

OPINION NO. 87-100

Syllabus:

1. Pursuant to R.C. 505.391, when a building is located in an area used primarily for nonresidential, commercial purposes, such building falls within the definition of a

"commercial establishment." It is not necessary that the building itself be used primarily for nonresidential, commercial purposes for the building to qualify as a "commercial establishment."

2. An organization operates for a "commercial purpose," as the term is used in R.C. 505.391, if such organization operates with intent to profit.
3. Pursuant to R.C. 505.391, after responding to a false alarm from an automatic fire alarm system at a commercial establishment, a board of township trustees must give written notice by certified mail only once before assessing charges upon owners and lessees of commercial establishments for false fire alarms at such establishments.
4. Once a board of township trustees assesses a charge for a false fire alarm pursuant to R.C. 505.391, the board must give written notice by certified mail to the owner of the commercial establishment that such charge has been assessed.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1987

I have before me your request for my opinion concerning R.C. 505.391 which provides that townships may assess charges for false fire alarms at commercial establishments. Your questions, as posed in your original request and subsequent addendum thereto, are as follows:

1. Should the definition of commercial establishment, as written in R.C. 505.391, be interpreted to mean that the building in question must be used for a commercial purpose or that the building in question must just be located in an area primarily containing buildings used for commercial purposes?
2. If the building itself must be used for commercial purpose, then must that building also be located in an area containing buildings used for commercial purposes, in order to invoke the provisions of R.C. 505.391?
3. Do we define commercial purposes to include both for profit and not for profit organizations who operate a business or provide a service?
4. Is the board of township trustees required to provide notice to commercial establishments one time only, or must notice be provided every thirty days?
5. If the board needs to provide only one notice by certified mail, how is that interpretation to be reconciled with the last sentence [sic] of R.C. 505.391 which states: "If [not] paid within sixty days after the owner receives written notice by certified mail that a charge has been assessed,

such charges shall be entered upon the real property tax list...." Does the last sentence [sic] mean that certified mail notice must be sent again after a charge has been assessed and before a lien can be placed on the property?

Your first question concerns the definition of "commercial establishment." R.C. 505.391 provides that "[a]s used in this section, 'commercial establishment' means a building or buildings in an area used primarily for nonresidential, commercial purposes." The Supreme Court has held that a plain and unambiguous statute leaves no occasion to resort to rules of statutory construction. Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920). See generally State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 439, 159 N.E. 823, 824-25 (1927) ("There is no dispute...as to what the law specifically provides with respect to these matters. There is practically no occasion for any construction of the statutes. They are very definite and very plain, and need only to be read to ascertain their meaning"). Therefore, I must apply rules of grammar rather than rules of statutory construction in order to answer your question. The phrase "used primarily for nonresidential, commercial purposes" modifies its antecedent noun "area" rather than the nouns "building or buildings." The sentence does not read "buildings used primarily for nonresidential, commercial purposes." Rather, the sentence reads "an area used primarily for nonresidential commercial purposes." Thus, I conclude that the building must be located in an area used for commercial, nonresidential purposes. It is not necessary that the building itself be used for commercial, nonresidential purposes. This being so, it is not necessary to address your second question.

In your third question you ask whether both for profit and not for profit organizations operate for a "commercial purpose" within the meaning of R.C. 505.391. Webster's New World Dictionary 285 (2d college ed. 1984) defines "commercial" as "of or connected with commerce or trade...made, done, or operating primarily for profit." See also R.C. 5516.01(H) (defining "zoned commercial or industrial areas" as "non-agricultural areas which are reserved for business, commerce, or trade"); R.C. 1343.01(B)(6)(b) (defining "business" as commercial enterprise carried on for profit); R.C. 1518.03 (defining "commercial purposes" as "with intent to sell or trade endangered or threatened plants for gain or profit"). Thus, for purposes of R.C. 505.391, I conclude that an organization is operating a business or providing a service for a "commercial purpose" if the organization operates with intent to profit. Whether an organization operates with intent to profit is a question which must be decided according to the facts of the particular case.¹

¹ In your question, you ask whether a not for profit organization operates for a commercial purpose. You do not specify the type of organization involved. However, I draw your attention to R.C. 1702.01(C) which defines a non-profit corporation as a corporation "not formed for the pecuniary gain or profit of...its members...." It would appear, therefore, that a corporation organized under R.C. Chapter 1702 does not qualify as "commercial" for purposes of R.C. 505.391.

R.C. 505.391 provides that the board of township trustees must provide notice before assessing charges for false fire alarms. R.C. 505.391 reads, in pertinent part:

If, after the fire department of a township...responds to a false alarm from an automatic fire alarm system at a commercial establishment, the board of township trustees gives written notice by certified mail...that the board may assess a charge of up to three hundred dollars for each subsequent false alarm within a period of thirty days after any false alarm by that system, the board of township trustees may assess such a charge. After the board gives written notice by certified mail once...the board need not give any additional written notices before assessing a charge for a false alarm as provided by this section. (Emphasis added.)

In your fourth question you ask whether the board of township trustees must provide notice one time only or every thirty days in order to assess a charge. In reading R.C. 505.391, it is apparent that the General Assembly intended that "[a]fter the board gives written notice by certified mail once" that a charge may be assessed, "the board need not give any additional written notices before assessing a charge...." Therefore, the answer to your fourth question is that the board need give notice one time only, rather than every thirty days, warning a commercial establishment that a charge may thereafter be assessed.

In your fifth question you ask whether certified notice must be sent after a charge has been assessed. Your uncertainty on the question of how many notices must be sent can be resolved by an examination of the language of R.C. 505.391. R.C. 505.391 provides:

If not paid within sixty days after the owner receives written notice by certified mail that a charge has been assessed, such charges shall be entered upon the real property tax list and tax duplicate and shall be a lien upon the property served, and shall be collected as other taxes. (Emphasis added.)

Clearly, the owner must be notified "that a charge has been assessed." The phrase "has been assessed" is in the present perfect tense. Webster's New World Dictionary 1125 (2d college ed. 1984) defines the present perfect tense as "a tense indicating an action or state as completed at the time of speaking but not at any definite time in the past." Once a charge has been assessed, the board must provide certified notice to the owner of the commercial establishment. This notice is in addition to the certified notice the board must send that it "may assess a charge." See id. at 877 (defining "may" as "possibility or likelihood...permission or chance"). Thus, in answer to your fifth question, I conclude that the General Assembly provided that the board must give one warning notice that charges may be assessed, and the board must again provide notice after a charge has been assessed.

Therefore, it is my opinion, and you are advised that:

1. Pursuant to R.C. 505.391, when a building is located in an area used primarily for nonresidential, commercial purposes, such building falls within the definition of a

"commercial establishment." It is not necessary that the building itself be used primarily for nonresidential, commercial purposes for the building to qualify as a "commercial establishment."

2. An organization operates for a "commercial purpose," as the term is used in R.C. 505.391, if such organization operates with intent to profit.
3. Pursuant to R.C. 505.391, after responding to a false alarm from an automatic fire alarm system at a commercial establishment, a board of township trustees must give written notice by certified mail only once before assessing charges upon owners and lessees of commercial establishments for false fire alarms at such establishments.
4. Once a board of township trustees assesses a charge for a false fire alarm pursuant to R.C. 505.391, the board must given written notice by certified mail to the owner of the commercial establishment that such charge has been assessed.