

**OPINION NO. 87-073****Syllabus:**

1. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "employees," as defined in R.C. 124.01(F), for purposes of R.C. Chapter 124.
2. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "public employees," as defined in R.C. 145.01(A), for purposes of R.C. Chapter 145.
3. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "employees," as defined in R.C. 4123.01(A)(1), for purposes of R.C. Chapter 4123.
4. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not in the "employment," as defined in R.C. 4141.01(B)(1), of the county department of human services for purposes of R.C. Chapter 4141.
5. Certified type B family day-care home providers and in-home aides with whom a county department

of human services contracts for child day-care services are not "employees" of the county department of human services for purposes of R.C. 5747.06.

**To: Patricia Barry, Director, Department of Human Services, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, October 15, 1987**

You have requested my opinion regarding the employment status of certified type B family day-care home providers and in-home aides, as defined in R.C. 5104.01(F) and (P) and R.C. 5104.01(U) respectively, who provide federally funded day-care services pursuant to contracts or vendor agreements with a county department of human services. R.C. 5107.26(A) states that the Department of Human Services shall "[a]uthorize county departments of human services to purchase child day-care services from funds made available by general assembly appropriation, federal aid that includes but is not limited to funds allocated pursuant to [R.C. 5101.462], or other means." In turn, R.C. 5107.28(D) provides that a county department of human services shall pay to a child day-care center, type A family day-care home, certified type B family day-care home, or in-home aide for child day-care services, "an amount equal to the amount customarily charged [thereby]...when the full fee is paid except that the amount of assistance shall not exceed the maximum rate established by the state department of human services." See also R.C. 5107.26(B) (the Department of Human Services shall promulgate rules as necessary to carry out R.C. 5107.25-.30); [1986-1987 Monthly Record] Ohio Admin. Code 5101:2-16-01 to 5101:2-16-05 at 289 (rules pertaining to the purchase of publicly funded day-care services by county departments of human services). R.C. 5107.25(D) states that the terms "certified type B family day-care home," and "in-home aide," inter alia, have the same meanings as defined in R.C. 5104.01. As used in R.C. Chapter 5104, R.C. 5104.01 defines a "[c]ertified type B family day-care home" and a "certified type B home" as a type B family day-care home "that is certified by the director of the county department of human services pursuant to [R.C. 5104.11] to receive public funds for providing child day-care services pursuant to [R.C. 5107.25-.30] and rules promulgated pursuant [thereto]," R.C. 5104.01(F), and further defines a "[t]ype B family day-care home" and a "type B home" as 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," R.C. 5104.01(E). R.C. 5104.01 also defines an "[i]n-home aide," as used in R.C. Chapter 5104, as a "person certified by a county director of human services pursuant to [R.C. 5104.12] to receive public funds for providing child day-care services to a child in a child's own home pursuant to [R.C. 5107.25-.30] and rules promulgated pursuant to [R.C. 5107.25-.30]." See R.C. 5104.01(G) and (H) (the Director of Human Services shall promulgate rules governing the certification of type B family day-care homes and in-home aides respectively); R.C. 5104.11 (requirements for certification of type B homes for publicly funded services; inspections thereof); R.C. 5104.12 (requirements for certification of in-home aides to receive public funds; inspections).

According to your letter, many county departments of human services enter into contracts and vendor agreements, pursuant to the authority conferred upon them by R.C. 5107.26 and R.C.

5107.28, with certified type B family day-care home providers and in-home aides for a variety of child day-care services. With respect to such arrangements, you specifically wish to know whether those certified type B family day-care home providers and in-home aides are employees of a county department of human services for purposes of R.C. Chapters 124 (civil service laws), 145 (public employees retirement system), 4123 (workers' compensation), 4141 (unemployment compensation; employment services), and R.C. 5747.06 (state income tax withholding).

Resolution of your questions requires that I examine the foregoing contractual arrangements in the light of the pertinent definitional provisions that appear in the preceding chapters of the Revised Code, and long-established common law principles that govern in determining whether, in a particular situation, a genuine employer-employee relationship exists between two contracting parties, or, rather, whether a particular individual is simply an independent contractor. As will be evident from the discussion that follows, both areas of inquiry conjoin in providing an answer to several of your questions.

I commence my analysis with R.C. Chapter 124, which sets forth a comprehensive scheme addressing, inter alia, the benefits and privileges to which certain governmental employees in the service of the state and its political subdivisions are entitled. Such benefits and privileges are extended to only those persons who are described unambiguously as falling within the scope of R.C. Chapter 124. See generally 1985 Op. Att'y Gen. No. 85-012 at 2-46. In particular, R.C. 124.01 enumerates the types of governmental service and the persons performing such service that are encompassed by the terms of R.C. Chapter 124, stating, in part, as follows:

As used in Chapter 124. of the Revised Code:

(A) "Civil service" includes all offices and positions of trust or employment in the service of the state and the counties, cities, city health districts, general health districts, and city school districts thereof.

(B) "State service" includes all such offices and positions in the service of the state, the counties, and general health districts thereof, except the cities, city health districts, and city school districts.

....  
(F) "Employee" means any person holding a position subject to appointment, removal, promotion, or reduction by an appointing officer. (Emphasis added.)

Thus, as relevant herein, the coverage of R.C. Chapter 124 extends to any "employee," as defined in R.C. 124.01(F), who holds a position of employment in the service of a county, R.C. 124.01(A).

I conclude that the certified type B family day-care home providers and in-home aides described in your letter are not "employees," as defined in R.C. 124.01(F). Such individuals, therefore, do not fall within the purview of R.C. Chapter 124. R.C. 124.01(F) defines "[e]mployee," as used in R.C. Chapter 124, as any person holding a position subject to "appointment, removal, promotion, or reduction by an appointing officer."

The certified type B family day-care home providers and in-home aides described in your letter do not hold positions subject to appointment, removal, promotion, or reduction by an appointing officer. Rather, as you state in your letter, such providers and in-home aides furnish a variety of federally funded child day-care services to eligible recipients thereof pursuant to contracts with the county department of human services. Such individuals, therefore, are not "employees," as defined in R.C. 124.01(F), and, accordingly, are not included within the scope of R.C. Chapter 124. 1976 Op. Att'y Gen. No. 76-040 at 2-135 (concluding that persons rendering services to the Ohio Environmental Protection Agency pursuant to personal services contracts are not entitled to the benefits of R.C. Chapter 124 because such individuals are not appointed, removed, promoted, or reduced by an appointing officer).

R.C. Chapter 145 establishes the Public Employees Retirement System (PERS) and addresses the rights, duties, and obligations of those employers and public employees who are covered thereby. In particular, R.C. 145.01 defines those persons who are public employees and those entities that are employers for purposes of PERS, stating, in pertinent part, as follows:

As used in Chapter 145. of the Revised Code:

(A) "Public employee" means:

(1) Any person holding an office, not elective, under...any county,...or...authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division, or employed and paid in whole or in part by...any of the authorities named in this division in any capacity not covered by section 3307.01 [State Teachers Retirement System] or 3309.01 [School Employees Retirement System] of the Revised Code.

....  
 (D) "Employer" means...any county,...or...authority, or administrative body as the same are, or have been, created by action of the general assembly or by the legislative authority of any of the units of local government named in this division not covered by section 3307.01 [State Teachers Retirement System] or 3309.01 [School Employees Retirement System] of the Revised Code. In addition, "employer" means the employer of employees described in division (A) of this section. (Emphasis added.)

The definitions set forth in R.C. 145.01(A) and (D) are quite broad, and have been interpreted as such. State ex rel. Boda v. Brown, 157 Ohio St. 368, 105 N.E.2d 643 (1956); 1986 Op. Att'y Gen. No. 86-047; 1985 Op. Att'y Gen. No. 85-012; Op. No. 76-040. They include, as an employer, any county authority or administrative body created by the General Assembly, and, as an employee, any person employed and paid in whole or in part by such county authority or administrative body. A county department of human services is, pursuant to R.C. 329.01, established by the General Assembly as a county authority or administrative body. A county department of human services is, therefore, an "employer" for purposes of R.C. Chapter 145, and a person who is employed and paid in whole or in part by a county department of human services is a "public employee" for the purposes of that chapter.

The foregoing definitions, in addition to identifying which entities and persons may be employers and public employees for purposes of R.C. Chapter 145, presume that an actual employer-employee relationship, as defined by traditional common law principles, exists between the two parties in question. See 1973 Op. Att'y Gen. No. 73-051 at 2-194 ("[t]hese statutory definitions [including R.C. 145.01(A)] of a 'public employee' adopt the common law distinction between an employee and an independent contractor"). See also Op. No. 76-040 (same); 1975 Op. Att'y Gen. No. 75-075. In this regard, the factor most often considered as controlling in determining whether a person who renders service to another is an employee thereof, or an independent contractor, is whether the purported employer retains control of, or the right to control, the mode and manner in which the services contracted for shall be performed. On this point, the following statement of the Ohio Supreme Court in Cuncell v. Douglas, 163 Ohio St. 292, 295, 126 N.E.2d 597, 599 (1955)(quoting from Miller v. Metropolitan Life Insurance Co., 134 Ohio St. 289, 291, 16 N.E.2d 447, 448 (1938)) is often cited:

"The relation of principal and agent or master and servant is distinguished from the relation of employer and independent contractor by the following test: Did the employer retain control, or the right to control, the mode and manner of doing the work contracted for? If he did, the relation is that of principal and agent or master and servant. If he did not but is interested merely in the ultimate result to be accomplished, the relation is that of employer and independent contractor."

See also Richardson v. Mehan, 69 Ohio St. 2d 52, 55, 430 N.E.2d 927, 929 (1982)(citing with approval Miller v. Metropolitan Life Insurance Co. "as setting forth the basic legal principles for determining the employer-employee relationship"); Industrial Commission of Ohio v. Laird, 126 Ohio St. 617, 186 N.E. 718 (1933)(syllabus, paragraph four)("[t]he vital test, in determining whether a person employed to do a certain work is an independent contractor or a mere servant, is the right of control over the work reserved by the employer"); Newcomb v. Dredge, 105 Ohio App. 417, 152 N.E.2d 801 (Clark County 1957)(syllabus, paragraph one)("[t]he right of control is the distinguishing feature between an employer-independent contractor relationship and a master-servant relationship; and where such right relates to the result and not to the details of the work to be performed the relation of employer and independent contractor exists"); 1980 Op. Att'y Gen. No. 80-098 at 2-394 ("[t]he foremost characteristic of an independent contractor is the right to control the manner in which the work is performed. Generally, an independent contractor controls the manner in which the work is performed while an employee is directed to perform in a particular way by his employer"); 1979 Op. Att'y Gen. No. 79-015 at 2-48; Op. No. 76-040 at 2-138; Op. No. 75-075 at 2-298.

Thus, the question whether certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are "public employees," as defined in R.C. 145.01(A), depends, in this instance, upon whether such individuals maintain employer-employee relationships with the county department of human services, or whether they render their child day-care services as independent contractors. Resolution of this

question, in turn, requires an examination of the extent to which a county department of human services retains the right, if any, to control the mode and manner in which those particular services are performed.

The degree to which one contracting party is able to control the mode and manner in which particular contractual obligations or services shall be performed by another contracting party is essentially a question of fact that can only be determined on a case-by-case basis, taking into account, in particular, specific contractual terms that may be addressed to this issue. Op. No. 80-098 at 2-394; Op. No. 76-040 (syllabus, paragraph three). Insofar as contractual arrangements might vary widely among county departments of human services and the certified type B family day-care home providers and in-home aides from whom the counties purchase child day-care services, I would ordinarily be unable to make a conclusive determination whether a county department of human services retains control of the mode and manner in which those services are rendered. In this instance, however, you have provided me with two model vendor agreements drafted by the Department of Human Services in conformity with the requirements appearing in [1986-1987 Monthly Record] Ohio Admin. Code 5101:2-14-04 at 260 and 5101:2-15-04 at 276 (describing, in part, the issuance of vendor agreements by the county director of human services to certified child day-care providers and in-home aides respectively). The Department supplies these model vendor agreements to all those counties that purchase federally funded child day-care services from certified type B family day-care home providers and in-home aides. Although use of these particular model agreements is not mandatory, you have indicated that most of the counties do, in fact, use these model agreements in purchasing such services. The terms of these agreements strongly suggest that a county department of human services does not retain control of the mode and manner in which certified type B family day-care home providers and in-home aides perform their child day-care functions.

The agreements provide that the county will furnish reimbursement for child day-care services rendered by an authorized provider operating under authority of a currently valid certificate issued by the county, for the hours approved by the county, and to a client determined to be eligible for such services. The agreements also contain language authorizing the payment of a fixed hourly or daily rate to the provider or in-home aide for each child receiving day-care services, and require the provider and in-home aide to submit an invoice to the county, for the services provided, on a weekly, biweekly, or monthly basis. Thereafter, the county reviews the invoice, and, if proper, authorizes reimbursement for those services.

In addition to the foregoing, the model agreements contain a number of important recitals on the part of the individual provider and in-home aide. As set forth in the agreement pertaining to services furnished by a certified type B child day-care home provider, those recitals read as follows:

I understand that in addition to the children covered by this agreement, I may provide child day care in my home for children who are not covered by this agreement. I am considered self-employed; therefore, I am not an employee of the county agency.

As a self-employed person, I am responsible for payment of any local, state, or federal tax obligations on income earned through this agreement as well as for other requirements of self-employment which include, but are not limited to: reporting of income to Internal Revenue Service; payment of social security taxes; purchasing insurance, if desired; establishing a retirement plan and other self-employment benefits, if desired. I understand the use or disclosure of any information concerning qualified recipients for any purpose not directly connected to delivery of purchased services is prohibited except upon written consent of the recipients or their responsible parent or guardian.

I agree that in the performance of this agreement there shall be no discrimination against any client or child because of race, color, sex, religion, national origin, handicap, age, or ancestry. I will fully comply with all appropriate federal and state laws regarding discrimination. In the event that state and federal funds are withdrawn or no longer available to the county agency, this agreement will be terminated. The effective date of such termination will be the date state and federal funds are withdrawn or no longer available, or a date otherwise stipulated by the county agency. I agree to hold the county agency, board of county commissioners of the county in which the county agency is located, and Ohio Department of Human Services (ODHS) harmless against all liability, loss, damage, or related expenses incurred through the provision of services under this agreement.<sup>1</sup> (Footnote added.)

Finally, the model agreements include a recital that the provider and in-home aide must notify the county immediately if any of the conditions set forth by the agreement change, and that the provider and in-home aide agree to maintain compliance with R.C. Chapter 5104 and all pertinent regulations promulgated thereunder; failure to do so results in immediate termination of the agreement. Further, such agreements may be terminated by the county or the provider and in-home aide upon a fifteen day notice. A member of your staff has also informed me that a county department of human services, in implementing such agreements, does not designate the particular certified provider or in-home aide from whom a parent or guardian receives child day-care services. Rather, the parent or guardian may select whichever certified provider or in-home aide he desires.

It is apparent from an examination of the terms of these model agreements that the relationship they establish between a county department of human services and a certified type B day-care home provider or in-home aide is not one of employer-employee. The model agreements neither address the mode and manner in which the child day-care services shall be performed by a provider or in-home aide, nor do they in any respect confer upon a county department of human services the

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<sup>1</sup> The model agreement that applies to in-home aides contains identical recitals, omitting, however, the statements about the self-employed status of the certified day-care services provider.

right to control, or otherwise direct, the manner in which the provider or in-home aide shall render such services. Thus, one may properly assume that the manner in which those services shall be performed is a matter left to the discretion of the individual provider or in-home aide, which shall be exercised, however, in accordance with the terms of the statutory scheme appearing in R.C. Chapter 5104 and the regulations promulgated thereunder by the Department of Human Services. In this regard, therefore, the certified type B day-care home provider and in-home aide perform their day-care services as independent contractors, and not as employees of the county department of human services. Accordingly, insofar as an employer-employee relationship does not exist between the county department of human services and the certified type B family day-care home providers and in-home aides, such persons are not "public employees," as defined in R.C. 145.01(A), for purposes of R.C. Chapter 145.

The preceding analysis also provides an answer to your remaining questions regarding the employment status of certified type B family day-care home providers and in-home aides for purposes of workers' compensation, unemployment compensation, and state income tax withholding. R.C. Chapter 4123 establishes a comprehensive scheme for compensating certain workers who sustain injuries or diseases in the course of their employment. In this regard, R.C. 4123.54 states, in pertinent part, that,

[e]very employee, who is injured or who contracts an occupational disease, ... or dies as the result of an occupational disease contracted in the course of employment, ... is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94 of the Revised Code (emphasis added).

R.C. 4123.01(A)(1) defines "[e]mployee," as used in R.C. Chapter 4123, to include "[e]very person in the service of ... any county, ... under any appointment or contract of hire, express or implied, oral or written." See also R.C. 4123.01(B)(1) ("[e]mployer," as used in R.C. Chapter 4123, includes "each county").

R.C. Chapter 4141, on the other hand, addresses the payment of benefits to certain eligible individuals who become unemployed. R.C. 4141.29 states, in part, that, "[e]ach eligible individual shall receive benefits as compensation for loss of remuneration due to involuntary total or partial unemployment in the amounts and subject to the conditions stipulated in [R.C. 4141.01-.46]." See R.C. 4141.29(A)-(I); R.C. 4141.291 (describing the eligibility requirements and qualifying conditions for receipt of unemployment compensation). R.C. 4141.01 further sets forth, in pertinent part, the following definitions of "[e]mployer" and "[e]mployment," as used in R.C. Chapter 4141:

(A) "Employer" means the state, its instrumentalities, its political subdivisions and their instrumentalities, and any individual or type of



organization including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the successor thereof, or the legal representative of a deceased person who subsequent to December 31, 1971, or in the case of political subdivisions or their instrumentalities, subsequent to December 31, 1973:

(a) Had in employment at least one individual.

....  
 (f) In the case of the state, its instrumentalities, its political subdivisions, and their instrumentalities, had in employment, as defined in division (B)(2)(a) of this section, at least one individual;

....  
 (B)(1) "Employment" means:

(a) Service performed for wages under any contract of hire, written or oral, express or implied, including service performed in interstate commerce and service performed by an officer of a corporation, without regard to whether such service is executive, managerial, or manual in nature, and without regard to whether such officer is a stockholder or a member of the board of directors of the corporation;

(b) Services performed by an individual for remuneration unless it is shown to the satisfaction of the administrator that such individual:

(i) Has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact;

(ii) That such service is outside the usual course of the business for which service is performed; and

(iii) That such individual is customarily engaged in an independently established trade, occupation, profession, or business. (Emphasis added.)

Finally, R.C. Chapter 5747 imposes an annual tax on the income of "every individual and every estate residing in or earning or receiving income in this state," R.C. 5747.02(A). R.C. 5747.06 imposes a concomitant obligation on an employer to deduct and withhold from his employees' compensation the amount of such tax they shall owe to the state:

(A) Every employer, including the state and its political subdivisions, maintaining an office or transacting business within this state and making payment of any compensation to an employee who is a taxpayer shall deduct and withhold from such compensation for each payroll period a tax computed in such manner as to result, as far as practicable, in withholding from the employee's compensation during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this chapter and Chapter 5748. of the Revised Code with respect to the amount of such compensation included in his adjusted gross income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rule of the tax commissioner. (Emphasis added.)

See R.C. 5747.07 (describing the procedures for payment to the

state of the amount of tax deducted and withheld by each employer).

Although R.C. Chapter 5747 provides no definition of the terms "employer" and "employee," R.C. 5747.01 does state that, "[e]xcept as otherwise expressly provided or clearly appearing from the context, any term used in [R.C. Chapter 5747] has the same meaning as when used in a comparable context in the Internal Revenue Code, and all other statutes of the United States relating to federal income taxes." The deduction and withholding of federal income tax is provided for in 26 U.S.C. §§3401-3406 (collection of income tax at source). For such purposes, 26 U.S.C. §3401 defines "[e]mployee" and "[e]mployer" as follows:

(c) Employee. For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

(d) Employer. For purposes of this chapter, the term "employer" means the person for whom an individual performs or performed any service, of whatever nature, as the employee of such person, except that--

(1) if the person for whom the individual performs or performed the services does not have control of the payment of the wages for such services, the term "employer" (except for purposes of subsection (a)) means the person having control of the payment of such wages, and

(2) in the case of a person paying wages on behalf of a nonresident alien individual, foreign partnership, or foreign corporation, not engaged in trade or business within the United States, the term "employer" (except for purposes of subsection (a)) means such person.

As in the case of the definitions of "public employee" and "employer" appearing in R.C. 145.01(A) and (D), the foregoing statutory provisions have been interpreted as describing, in their application, traditional employer-employee relationships, as defined by the common law right of control principle. Nuttelman v. Vossberg, 753 F. 2d 712 (8th Cir. 1985)(syllabus, paragraph two); Marvel v. United States, 719 F. 2d 1507, 1514 (10th Cir. 1983)("[a]n individual is an employee for federal employment tax purposes if he has the status of employee under the usual common law rules applicable in determining the employer-employee relationship," and, generally, such relationship exists "when the person for whom the services are performed has the right to direct and control the method and manner in which the work shall be done and the result to be accomplished"); Lanigan Storage & Van Co. v. United States, 389 F. 2d 337, 338 (6th Cir. 1968)(same); McGuire v. United States, 349 F.2d 644, 646, (9th Cir. 1965)(same); Richardson v. Mehan; Behner v. Industrial Commission of Ohio, 154 Ohio St. 433, 96 N.E.2d 403 (1951)(syllabus, paragraph one)(for purposes of workers' compensation, "[w]hether an individual performing service for another does so as an independent contractor or as an employee is ordinarily a question of fact, the deciding factor being in whom is vested the right of control or superintendence as to the details of the work"); Commercial

Motor Freight, Inc. v. Ebright, 143 Ohio St. 127, 54 N.E.2d 297 (1944)(an independent contractor is not covered by the state unemployment compensation act); Gillum v. Industrial Commission of Ohio, 141 Ohio St. 373, 48 N.E.2d 234 (1943)(syllabus, paragraphs one and two); 1982 Op. Att'y Gen. No. 82-041 at 2-117 ("[w]ithout an employer/employee relationship, the provisions of the Workers' Compensation Act, including R.C. 4123.38 which requires contribution to the fund, do not apply"); 1982 Op. Att'y Gen. No. 82-040 at 2-115 (same); 1982 Op. Att'y Gen. No. 82-007 at 2-23 ("one of the fundamental elements necessary for the compensability of claims for workers' compensation benefits is the existence of the relation of employer and employee"); Op. No. 76-040. Thus, whether certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are subject to the workers' compensation provisions of R.C. Chapter 4123, the unemployment compensation provisions of R.C. Chapter 4141, and the state income tax withholding provisions of R.C. 5747.06 again depends upon whether such individuals maintain with the county department of human services employer-employee relationships, as defined by the common law right of control principle.

I have already concluded, however, that, for purposes of R.C. Chapter 145, a county department of human services does not, as a matter of contract, retain control of the mode and manner in which certified type B family day-care home providers and in-home aides perform their child day-care services. Similarly, it follows that a county department of human services does not retain control of the mode and manner in which those providers and in-home aides perform their child day-care services for purposes of R.C. Chapters 4123, 4141, and 5747. This means, therefore, that certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for day-care services are not "employees," as defined in R.C. 4123.01(A)(1), for purposes of R.C. Chapter 4123, or in the "employment," as defined in R.C. 4141.01(B)(1), of the county department of human services for purposes of R.C. Chapter 4141. Additionally, such individuals are not "employees" of the county department of human services for purposes of R.C. 5747.06.

Based upon the foregoing it is my opinion, and you are advised that:

1. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "employees," as defined in R.C. 124.01(F), for purposes of R.C. Chapter 124.
2. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "public employees," as defined in R.C. 145.01(A), for purposes of R.C. Chapter 145.
3. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "employees," as defined in R.C. 4123.01(A)(1), for purposes of R.C. Chapter 4123.

4. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not in the "employment," as defined in R.C. 4141.01(B)(1), of the county department of human services for purposes of R.C. Chapter 4141.
5. Certified type B family day-care home providers and in-home aides with whom a county department of human services contracts for child day-care services are not "employees" of the county department of human services for purposes of R.C. 5747.06.