

OPINION NO. 2000-045**Syllabus:**

1. Pursuant to R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20, a private water systems contractor must register with the Ohio Department of Health and comply with surety bonding requirements as a condition of doing business in the State of Ohio, but no registration or bonding is required of a person who performs labor or services under the direct supervision of a registered contractor, a private water system owner who performs work on the private water system serving his dwelling house, or any person who aids the owner with such work without compensation.
 2. Pursuant to 6 Ohio Admin. Code 3701-28-20(E), the registration exemption applicable to a private water system owner who performs work on the private water system serving his dwelling house does not apply to an individual who builds a house for sale to a third party and owns but does not occupy that house.
 3. For purposes of exempting a person from the requirements of R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20 governing registration and bonding as a private water systems contractor, a house may be considered to be the person's dwelling house under 6 Ohio
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Admin. Code 3701-28-20(E) if the person occupies the house or if the person considers the house to be his dwelling house and intends to assume or resume occupancy when construction, remodeling, or repair is completed.

4. Pursuant to R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20(E), a private water system owner who works on the private water system serving his dwelling house may install a private water system or a well pump without meeting registration and bonding requirements.
5. A person who installs plumbing that is part of a private water system as defined in 6 Ohio Admin. Code 3701-28-01(ZZ) is subject to the requirements of R.C. 3701.344(B)(3) and the exemptions of 6 Ohio Admin. Code 3701-28-20(E) governing registration and bonding as a private water systems contractor. A person who installs plumbing that does not come within the definition of a private water system — that is, plumbing that is located after the point of discharge or entry to the foundation as described in rule 3701-28-01(ZZ) — is not subject to those registration and bonding requirements or exemptions.

To: P. Eugene Long, II, Pickaway County Prosecuting Attorney, Circleville, Ohio
By: Betty D. Montgomery, Attorney General, December 29, 2000

We have received your request for an opinion on several questions concerning the requirement that private water systems contractors register with the Ohio Department of Health and comply with the Department's surety bonding requirements in order to do business in Ohio. *See* R.C. 3701.344(B)(3); 6 Ohio Admin. Code 3701-28-20. For ease of discussion, your questions have been reorganized and rephrased to read as follows:

1. When does 6 Ohio Admin. Code 3701-28-20(E) exempt a person who performs work on a private water system from the provisions of R.C. 3701.344(B)(3) requiring registration and bonding as a private water systems contractor?
2. When a person builds a house and installs a private water system to service the house, can the person be exempt from registration and bonding as a private water systems contractor if the house is constructed for sale to a third party and the person has no intention of residing in the house?
3. Can a house be considered a person's dwelling house for purposes of exempting that person from registration and bonding as a private water systems contractor if the person is not presently living in the house, and does a person's intention regarding living in a house have a dispositive effect in this regard?
4. Does an exemption from registration and bonding as a private water systems contractor permit a person to install a private water system or a well pump that services his dwelling house?

5. Does an exemption from registration and bonding as a private water systems contractor permit a person to install plumbing in a one-family dwelling or a two-family dwelling?

Your questions have arisen in connection with a situation in which a housing contractor builds houses and installs in them pumps that serve as part of a private water system. The housing contractor contends that he is not required to be registered with the Department of Health as a private water systems contractor because he is the legal owner of each house until it is sold, and thus qualifies for exemption from registration. This opinion does not make findings of fact regarding a particular individual, but it sets forth general principles that may be applied to specific situations.

Let us first consider questions one through three, which raise related issues concerning the circumstances in which a person who works on a private water system serving a house that the person owns is exempt from the requirement of being registered and bonded as a private water systems contractor. In order to address these questions, we need to examine the provisions of law that impose registration requirements upon private water systems contractors.

R.C. 3701.344 provides for the Public Health Council to adopt rules regarding private water systems¹ and for the boards of health of city or general health districts to administer and enforce those rules. R.C. 3701.344(B). Statutory provisions require the registration of private water systems contractors. In this regard, the statute states: "Private water systems contractors, as a condition of doing business in this state, shall annually register with, and comply with surety bonding requirements of, the department of health." R.C. 3701.344(B)(3). See generally 6 Ohio Admin. Code 3701-28-01(OOO) (a "[w]ater systems contractor" is a person who, for hire, performs various construction, installation, or inspection activities relating to private water systems).

Rules implementing this provision appear in Chapter 3701-28 of the Ohio Administrative Code. 6 Ohio Admin. Code Chapter 3701-28. The rules require annual registration of private water systems contractors and a registration bond in the sum of ten thousand dollars. 6 Ohio Admin. Code 3701-28-20(A) and (B). The required surety bond runs to the state as obligee and is "for the benefit of any aggrieved party for damages incurred as a result of a violation of" private water systems rules appearing in Chapter 3701-28 of the Ohio Administrative Code. 6 Ohio Admin. Code 3701-28-20(B)(1)(b).²

Instances in which registration is not required are set forth in the rules as follows:

Registration is not required of any person who performs labor or services under the direct supervision of a registered contractor, any private

¹A private water system is defined as a system for the provision of water for human consumption that "has fewer than fifteen service connections and does not regularly serve an average of at least twenty-five individuals daily at least sixty days out of the year." R.C. 3701.344(A); accord 6 Ohio Admin. Code 3701-28-01(ZZ). The entire system must be owned, operated, and maintained by one person, even if it services more than one dwelling. 6 Ohio Admin. Code 3701-28-10(A).

²An aggrieved party is "the property owner or the agent of the property owner who contracts for a private water system with a water systems contractor and whose system is not installed, altered, repaired or abandoned in substantial compliance" with the relevant rules. 6 Ohio Admin. Code 3701-28-20(D)(3)(a).

water system owner who performs work on the private water system serving his dwelling house, or any person who aids the owner with this work without compensation.

6 Ohio Admin. Code 3701-28-20(E) (emphasis added). Persons who are exempt from registration and bonding are not exempt from complying with rules governing the installation, operation, and maintenance of private water systems. *Id.*³

These provisions of statute and rule provide a clear answer to the first question. Pursuant to R.C. 3701.344(B)(3) and rule 3701-28-20, a private water systems contractor must register with the Ohio Department of Health and comply with surety bonding requirements as a condition of doing business in the State of Ohio, but no registration or bonding is required of a person who performs labor or services under the direct supervision of a registered contractor, a private water system owner who performs work on the private water system serving his dwelling house, or any person who aids the owner with such work without compensation.

Your concerns relate to the second of these exemptions — that is, to a private water system owner who performs work on the private water system serving his dwelling house — and this opinion addresses only that exemption. You have asked whether a person comes within this exemption if the person is building a house with the intention of selling it to a third party, rather than residing in it himself. We are informed that the person building the house is the owner of both the house and the private water system and that the person never uses or intends to use the house as his residence.

By its terms, the registration exemption under consideration applies to “any private water system owner who performs work on the private water system serving his dwelling house.” 6 Ohio Admin. Code 3701-28-20(E). Therefore, this exemption applies to the facts presented only if the house that the individual is building for sale to a third party can be considered “his dwelling house.”

Existing administrative rules do not define the term “his dwelling house.” The rules define “[d]welling unit” to mean “the place which is occupied by a person or persons,” thereby suggesting that a dwelling house is a house occupied by a person or persons. 6 Ohio Admin. Code 3701-28-01(Y).⁴ This definition is consistent with the common understanding of a dwelling house as a structure used by one or more persons as a residence. *See* R.C. 1.42; *Black’s Law Dictionary* 524 (7th ed. 1999) (defining “dwelling-house” as “[t]he house or other structure in which a person lives; a residence or abode”).

³It is interesting to note that at one time the owner exemption from registration requirements was available to “any owner of a dwelling house who perform[ed] work on the private water system serving his dwelling house.” [1991-1992 Ohio Monthly Record, vol. 2] Ohio Admin. Code 3701-28-20(E), at 1536, 1537. That language was recently amended and now refers to “any private water system owner who performs work on the private water system serving his dwelling house.” 6 Ohio Admin. Code 3701-28-20(E). Thus, for the owner exemption from registration to apply, a person now must own the private water system that serves “his dwelling house.” *Id.*; *see* note 1, *supra*.

⁴The previous version of the rules defined “[d]welling house” to mean “the house or apartment which is occupied by a family as a place of residence,” and “[r]esidence” to mean “a factual place of abode which simply requires bodily presence as an inhabitant in a given place.” [1983-1984 Ohio Monthly Record, vol. 1] Ohio Admin. Code 3701-28-01(N) and (Z), at 458, 459.

Use of the possessive "his" to modify "dwelling house," however, appears to be susceptible of more than one interpretation. It may be argued that any dwelling house owned by an individual is "his" dwelling house because he owns the dwelling house, regardless of whether the individual himself resides in the house. Alternatively, it may be argued that a dwelling house cannot be considered "his" dwelling house unless it is the house in which the individual actually resides, and thus is his personal residence. For the reasons discussed below, we adopt the second interpretation, requiring that the house be his personal residence.

In construing administrative rules, it is appropriate to apply general principles of statutory construction. See, e.g., *State ex rel. Miller Plumbing Co. v. Industrial Comm'n*, 149 Ohio St. 493, 496-97, 79 N.E.2d 553, 555 (1948). The primary purpose of construing provisions of rule and statute is to give effect to the intention of the legislative body. See, e.g., *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 16, 242 N.E.2d 342, 343 (1968) (syllabus, paragraph 2). To determine that intention, it is appropriate to consider related provisions of law and to construe the scheme as a whole. See, e.g., *State ex rel. Cuyahoga County Hosp. v. Ohio Bureau of Workers' Comp.*, 27 Ohio St. 3d 25, 27, 500 N.E.2d 1370, 1372 (1986); 1998 Op. Att'y Gen. No. 98-012, at 2-62; 1991 Op. Att'y Gen. No. 91-038, at 2-211 to 2-212.

It is also appropriate to consider other factors that indicate legislative intent. Among those factors are the object sought to be attained, the consequences of a particular construction, and the administrative construction of the statute. R.C. 1.49(A), (E), and (F); see, e.g., 1995 Op. Att'y Gen. No. 95-045, at 2-246 to 2-247.

We are informed, initially, that the Department of Health has consistently construed "his dwelling house" to refer only to the house in which an individual himself resides, and not to a house that the individual owns but does not inhabit. This is a reasonable reading of the rule and is entitled to deference, provided that it is not inconsistent with provisions of statute or constitution. See, e.g., *State ex rel. DeBoe v. Industrial Comm'n*, 161 Ohio St. 67, 67, 117 N.E.2d 925, 926 (1954) (syllabus, paragraph 1); *Hocking Valley Ry. Co. v. Public Utilities Comm'n*, 92 Ohio St. 362, 110 N.E. 952 (1915); 1994 Op. Att'y Gen. No. 94-059, at 2-289 to 2-290; 1989 Op. Att'y Gen. No. 89-008, at 2-33.

We find that the construction adopted by the Department of Health is consistent with statutory provisions and serves to carry out their object. The statute states expressly that registration as a private water systems contractor is required "as a condition of doing business in this state." R.C. 3701.344(B)(3). An individual who works on the private water system of the house in which he lives is not doing business in the state and may reasonably be exempted from the registration requirement. In contrast, an individual who builds a house with the intention of selling it to a third party is undertaking construction for business purposes. It serves the statutory intent to include such an individual in the class of persons who must be registered to work on private water systems.

The consequences of adopting an interpretation that provides an exemption only when the individual himself resides in the dwelling house also support that interpretation. Under such an interpretation, the individual is exempted from registration and bonding procedures that provide the public with information and protection, but such exemption is granted only when the individual himself lives in a residence served by the water system that he installs. When an individual builds a house with the intention of selling it to a third party, the exemption is not granted. Rather, in those circumstances the individual is required to make public registration and provide appropriate bond, thereby giving potential buyers the information and protection that the contractor's registration and bond provide.

The arguments set forth above support the “personal residence” interpretation of the term “his dwelling house,” as used in rule 3701-28-20(E). We conclude, therefore, that pursuant to rule 3701-28-20(E), the registration exemption applicable to a private water system owner who performs work on the private water system serving his dwelling house does not apply to an individual who builds a house for sale to a third party and owns but does not occupy that house.

Having determined that the registration exemption applicable to work on “his dwelling house” does not apply to a person building a house for sale to a third party, let us turn now to the question whether that exemption applies when the private water system owner intends to make the house “his dwelling house” but is not presently living in the house. Such a situation may occur if a house is undergoing construction, remodeling, or repair and the private water system owner is living elsewhere. As discussed above, for the exemption to apply, the house must be “his dwelling house” — that is, the private water system owner must consider the house to be his personal residence, not merely property that he owns.

The facts presented raise the question whether a house may be considered the dwelling house of a person if that person resides elsewhere for a temporary period while the house is being constructed, remodeled, or repaired. We believe that it may. There is no substantial distinction between a person who owns a house and resides in it throughout a period of construction, remodeling, or repair and a person who owns a house and considers it to be his dwelling house but makes arrangements to live elsewhere until construction, remodeling, or repair — including installation of a private water system — is completed. Common sense dictates that the exemption from registration and bonding should apply to a person who is installing a private water system in a house that the person owns if the person considers the house to be his home and intends to occupy it when work is completed, even if the person is not occupying it as the work is done. We are informed that this is the manner in which the Department of Health has construed and applied its rule, and we find this a reasonable reading that is consistent with statutory provisions. *See generally, e.g., State v. Lisiewski*, 20 Ohio St. 2d 20, 20, 252 N.E.2d 168, 169 (1969) (syllabus, paragraph 2) (“[w]here a person establishes one or more homes as dwelling houses, each retains the character of an ‘inhabited dwelling house’ so long as he intends each such home to be a place of habitation for himself, even though he and members of his household are absent from it for a period of time”).

We note, in particular, that the statutory language requires that a private water systems contractor register in order to do business in the state. R.C. 3701.344(B)(3). The rule exempts persons who are not doing business or working for hire but, instead, are working on private water systems that serve their own dwellings or are contributing work to other private water system owners. 6 Ohio Admin. Code 3701-28-20(E). Consistent with the statute, the exemption reasonably extends to a private water system owner who is working on the system serving a house that he does not occupy, provided that he intends to occupy the house as soon as necessary work is completed. Therefore, for purposes of exempting a person from the requirements of R.C. 3701.344(B)(3) and rule 3701-28-20 governing registration and bonding as a private water systems contractor, a house may be considered to be the person’s dwelling house under division (E) of rule 3701-28-20 if the person occupies the house or if the person considers the house to be his dwelling house and intends to assume or resume occupancy when construction, remodeling, or repair is completed.

Let us now consider the fourth and fifth questions, which concern the nature of work that may be performed by an individual who is exempt from registration when working on the private water system serving his dwelling house. Your fourth question asks about the

installation of a private water system and the installation of a well pump. Your fifth question asks about the installation of plumbing in a one-family or two-family dwelling.

The statutory registration requirement applies to “[p]rivate water systems contractors,” R.C. 3701.344(B)(3), and the exemption in question applies to certain private water system owners, 6 Ohio Admin. Code 3701-28-20(E). By definition, a “[w]ater systems contractor” is a person who, for hire, constructs or develops a well for use as a private water system or otherwise constructs a private water system; installs pumping equipment for a private water system; alters, repairs, or seals a private water system; or inspects or evaluates private water systems. 6 Ohio Admin. Code 3701-28-01(OOO). Thus, the installation of a private water system and the installation of a well pump are the kinds of activities that a water systems contractor performs. A person who performs those activities must be registered as a water systems contractor, unless the person comes within exemptions established by law. Thus, pursuant to R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20(E), a private water system owner who works on the private water system serving his dwelling house may install a private water system or a well pump without meeting registration and bonding requirements.

To determine the extent to which plumbing is included in the construction of a private water system, let us look at the definition of “[p]rivate water system” that appears in rule 3701-28-01(ZZ). That definition includes as part of a private water system the source of the water (well, spring, cistern, pond, or hauled water) and “any equipment for the collection, distribution, transportation, filtration, disinfection, treatment, or storage of water extending from and including the source of the water”: (1) to the point of discharge from a pressure tank or other storage vessel; (2) to the point of discharge from the water pump where no pressure tank or other storage vessel is present; (3) to the point where the distribution line enters the foundation of the building or dwelling, where the pressure tank is outside the building or dwelling; or (4) for multiple service connections serving more than one dwelling, to the point of discharge from each service connection where the service connection enters the foundation. 6 Ohio Admin. Code 3701-28-01(ZZ); *see also* R.C. 3701.344(A). “A private water system does not include the water service line extending from the point of discharge to a structure.” R.C. 3701.344(A); 6 Ohio Admin. Code 3701-28-01(ZZ); *see also* 6 Ohio Admin. Code 3701-28-01(EEE) (defining “[s]ervice connection” to include “that point at which the private water system enters any ... dwelling”).

The construction, installation, alteration, or repair of a private water system comes within the registration and bonding requirements and exemptions discussed above, regardless of whether it is referred to as plumbing. *See* R.C. 3701.344(B)(3); 6 Ohio Admin. Code 3701-28-01(OOO); 6 Ohio Admin. Code 3701-28-20. However, any installation after the point of discharge or entry into the foundation, as described in the private water system definition, is not considered part of the private water system and is not subject to the registration and bonding requirements or exemptions. *See* 6 Ohio Admin. Code 3701-28-01 (ZZ). In general, plumbing that is installed within a one-family dwelling or a two-family dwelling is household plumbing rather than part of a private water system, and a person who installs such plumbing is not subject to the registration and bonding requirements or exemptions applicable to private water systems contractors.⁵

⁵Plumbing contractors may be regulated by licensing requirements of municipal corporations pursuant to R.C. 715.27 and by registration requirements of boards of health pursuant to R.C. 3709.21. *See* R.C. 4740.12; 1999 Op. Att’y Gen. No. 99-048; 1999 Op. Att’y Gen. No. 99-009.

Accordingly, a person who installs plumbing that is part of a private water system as defined in rule 3701-28-01(ZZ) is subject to the requirements of R.C. 3701.344(B)(3) and the exemptions of rule 3701-28-20(E) governing registration and bonding as a private water systems contractor. A person who installs plumbing that does not come within the definition of a private water system — that is, plumbing that is located after the point of discharge or entry to the foundation as described in rule 3701-28-01(ZZ) — is not subject to those registration and bonding requirements or exemptions. Thus, persons who perform plumbing after the point of discharge or entry to the foundation (as described in rule 3701-28-01(ZZ)) are not required to register with the Ohio Department of Health.

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20, a private water systems contractor must register with the Ohio Department of Health and comply with surety bonding requirements as a condition of doing business in the State of Ohio, but no registration or bonding is required of a person who performs labor or services under the direct supervision of a registered contractor, a private water system owner who performs work on the private water system serving his dwelling house, or any person who aids the owner with such work without compensation.
2. Pursuant to 6 Ohio Admin. Code 3701-28-20(E), the registration exemption applicable to a private water system owner who performs work on the private water system serving his dwelling house does not apply to an individual who builds a house for sale to a third party and owns but does not occupy that house.
3. For purposes of exempting a person from the requirements of R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20 governing registration and bonding as a private water systems contractor, a house may be considered to be the person's dwelling house under 6 Ohio Admin. Code 3701-28-20(E) if the person occupies the house or if the person considers the house to be his dwelling house and intends to assume or resume occupancy when construction, remodeling, or repair is completed.
4. Pursuant to R.C. 3701.344(B)(3) and 6 Ohio Admin. Code 3701-28-20(E), a private water system owner who works on the private water system serving his dwelling house may install a private water system or a well pump without meeting registration and bonding requirements.
5. A person who installs plumbing that is part of a private water system as defined in 6 Ohio Admin. Code 3701-28-01(ZZ) is subject to the requirements of R.C. 3701.344(B)(3) and the exemptions of 6 Ohio Admin. Code 3701-28-20(E) governing registration and bonding as a private water systems contractor. A person who installs plumbing that does not come within the definition of a private water system — that is, plumbing that is located after the point of discharge or entry to the foundation as described in rule 3701-28-01(ZZ) — is not subject to those registration and bonding requirements or exemptions.