

## OPINION NO. 85-091

## Syllabus:

For purposes of the Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984), the first and second regular sessions of the Ohio General Assembly, as defined in R.C. 101.01 pursuant to Ohio Const. art. II, §8, constitute a single legislative session.

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To: Patricia K. Barry, Director, Department of Human Services, Columbus, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985

You have informed me that the Ohio Department of Human Services may be subject to the loss of federal funds unless state legislation is enacted in 1985 to comply with the Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984). You have, however, noted that delayed implementation is permitted in certain circumstances pursuant to Pub. L. 98-378, §3(g)(3), 98 Stat. 1311, which states:

In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature. (Emphasis added.)

You have indicated that the United States Department of Health and Human Services has been unable to determine whether a session of the Ohio General Assembly runs for one year or two years for the purposes of Pub. L. No. 98-378, and you have asked for my opinion on this question.

R.C. 101.01, which deals with the organization of the General Assembly, states, in part:

(A) The first regular session of each general assembly shall convene on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year. The second regular session of each general assembly shall be in a continuum of the first

regular session. At the second regular session, the general assembly shall consider matters held over from the first regular session, revenue and appropriation bills, and other measures agreed to by a majority of the members elected to either house or recommended by the governor in a public proclamation or a message to the general assembly. (Emphasis added.)

This provision sets forth the starting date of the first regular session of each General Assembly and provides that the second regular session shall start on the same date of the following year. From this language, it appears that each regular session of the General Assembly is one year long. Since Pub. L. No. 98-378 expressly states that its language concerning "the end of the first session of the State legislature which ends on or after October 1, 1985" includes a regular session of a state legislature, it might be argued that the appropriate session of the General Assembly will end on or before the first Monday of January, 1986, when the second regular session is to convene. I believe, however, that a closer examination of the question leads to the conclusion that a two-year session of the General Assembly should be recognized for purposes of Pub. L. No. 98-378.

The provisions of Pub. L. No. 98-378 which are quoted above do not refer to the beginning of any session of a state legislature. Rather, their reference is to "the end of the first session of the State legislature which ends on or after October 1, 1985." While it is true, pursuant to R.C. 101.01, that the second regular session of the General Assembly will convene on the first Monday of January, 1986, it does not follow that, for purposes of Pub. L. No. 98-378, the session which was in progress on October 1, 1985, will end on or before that date. Rather, R.C. 101.01 states: "The second regular session of each general assembly shall be...a continuum of the first regular session." "Continuum" is defined as "a continuous whole...; thing whose parts cannot be separated or separately discerned." Webster's New World Dictionary 308 (2d college ed. 1978). Thus, while the second regular session is in progress, the session of the General Assembly which began on the first Monday of January, 1985, will not be considered to have terminated; rather, it will continue.

This somewhat confusing situation results from the fact that the word "session" has more than one meaning under Ohio law. See generally 1973 Op. Att'y Gen. No. 73-093. Ohio Const. art. II, §8 states, in part: "Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year." In State ex rel. Horner v. Anderson, 41 Ohio St. 2d 166, 169, 324 N.E.2d 572, 574 (1975), the Ohio Supreme Court examined the intent of art. II, §8 and concluded that its purpose was "to establish a single continuous session divided into two mandated chronological 'regular sessions'." State ex rel. Horner v. Anderson involved the question whether, under Ohio Const. art. III, §21, "an appointment to state office submitted to the Senate during its first regular session is consented to as a matter of law if consent is not refused prior to the first day of the second regular session of the Senate." 41 Ohio St. 2d at 167, 324 N.E.2d at 573. Ohio Const. art. III, §21, states in relevant part:

If an appointment is submitted during a session of the General Assembly, it shall be acted upon by the Senate during such session of the General Assembly, except that if such session of the General Assembly adjourns sine die within ten days after such submission without acting upon such appointment, it may be acted upon at the next session of the General Assembly.

If an appointment is made after the Senate has adjourned sine die, it shall be submitted to the Senate during the next session of the General Assembly.

In State ex rel. Horner v. Anderson, the Ohio Supreme Court considered the history and purposes of Ohio Const. art. II, §8 and art. III, §21 and concluded that, for purposes of Ohio Const. art. III, §21, a session of the General Assembly includes both the first and second regular sessions of the General Assembly, as those regular sessions are defined by art. II, §8. The court based this conclusion on the fact that, when art. III, §21 was adopted, the Ohio Constitution provided that the General Assembly was to meet biennially on the first Monday of January. See former Ohio Const. art. II, §25 (repealed May 8, 1973). At that time, a session lasted from that first meeting until adjournment sine die, which could occur at any time within the two-year period. The purpose of the adoption of art. III, §21 was, in the words of the court: "to prevent indefinite periods of uncertainty in the status of appointments and to ensure that decisions on appointments would be made by a single body of senators." 41 Ohio St. 2d at 168, 324 N.E.2d at 574.

As a practical matter, however, the General Assembly had developed the practice of continuing its biennial meeting into the second year by adjourning to a named date. Art. II, §8, enacted on May 8, 1973, recognized this fact by expressly providing for two regular sessions during each term of the General Assembly. The court, in the Horner case, examined the history of art. II, §8 and concluded that art. II, §8 does not mandate two distinct legislative sessions. Based upon such conclusion, the court upheld the validity of R.C. 3.03<sup>1</sup> and R.C. 101.01, which permit the carry-over of appointments from the first regular session of the General Assembly to the second regular session. The court stated:

In the instant case, the purpose of the framers of Section 8 of Article II is clear--to provide a definite starting date for the second session of the General Assembly, while allowing the General Assembly to establish its own procedural rules for its term of

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<sup>1</sup> R.C. 3.03 states, in part:

A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the adjournment sine die of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.

office. We do not find any conflict with Section 21 of Article III, in which the period of a session encompasses both the first and second regular sessions of the General Assembly, as these were later established by Section 8 of Article II.

41 Ohio St. 2d at 172, 324 N.E.2d at 576.

It has, thus, been established by the Ohio Supreme Court that, pursuant to R.C. 101.01, the first and second regular sessions of each General Assembly, established under R.C. 101.01 and Ohio Const. art. II, §8, constitute a single session of the General Assembly as that term is used in Ohio Const. art. III, §21. While Pub. L. No. 98-378 uses the term "regular...session," I do not believe that it uses that term in the sense in which that term is used in R.C. 101.01 and Ohio Const. art. II, §8. Rather, the intent of Pub. L. No. 98-378 is to grant a state legislative body the opportunity to take action necessary for conformity with the federal law until such time as the body's legislative session terminates and its ability to act on matters before it ceases. The first regular session of the Ohio General Assembly continues with the second regular session. Matters are held over from the first regular session to the second regular session. See R.C. 101.01. The first regular session may, therefore, not be considered terminated until the second regular session ends. I conclude, as a result, that, for purposes of Pub. L. No. 98-378, the first and second regular sessions of the Ohio General Assembly, as defined in R.C. 101.01 pursuant to Ohio Const. art. II, §8, constitute a single legislative session. This conclusion permits the session of the General Assembly which was in progress on October 1, 1985, to carry the question of conformity with Pub. L. No. 98-378 over to its second regular session, even as it carries over other matters of unresolved business.

It is, therefore, my opinion and you are hereby advised, that, for purposes of the Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984), the first and second regular sessions of the Ohio General Assembly, as defined in R.C. 101.01 pursuant to Ohio Const. art. II, §8, constitute a single legislative session.