver to obtain written approval “prior to conducting any business, or allowing any business to operate, including babysitting services, in a foster home.” If the required approval is obtained and a business operates in the foster home, the home would then become subject to R.C. Chapter 3794 to the extent that the operation of the business so dictates.

It thus appears that a privately operated program consisting of two or more certified foster homes may be operated by a common administrative unit and be classified as a child care institution. Whether the common administration renders the foster homes part of a business operated by a person other than a person residing in the private residence under R.C. 3794.03(A) involves questions of fact that cannot be determined by means of this opinion. If the privately operated program is such a business, it comes within an exception to the smoking ban exemption and thus is subject to the statewide smoking ban. *See generally* R.C. 5101.141; 13 Ohio Admin. Code 5101:2-47-02 (foster care maintenance program); 13 Ohio Admin. Code 5101:2-47-17 (foster care maintenance payments and child care payments for public foster homes); 1987 Op. Att’y Gen. No. 87-082 (syllabus, paragraph 3) (“[w]hether a foster parent appointed and certified by a county children services board pursuant to R.C. 5153.16 and accompanying regulations is an employee of or an independent contractor for the county pursuant to R.C. 2744.01(B) in a particular case is a question of fact related to the contractual and regulatory relationship between the foster parent and the county children services board with respect to that particular case,” and the Attorney General cannot decide questions of fact by means of an opinion).

**Application of R.C. Chapter 3794 to Foster Homes Certified Under R.C. 5103.03**

As your letter of request notes, 6 Ohio Admin. Code 3701-52-04(D) declares that “[a] private residence or portion of a private residence that is licensed or certified by the state or federal government to provide overnight accommodations and supervision or personal care services to unrelated individuals is not subject to Chapter 3794. of the Revised Code or this chapter.” This provision indicates that foster homes certified under R.C. 5103.03 to provide full-time accommodations and supervision to children are not subject to the statewide smoking ban set forth in R.C. Chapter 3794. The definition of “[p]rivate residence” applicable to this provision begins “except as otherwise provided by division (A) of section 3794.03 of the Revised Code.” 6 Ohio Admin. Code 3701-52-01(O).<sup>9</sup> The definition thus incorporates R.C. 3794.03(A)’s private residence exceptions and supports the conclusion that the general exemption from the statewide smoking ban does not apply to a foster home “during the hours of operation as a child care or adult care facility for compensation, during the hours of operation as a business by a person other than a person residing in the private residence, or during the hours of operation as a business, when employees of the business, who are not residents of the private residence or are not related to the owner, are present.”

Under the analysis set forth above, a foster home certified under R.C. 5103.03 is a private residence that, under R.C. 3794.03(A), is exempt from the provisions of the statewide smoking ban set forth in R.C. Chapter 3794 unless activities occurring within a particular foster home bring the home within the exceptions to the private residence exemption. Accordingly, a foster home certified under R.C. 5103.03 is not by virtue of its status as a foster home made subject to R.C. Chapter 3794, the Smokefree Workplace Act. The Act will apply, however, if the foster home is also used for a purpose that comes within the exceptions set forth in R.C. 3794.03(A). In particular, a foster home that is also a type B family day care home provider or an operator of another type of child care is subject to the statewide smoking ban during the hours of operation as a child care facility for compensation. A foster home that is operated as an adult care facility for compensation, as a business by a person other than a person residing in the private residence, or as a business with employees who are not residents of the private residence or are not related to the owner, is subject to the statewide smoking ban in the circumstances set forth in R.C. 3794.03(A).

**Conclusions**

For the reasons discussed above, it is my opinion and you are advised that a foster home certified under R.C. 5103.03 is not by virtue of its status as a foster

<sup>9</sup> The definition set forth in 6 Ohio Admin. Code 3701-52-01(O) states in full:

(O) “Private residence” means, except as otherwise provided by division (A) of section 3794.03 of the Revised Code, a dwelling or area of a dwelling where there is a reasonable expectation of privacy and used as an individual’s residence, including employer-provided housing.

home made subject to R.C. Chapter 3794, the Smokefree Workplace Act. Rather, a foster home certified under R.C. 5103.03 is a private residence that, under R.C. 3794.03(A), is exempt from the provisions of the statewide smoking ban set forth in R.C. Chapter 3794 unless activities occurring within a particular foster home bring the home within the exceptions to the private residence exemption.