OPINION NO. 88-061

Syllabus:

For purposes of R.C. 4301.632, which prohibits the possession of any beer or intoxicating liquor in any public place by a person under the age of twenty-one years, "any public place" includes a motor vehicle located on a public roadway or in a public parking lot.

To: Betty D. Montgomery, Wood County Prosecuting Attorney, Bowling Green, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, September 9, 1988

I have before me your request for an opinion interpreting R.C. 4301.632, which states:

> Except as otherwise provided in this chapter, ***no person under the age of twenty-one years shall*** order, pay for, share the cost of, or attempt to purchase any beer or intoxicating liquor, or consume any beer or intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, or ***possess any beer or intoxicating liquor, in any public place.*** (Emphasis added.)

You have described your concerns as follows:

> One of our Township Police Departments, along with the Department of Liquor Control, has targeted a local drinking establishment among others, for liquor violators, many of whom are under the 21 age limit. The state amended the Ohio Revised Code §4301.632 with the following language: "No person shall possess any beer or intoxicating liquor in any public place." A local judge has held that any public place does not include a car or automobile on a highway or in a public parking lot. Many of our arrests have been for possession by unlawful people, namely under the age of 21, for possession of beer when they are parked along a road or in a parking lot.
>
> When the suspects/defendants have attempted to plead no

> contest, this judge has dismissed these cases because he holds that for purposes of §4301.632, a car on a public highway or public parking lot is not a public place.
>
> It is my understanding that the reason the language "in any public place" was added for that particular [statute] was to prevent arrests in homes for possession of alcohol by a person under the age of 21.

You have asked for an opinion as to the proper legal interpretation of "in any public place."

In construing R.C. 4301.632, it is helpful to examine the legislative scheme governing the purchase, possession, and consumption of alcoholic beverages by persons under the age of twenty-one years. It should be noted initially that, prior to the enactment of Am. Sub. H.B. 419, 117th Gen. A. (1987) (eff. July 1, 1987, with relevant provisions eff. July 31, 1987), Ohio law generally prohibited the purchase or consumption of intoxicating liquor (excluding beer) by persons under age twenty-one and the purchase or consumption of intoxicating liquor or beer by persons under age nineteen. *See* Am. Sub. H.B. 419. Am. Sub. H.B. 419 operated to raise the drinking age to twenty-one for beer as well as for other alcoholic beverages, in conformance with the National Minimum Drinking Age law, 23 U.S.C. §158. The federal law provides that certain federal highway funds shall be withheld from any state in which "the purchase or public possession...of any alcoholic beverage by a person who is less than twenty-one years of age is lawful." 23 U.S.C. §158(a)(1), (2) (Supp. IV 1986).[1]

Provisions other than R.C. 4301.632 also govern the purchase and possession of alcoholic beverages. R.C. 4301.63 prohibits a person under the age of twenty-one years from purchasing beer or intoxicating liquor, except as permitted by statute. R.C. 4301.638 states that R.C. 4301.632 and related sections "shall not be deemed to modify or affect," *inter alia*, R.C. 4301.69, which provides exceptions to the drinking age for alcoholic beverages furnished by a physician, for religious purposes, or when a person under age twenty-one is accompanied by a parent, spouse, or legal guardian. R.C. 4301.69(B) prohibits a person who is the owner or occupant of a public place from knowingly allowing a person under twenty-one to remain in or on the public place while possessing or consuming beer or intoxicating liquor, unless the beer or intoxicating liquor is provided by a parent, spouse, or legal guardian and the parent, spouse, or legal guardian is present at the time of possession or consumption.[2] R.C. 4301.64 provides that "[n]o person shall consume any beer or intoxicating liquor in a motor vehicle." R.C. 4301.62 provides, with certain exceptions, that "[n]o person shall have in his possession an opened container of beer or intoxicating liquor in a state liquor store, or on the premises of the holder of any permit issued by the department of liquor control, or any other public place." R.C. 4301.69(E) prohibits any person under the age of eighteen years from knowingly possessing or consuming any beer or intoxicating liquor in any public or private place, unless the person is accompanied by a parent, spouse, or legal guardian, or unless the beer or intoxicating liquor is given by a physician or for established religious purposes.[3] *See also* R.C. 4301.99 (establishing criminal penalties for violations of various provisions of R.C. Chapter 4301). Thus, no person, regardless of age, may consume an alcoholic beverage in a motor vehicle, and, with

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1 The federal law permits grandfather provisions, allowing individuals between age eighteen and age twenty-one who could lawfully purchase or possess alcoholic beverages under prior state law to continue to do so. 23 U.S.C. §158(a)(3) (Supp. IV 1986). In Am. Sub. H.B. 419, 117th Gen. A. (1987) (eff. July 1, 1987, with relevant provisions eff. July 31, 1987) (section 6.01, uncodified) and Am. Sub. H.B. 306, 117th Gen. A. (1988) (eff. June 9, 1988) (section 3, uncodified), Ohio has adopted grandfather provisions for persons who were nineteen on July 31, 1987.

2 R.C. 4301.69(B) was added to R.C. 4301.69 by Am. Sub. H.B. 306, 117th Gen. A. (1988) (eff. June 9, 1988).

3 R.C. 4301.69(E) was added to R.C. 4301.69 by Am. Sub. H.B. 306, 117th Gen. A. (1988) (eff. June 9, 1988). R.C. 4301.69, as amended by Am.

certain exceptions, no person of any age may possess an opened container of an alcoholic beverage in a public place. Further, no person under age eighteen may possess or consume alcoholic beverages in any location, unless the exceptions of R.C. 4301.69(E) apply.

The portion of R.C. 4301.632 prohibiting the possession of alcoholic beverages in a public place by a person under age twenty-one was added by Am. Sub. H.B. 419. The previous version of R.C. 4301.632 had addressed the purchase and consumption of intoxicating liquor by persons under twenty-one, but had not addressed simple possession and had not contained the reference to "any public place."[4] *See* Am. Sub. H.B. 419.

It is clear that the Ohio General Assembly adopted provisions changing the drinking age only in order to obtain federal highway funds that would otherwise have been withheld. Am. Sub. H.B. 419 states as one of the purposes of the bill: "to raise to age 21 the minimum age at which persons can consume or purchase beer unless the federal uniform drinking age of 21 is repealed by Congress or invalidated by the courts." Further, R.C. 4301.691, initially enacted by Am. Sub. H.B. 419, sets forth provisions that shall apply "[i]f the United States congress repeals the mandate established by the 'Surface Transportation Assistance Act of 1982' relating to a national uniform drinking age of twenty-one [23 U.S.C. §158] or if a court of competent jurisdiction declares the mandate to be unconstitutional or otherwise invalid." Those provisions reinstate age nineteen as the drinking age for beer. They prohibit the purchase or consumption of intoxicating liquor by persons under twenty-one and the purchase or consumption of beer by persons under nineteen, with certain exceptions. *See* R.C. 4301.69; R.C. 4301.691(B),(C),(D),(H). The provisions of R.C. 4301.691 contain no direct prohibition against the simple possession of alcoholic beverages by persons under nineteen or twenty-one. They do, however, provide that a person who is the owner or occupant of a public place may not knowingly allow a person under age twenty-one to remain in or on the public place while possessing or consuming intoxicating liquor, or knowingly allow a person under age nineteen to remain in or on the public place while possessing or consuming beer, unless the intoxicating liquor or beer is provided by a parent or legal guardian and the parent or legal guardian is present at the time of possession or consumption. R.C. 4301.691(I).[5]

Sub. H.B. 306, also regulates the engagement and use of accommodations at a hotel, inn, cabin, campground, or restaurant by or for a minor who is intoxicated or who possesses or consumes beer, intoxicating liquor, or a drug of abuse on the premises.

4 R.C. 4301.632, as in effect prior to the enactment of Am. Sub. H.B. 419, 117th Gen. A. (1987) (eff. July 1, 1987, with relevant provisions eff. July 31, 1987), stated:

> No person under the age of twenty-one years shall order, pay for, share the cost of, or attempt to purchase any intoxicating liquor, or consume any intoxicating liquor, either from a sealed or unsealed container or by the glass or by the drink, except as provided in section 4301.69 of the Revised Code.

R.C. 4301.69 as then in effect stated, in part:

> No person shall sell intoxicating liquor to a person under the age of twenty-one years or sell beer to a person under the age of nineteen, or buy intoxicating liquor for, or furnish it to, a person under the age of twenty-one years, or buy beer for or furnish it to a person under the age of nineteen, unless given by a physician in the regular line of his practice or by a parent or legal guardian.

See Am. Sub. H.B. 419.

5 R.C. 4301.691(I) was added to R.C. 4301.691 by Am. Sub. H.B. 306, 117th Gen. A. (1988) (eff. June 9, 1988). *See also* note 2, *supra*.

It is, thus, evident that the General Assembly enacted the prohibition of R.C. 4301.632 against possession of beer or intoxicating liquor by a person under age twenty-one in order to meet the requirement set forth in 23 U.S.C. §158 that, for maximum highway funding, the "public possession" of alcoholic beverages by persons under twenty-one must be prohibited within the state.[6] It is, accordingly, instructive to examine the interpretation that has been given to the term "public possession" as used in 23 U.S.C. §158. 23 C.F.R. Part 1208 clarifies "the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age." 23 C.F.R. §1208.2 (1987). To this end, 23 C.F.R. §1208.3 (1987) defines "public possession" as follows:

> *"Public possession"* means the possession of any alcoholic beverage for any reason, including consumption on any street or highway or in any public place or in any place open to the public (including a club which is *de facto* open to the public). The term does not apply to the possession of alcohol for an established religious purpose; when accompanied by a parent, spouse or legal guardian age 21 or older; for medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital or medical institution; in private clubs or establishments; or to the sale, handling, transport, or service in dispensing of any alcoholic beverage pursuant to lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

While no comma follows the word "consumption" in the rule as published, it is apparent both from the meaning of the rule and from analysis concerning its effect that the rule should be read as if a comma were so inserted. *See, e.g.*, 51 Fed. Reg. 10377 (1986) ("[t]he phrase 'public possession' was not defined in the statute and the Agencies [the National Highway Traffic Safety Administration and the Federal Highway Administration] defined it in the NPRM [Notice of Proposed Rulemaking] to mean 'the possession of any alcoholic beverage for any reason, including consumption, on any street or highway or in any public place or in any place open to the public'").

The federal definition thus includes as "public possession" the possession of any alcoholic beverage "on any street or highway or in any public place or in any place open to the public." The definition excludes possession for religious or medical purposes; possession in the company of a parent, spouse, or legal guardian who is twenty-one or older; possession in private clubs or establishments; and possession as part of lawful employment. *See* R.C. 4301.22; R.C. 4301.632; R.C. 4301.638; R.C. 4301.69. The definition does not specify whether "public possession" includes possession in a motor vehicle that is located on a street or highway or in another public place, but the clear implication is that it does. The term "any public place" would ordinarily be construed as including such public ways as streets and highways. Specific reference in 23 C.F.R. §1208.3 to "any street or highway," in addition to "any public place," indicates a concern that all persons on streets or highways be included. While such persons may be pedestrians, by far the greatest class of persons on streets or highways is the class of persons located in motor vehicles that are traveling or parked on such streets or highways. Specific reference to streets and highways thus suggests that persons using those roadways as drivers of motor vehicles, or as passengers in motor vehicles, are included among persons who may be found to be in public possession of alcoholic beverages.

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6 The fact that Congress intended that, in order to obtain maximum highway funding, states must prohibit both the purchase and the public possession of alcoholic beverages by persons under age twenty-one is evident both from the language of 23 U.S.C. §158(a)(1) and (2) and also from the fact that ambiguous language that had appeared in 23 U.S.C. §158(b), arguably permitting the prohibition of only one but not the other, *see* 51 Fed. Reg. 10379 (1986), was amended by the Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, §4104, 100 Stat. 114.

The conclusion that "public possession," for purposes of 23 C.F.R. §1208.3, includes possession in a motor vehicle on a street or highway is supported by the purposes of the National Minimum Drinking Age law. That law was passed to reduce deaths and injuries resulting from drunk driving by persons under age twenty-one. *See* 51 Fed. Reg. 10378 (1986) ("the Agencies [the National Highway Traffic Safety Administration and the Federal Highway Administration] have reviewed the legislative history of the National Minimum Drinking Age, and concluded that Congress passed the statute not to withhold funds but rather to reduce the deaths and crippling injuries attributed to [drunk] driving by individuals under age 21....Since the purpose of the Federal statute is to control drunk driving, the Agencies believe that this purpose will continue to be served because those individuals over 21 who have some responsibility toward the underage individual can ensure that the younger person in their company will not drive"). The United States Supreme Court, in upholding the National Minimum Drinking Age law, discussed its purpose as follows:

> We can readily conclude that the provision [23 U.S.C. §158] is designed to serve the general welfare, especially in light of the fact that "the concept of welfare or the opposite is shaped by Congress...." *Helvering v. Davis*, [301 U.S. 619, 645 (1937)]. Congress found that the differing drinking ages in the States created particular incentives for young persons to combine their desire to drink with their ability to drive, and that this interstate problem required a national solution....[T]he condition imposed by Congress is directly related to one of the main purposes for which highway funds are expended — safe interstate travel....This goal of the interstate highway system had been frustrated by varying drinking ages among the States. A presidential commission appointed to study alcohol-related accidents and fatalities on the Nation's highways concluded that the lack of uniformity in the States' drinking ages created "an incentive to drink and drive" because "young persons commut[e] to border States where the drinking age is lower." Presidential Commission on Drunk Driving, Final Report 11 (1983).

South Dakota v. Dole, 107 S.Ct. 2793, 2797 (1987) (citation and footnote omitted). The prohibition of the possession, by persons under age twenty-one, of alcoholic beverages in motor vehicles on public streets or highways or in public parking lots is, thus, consistent with the purpose of the National Minimum Drinking Age law and serves to implement that purpose.

The concept of "public possession," as used in 23 U.S.C. §158(a) and clarified in 23 C.F.R. §1208.3, excludes private settings, such as homes and private clubs. *See* 51 Fed. Reg. 10378 (1986) ("[t]he Statute's use of the word 'public' indicates that Congress chose not to require drinking age restrictions on possession in private settings....[H]omes are not covered by the plain language of the statute itself which refers to 'public possession'"). While a privately-owned motor vehicle is not ordinarily considered to be a public facility, a privately-owned motor vehicle situated on a public roadway or in a public parking lot is clearly not a private setting in the same sense as a home or private club. It does not appear that the fact of being in a motor vehicle insulates one who would otherwise clearly be in a public place. *See, e.g., People v. Belanger*, 243 Cal. App. 2d 654, 658, 52 Cal. Rptr. 660, 662 (1966).

It is true that a person who is in a motor vehicle may have Fourth Amendment rights restricting the search and seizure of the motor vehicle, even when the motor vehicle is on a public roadway or in a public parking lot. *See, e.g., California v. Carney*, 471 U.S. 386 (1985) (recognizing that privacy interests in a motor vehicle are constitutionally protected but that the expectations of privacy in a motor vehicle are less than those in a home, and upholding the warrantless search (based upon probable cause) of a mobile motor home located in a public parking lot); *Rakas v. Illinois*, 439 U.S. 128 (1978); *United States v. Chadwick*, 433 U.S. 1, 11 (1977) ("a fundamental purpose of the Fourth Amendment is to safeguard individuals from unreasonable government invasions of legitimate privacy interests, and not simply those interests found inside the four walls of the home" (footnote omitted)); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976) ("one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and

freedom in one's residence"); *Cardwell v. Lewis*, 417 U.S. 583, 589-91 (1974) (there is a lesser expectation of privacy in a motor vehicle than in a home because the function of the motor vehicle is transportation and it seldom serves as one's residence or as the repository of personal effects; further, the occupants and contents are in plain view). The issue of search and seizure is, however, separate and distinct from the issue of when public possession of an alcoholic beverage may be found. Assuming that law enforcement officers lawfully confront an individual who is in a motor vehicle on a public roadway or in a public parking lot, there is no constitutional prohibition against their finding that individual to be in public possession of an alcoholic beverage. *See generally, e.g., Miles v. State*, 247 Ind. 423, 216 N.E.2d 847 (1966); *State v. Kersh*, 313 N.W.2d 566, 568 (Iowa 1981) (a police officer who found the defendant slumped behind the steering wheel of an automobile located on a street right-of-way "justifiably opened the car door and checked defendant's condition.... He could then legally arrest defendant for public intoxication and search him incident to the arrest"); *Tackett v. Commonwealth*, 261 S.W.2d 298 (Ky. Ct. App. 1953); *City of Lansing v. Johnson*, 12 Mich. App. 139, 143, 162 N.W.2d 667, 669 (1968) ("[t]he inhibition against unreasonable search and seizure remains whether defendant is in the car drunk or sober, or whether defendant was outside the car standing on the curb. But the point is that this defendant, though in his car, was in a 'public place' [asleep in his car in a 'no parking' zone]").

The concept of "public place" as encompassing a person who is in a motor vehicle on a public roadway or in a public parking place has been applied in various jurisdictions in matters involving public intoxication. *See, e.g., Berry v. City of Springdale*, 238 Ark. 328, 381 S.W.2d 745 (1964) (a person who is in a truck situated between ten and twenty-five feet from the traveled portion of a highway is in a public place for purposes of a public drunkenness statute); *People v. Belanger* (a person who is in an automobile lawfully parked along a public road is in a "public place" for purposes of a statute making it a misdemeanor to be found in any public place under the influence of intoxicating liquor in such condition as to be unable to exercise care for safety); *Miles v. State* (for purposes of a statute prohibiting a person from being intoxicated in a public place, a person who is in the cab of a truck with the window open, approximately three or four feet from the traveled portion of a busy highway, is in a public place); *Atkins v. State*, 451 N.E.2d 55 (Ind. Ct. App. 1983) (for purposes of a statute prohibiting a person from being in a public place in a state of intoxication, a passenger in an automobile traveling on a public highway is in a public place); *State v. Kersh*, 313 N.W.2d at 568 (a person sitting in a car parked in a public place was legally arrested for intoxication in a public place under a statute defining "public place" as "any place, building, or conveyance to which the public has or is permitted access"; "[t]he evidence shows that defendant was sitting in his car in a place to which the public was permitted access"); *Tackett v. Commonwealth* (a person who is in an automobile parked partly off the highway is on a public road under a statute prohibiting the offense of being intoxicated on a "public or private road"); *City of Lansing v. Johnson*; *State v. Teas*, 108 N.H. 485, 238 A.2d 737 (1968); *Rothrock v. State*, 89 Okla. Crim. 262, 206 P.2d 1009 (Crim. Ct. App. 1949); *Walker v. State*, 171 Tex. Crim. 379, 350 S.W.2d 561 (Crim. App. 1961) (a person asleep in an automobile in a ditch along a highway is in a public place for purposes of a statute prohibiting drunkenness in a public place).

I conclude, accordingly, that it was the intent of the Federal Minimum Drinking Age law, as interpreted in 23 C.F.R. §1208.3, that, in order to obtain maximum highway funding, a state must prohibit persons under the age of twenty-one from possessing alcoholic beverages in public places, including motor vehicles located on public roadways or in public parking lots. Both 23 U.S.C. §158 and 23 C.F.R. §1208.3 were in effect when the General Assembly enacted Am. Sub. H.B. 419, and, as discussed above, the possession prohibition of R.C. 4301.632 was enacted to insure that Ohio would receive the maximum amount of highway funding. It follows that the possession prohibition of R.C. 4301.632 should be so construed as to be consistent with the federal provisions[7] and, thus, that the possession of beer

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7 This construction is consistent with R.C. 1.49, which states:

> If a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters:
> (A) The object sought to be attained;

or intoxicating liquor in a public place includes, for purposes of R.C. 4301.632, the possession of such beverages in a motor vehicle on a public roadway or in a public parking lot.

I am aware that there is case law that suggests a contrary conclusion. *City of Hamilton v. Collier*, 44 Ohio App. 2d 419, 339 N.E.2d 851 (Butler County 1975), concerned a city ordinance that prohibited the possession of an opened container of intoxicating liquor in a public place. The ordinance stated: "Whoever shall have in his possession an opened container of intoxicating liquor in a state liquor store or on the premises of the holder of any permit issued by the State Department of Liquor Control or any other public place unless such intoxicating liquor shall have been lawfully purchased for consumption on such premises shall be deemed guilty of a misdemeanor...." 44 Ohio App.2d at 420, 339 N.E.2d at 852. The court held that a privately owned automobile, stopped by a patrolman as it was being driven on a public street, was not a "public place" for purposes of this ordinance. I respectfully decline to extend the reasoning of the *Collier* case to the question here under consideration. The *Collier* court was concerned that a finding that automobiles are public places would open them to intrusion by members of the public and would divest them of Fourth Amendment protection against unreasonable searches and seizures. As discussed above, however, Fourth Amendment rights are retained, even though possession in a motor vehicle situated in a public place may be found to be possession in a public place. Further, the purpose of the amendment to R.C. 4301.632 was clearly to comply with federal provisions. Hence, the federal interpretation must be given weight in construing the state statute. *See, e.g.*, R.C. 1.49.

I note that R.C. 4301.62 prohibits the possession of an opened container of beer or intoxicating liquor "in a state liquor store, or on the premises of the holder of any permit issued by the department of liquor control, or any other public place." This language is similar to that of the ordinance considered in the *Collier* case. The "public place" language of R.C. 4301.62 has been upheld against challenges of unconstitutional vagueness and unreasonable exercise of police power, *see State v. Van Dyne*, 26 Ohio App. 3d 95, 498 N.E.2d 221 (Franklin County), *motion to certify overruled*, No. 85-1548 (Ohio Sup. Ct. Dec. 26, 1985) (holding that a sidewalk is clearly a public place for purposes of R.C. 4301.62 and that the state has a legitimate interest in controlling the places in which people may possess opened containers of liquor or beer).

I note further that, notwithstanding the general rule that a criminal law is to be construed strictly against the prosecution and in favor of the accused, *see, e.g., City of Hamilton v. Collier*, 44 Ohio App. 2d at 421, 339 N.E.2d at 853, it has been held in such areas as liquor control and regulation of fireworks that statutes relating to the protection of the health, safety, and welfare of the people of this state are entitled to a liberal construction in order to achieve their ends, even though a violation might incur a penal sanction. *See, e.g., Pizza v. Sunset Fireworks Co.*, 25 Ohio St. 3d 1, 4, 494 N.E.2d 1115, 1118 (1986) ("the principle of giving liberal construction to a statute intended to promote the public good is applicable [to fireworks statutes], notwithstanding the fact that a violation of the statute may incur a penal sanction"); *Van Camp v. Riley*, 16 Ohio App. 3d 457, 476 N.E.2d 1078 (Clermont County 1984), *motion to certify overruled*, No. 84-980 (Ohio Sup. Ct. Sept. 12, 1984) (statutes governing fireworks are enactments of the legislature in the exercise of the police power and deal with businesses which, if not regulated, would pose a threat to the health, safety and welfare of the state; accordingly, they should be liberally construed to give effect to the purpose of promoting the public safety, even though they establish penal sanctions); *Mason v. Roberts*, 33 Ohio St.2d 29, 294 N.E.2d 884 (1973), *aff'g* 35 Ohio App. 2d 29, 300 N.E.2d 211 (1971) (statutes dealing with liquor regulation are intended to promote the public health, safety, and

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(B) The circumstances under which the statute was enacted;
(C) The legislative history;
(D) The common law or former statutory provisions, including laws upon the same or similar subjects;
(E) The consequences of a particular construction;
(F) The administrative construction of the statute.

welfare and should be liberally construed to give effect to that purpose); 1988 Op. Att'y Gen. No. 88-040. *But see Great Central Insurance Co. v. Tobias*, 37 Ohio St. 3d 127, __ N.E.2d __ (1988) and *Settlemyer v. Wilmington Veterans Post No. 49*, 11 Ohio St. 3d 123, 464 N.E.2d 521 (1984) (construing and following *Mason v. Roberts* but declining to extend it). It is consistent with these principles to construe R.C. 4301.632 so as to carry out the intent of the General Assembly to comply with relevant federal provisions.

You have provided my staff with a statement by one of the legislators who sponsored the bill that introduced the language "in a public place" as it currently appears in R.C. 4301.632. The statement that you have provided indicates that the language "in a public place" was added to allow a parent or guardian to serve an alcoholic beverage to a minor in his home without violating R.C. 4301.632, and also to prevent an individual under the age of twenty-one from possessing or consuming alcoholic beverages in automobiles, whether parked or in operation, in or along highways or parking lots used by the public. This statement of the purposes of the amendment is consistent with the conclusions reached in this opinion. *See, e.g., State ex rel. Srofe v. Sword*, 29 Ohio Op. 109, 111 (C.P. Pike County 1944) ("judicial notice may be taken of the purpose of enactment of a particular statute where such purpose is a matter of sufficient common knowledge"); *Dayton & Union R.R. Co. v. Dayton & Muncie Traction Co.*, 1 Ohio N.P. (n.s.) 218, 222 (C.P. Darke County), *aff'd*, 4 Ohio C. C. (n.s.) 329 (Darke County 1903) ("[t]he courts in the case of a constitutional provision as well as an act of Congress will refer to the debates for the purpose of determining what the meaning of the enactment is where there is doubt, but the expression of opinion of the individual members of Congress or of the individual members of the constitutional convention is not conclusive. It is simply one of the aids which the court will adopt...").

It is, therefore, my opinion, and you are hereby advised, that for purposes of R.C. 4301.632, which prohibits the possession of any beer or intoxicating liquor in any public place by a person under the age of twenty-one years, "any public place" includes a motor vehicle located on a public roadway or in a public parking lot.

OPINION NO. 88-062

Syllabus:

1. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization or institutionalization in a secure facility under R.C. 2151.355(A)(4) or (5), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the expiration of the minimum period prescribed by the statutory provision under which he was committed, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B); once such a child has been institutionalized or institutionalized in a secure facility for the minimum period prescribed by the statutory provision under which he was committed, the Department may, in accordance with R.C. 2151.38(C) and R.C. 5139.06, allow the child to leave the institution in which he was placed and return home, without prior approval of the court which committed the child.

2. Where the Department of Youth Services wishes to grant a home furlough to a child who has been committed to the legal custody of the Department of Youth Services for institutionalization in a secure facility under R.C. 2151.355(A)(6), the Department may not, for the purpose of such furlough, allow the child to leave the institution in which he has been placed, prior to the child's attainment of the age of twenty-one years, unless the court which committed the child approves of such early release in accordance with R.C. 2151.38(B).