

OPINION NO. 89-055**Syllabus:**

1. A judicial determination that a particular entity is a public office under R.C. 149.011(A) for purposes of the public records law is not determinative of the question whether that entity is a public office under R.C. 117.01(D) for purposes of audit and regulation by the Auditor of State under R.C. Chapter 117.
 2. The Auditor of State has discretion to interpret and apply the definition of "public office" appearing in R.C. 117.01(D) in the exercise of his responsibilities under R.C. Chapter 117.
 3. The receipt of public money is not, in itself, sufficient to require that an entity be classified as a public office for purposes of R.C. Chapter 117; rather, pursuant to R.C. 117.01(D), an entity may not be classified as a public office for purposes of R.C. Chapter 117 unless it is "established by the laws of this state for the exercise of any function of government."
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To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 26, 1989

I have before me your request for an opinion concerning the effect of the Ohio Supreme Court's decision in *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988), upon the duties of the Auditor of State. In the *Fostoria* case, the Ohio Supreme Court found that a hospital operated by a nonprofit, nonsectarian corporation under a lease with a city was a "public office," as that term is defined in R.C. 149.011(A), and, therefore, the public records of the hospital were required to be disclosed by the nonprofit corporation under R.C. 149.43.¹ The definition appearing in R.C. 149.011(A) states:

As used in this chapter:

(A) "Public office" includes any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

Your question arises from the fact that R.C. 117.01(D) contains a definition of "public office" that is nearly identical to that appearing in R.C. 149.011(A). R.C. 117.01 states, in relevant part:

As used in this chapter:

....
 (D) "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

The term "public office" is used throughout R.C. Chapter 117. For example, R.C. 117.10 provides that "[t]he auditor of state shall audit all public offices as provided in [R.C. Chapter 117]." R.C. 117.11 provides that each public office shall be audited

¹ The letter requesting this opinion states that, in *State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association*, 40 Ohio St. 3d 10, 531 N.E.2d 313 (1988), the Ohio Supreme Court "held that a nonprofit nonsectarian corporation operating a public hospital under lease with a public hospital [*sic*; should it read "city"?] was a 'public office' as defined in [R.C. 149.011(A)]." A careful review of the *Fostoria* case discloses that the court nowhere stated that the nonprofit corporation was a public office. The court stated, instead, that the hospital was "a public office whose public records must be disclosed" by the nonprofit corporation. 40 Ohio St. 3d at 11, 531 N.E.2d at 314. See also *Fostoria*, 40 Ohio St. 3d at 13, 531 N.E.2d at 316 (stating that the hospital "is a public institution, and its public records must be disclosed by [the nonprofit corporation] under R.C. 149.43"). With respect to the status of the nonprofit corporation, the court described the argument presented by counsel for the corporation as follows:

Respondents focus their argument on the status of FHA [the nonprofit corporation] as the body ultimately responsible for the management and operation of the hospital and as the custodian of the records in question. Since FHA is a private, nonprofit corporation, respondents argue, R.C. 149.43 may not be applied to compel disclosure of the records relator seeks.

40 Ohio St. 3d at 11, 531 N.E.2d at 314. It does not appear that the *Fostoria* court made a determination as to whether the corporation in question was a public office. It appears, instead, that the court concluded that the hospital was a public office and that, as a result, its public records were required to be disclosed by whoever held the records. In this regard, the provisions of R.C. 149.43(B) are passive: "All public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours." The disclosure requirement is thus established in terms of the public records, and not in terms of a public office. See also R.C. 149.431.

once every two years, and that if the Auditor of State is unable to conduct such an audit he shall provide notice to the public office, which may engage an independent certified public accountant to conduct the audit. R.C. 117.38 requires that a financial report of each public office, other than a state agency, be made for each fiscal year. R.C. 117.43 authorizes the Auditor of State to prescribe requirements for accounting and financial reporting for public offices other than state agencies.

Your question is whether the decision of the court in the *Fostoria* case affects the interpretation and implementation of R.C. Chapter 117. You have asked specifically:

1. Where a nonprofit nonsectarian institution is determined by a court of law to be a "public office" as that term is defined in Section 149.011(A), Revised Code, and is therefore determined to be subject to the provisions of Section 149.43, Revised Code, is that institution a "public office", as that term is defined in Section 117.01(D), Revised Code, requiring that it be audited by the Auditor of State?
2. Is such an institution subject to other requirements applicable to "public offices" under Chapter 117, Revised Code?

As discussed more fully below, an examination of the *Fostoria* case and the relevant statutes leads to the conclusion that the definitions appearing in R.C. 117.01(D) and in R.C. 149.011(A) are separate and distinct. Accordingly, a determination that a particular entity is classified as a public office under one of the definitions is not binding under the other statute.

It should be noted that, although the definitions appearing in R.C. 117.01(D) and R.C. 149.011(A) are similar, they are not identical. R.C. 117.01(D) uses the word "means" where R.C. 149.011(A) uses the word "includes," and R.C. 149.011(A) has the word "any" inserted before "other organized body." While it might be argued that these differences are not substantial, they do provide a clear indication that the General Assembly composed two different definitions, rather than adopting a single definition for both statutes. This is obviously not a situation in which the General Assembly inserted in one statute a definition that had an established meaning in a different statute, or in which it adopted by cross-reference a definition from a different statute. See generally, e.g., *Larkins v. Routson*, 115 Ohio St. 639, 155 N.E. 227 (1927); *State ex rel. Merchants' Fire Ins. Co. v. Conn*, 110 Ohio St. 404, 144 N.E. 130 (1924); *State ex rel. Northwestern Mutual Life Ins. Co. v. Tomlinson*, 99 Ohio St. 233, 124 N.E. 220 (1919); *Job v. Harlan*, 13 Ohio St. 485 (1862).

The conclusion that the definitions appearing in R.C. 117.01(D) and R.C. 149.011(A) were not intended to be identical is supported by their history. Both of these definitions became effective on July 1, 1985, under different pieces of legislation. See 1985-1986 Ohio Laws, Part I, 1760, 1794 (Sub. H.B. 201, eff. July 1, 1985) (amending R.C. 117.01); 1985-1986 Ohio Laws, Part II, 2761, 2768 (Am. Sub. H.B. 238, eff. July 1, 1985) (enacting R.C. 149.011).

Prior to its amendment in 1985, R.C. 117.01 contained a list of entities that were classified as public offices:

"Public office" means any state agency, county, municipal corporation, township, police district, township fire district, joint fire district, joint ambulance district, joint recreation district, township waste disposal district, township road district, community college district, technical college district, detention home district, a district organized under section 2151.65 of the Revised Code, a combined district organized under sections 2151.34 and 2151.61 of the Revised Code, a joint-county mental health district, school district, public institution, or political subdivision, and the offices thereof. "Public office" also includes any taxing authority, taxing unit, or district authority as defined in section 5705.01 of the Revised Code.

1985-1986 Ohio Laws, Part I, 1794. The amendment of R.C. 117.01 in 1985 was part of a general revision of the state financial system. See 1985-1986 Ohio Laws,

Part I, 1760. *See generally* 1987 Op. Att'y Gen. No. 87-027. There is no indication that the change in the definition of "public office" was intended to change the manner in which that term had been interpreted by the Auditor of State in the past. *See generally* Ohio Legislative Service Commission, *Summary of Enactments January - July 1985*, at 133-38 (1985) (Sub. H.B. 201). It appears, instead, that the amendment was intended simply to make the definition more concise. *See generally* 1986 Op. Att'y Gen. No. 86-067 at 2-369 (classifying a county hospital as a public office for purposes of R.C. 117.01(D) because "it is a public institution established under the laws of this state").

It is of interest that the definition listing the entities that were included as public offices was in effect for a comparatively short period of time. It was adopted in 1979-1980 Ohio Laws, Part II, 2800 (Am. Sub. H.B. 440, eff. Dec. 11, 1980, with certain sections, including R.C. 117.01, eff. March 13, 1981). Prior to the enactment of Am. Sub. H.B. 440, R.C. Chapter 117 "contained no formal definition of a public office." 1983 Op. Att'y Gen. No. 83-059 at 2-247.² Instead, R.C. 117.01 stated, in part:

This section creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall inspect and supervise the accounts and reports of *all state offices* as provided in sections 117.01 to 117.19 of the Revised Code, *including every state educational, benevolent, penal, and reformatory institution, public institution, and the offices of each taxing district or public institution in the state.* The bureau may examine the accounts of every private institution, association, board, or corporation receiving public money for its use.... (Emphasis added.)

1979-1980 Ohio Laws, Part II, 2806. At the same time, R.C. 117.09 stated: "The bureau of inspection and supervision of public offices shall examine each public office, department, or agency at least once every two years...." 1979-1980 Ohio Laws, Part II, 2810. It appears that it was generally understood that entities that were clothed with part of the sovereignty of the state were public offices,

² The action of the General Assembly in enacting a formal definition of "public office" for purposes of R.C. Chapter 117, *see* 1979-1980 Ohio Laws, Part II, 2800 (Am. Sub. H.B. 440, eff. Dec. 11, 1980, with certain sections, including R.C. 117.01, eff. March 13, 1981), was discussed in 1983 Op. Att'y Gen. No. 83-059, at 2-247 to 2-248, as follows:

I find no indication in Am. Sub. H.B. 440 that, by adopting a formal definition of "public office," the General Assembly intended to reduce the number of public offices which were subject to inspection by the Bureau. Rather, the Act amended R.C. 117.01 to broaden "state offices" to "public offices" and "taxing district" to "public office." Further, R.C. 117.01(A), as adopted by Am. Sub. H.B. 440, includes all taxing authorities, taxing units, and district authorities, as defined in R.C. 5705.01, and also includes language nearly parallel to the definition of "[s]ubdivision" appearing in R.C. 5705.01(A).

It is a general rule of statutory construction that every part of a statute's language is to be given effect. *See* R.C. 1.47(B); *State ex rel. Bohan v. Industrial Commission*, 147 Ohio St. 249, 251, 70 N.E.2d 888, 889 (1946) ("it is the duty of courts to accord meaning to each word of a [legislative] enactment if it is reasonably possible to do so"). For the term "political subdivision" to encompass any bodies other than those expressly named as public offices in R.C. 117.01(A), that term must be given a broad construction to include all types of public bodies authorized to exercise governmental functions. Under such broad construction, the term "[p]ublic office," as defined in R.C. 117.01(A), includes a county-wide organization for civil defense established pursuant to R.C. 5915.07.

departments, or agencies for purposes of examination under R.C. 117.09. 1954 Op. Att'y Gen. No. 4224, p. 460 at 466-67, contains the following discussion:

I do not believe that it could seriously be contended that a regional organization for civil defense is not a public agency, nor that its officers are not public officers, nor that its funds are not "public moneys" as such term is defined in Section 117.10, Revised Code. The purpose and function of such an organization, the method of its creation, the means by which it is supported, and the powers given it under the provisions of Chapter 5915., Revised Code, all clearly indicate that it has been clothed with some part of the sovereignty of the state, and this is the chief and controlling test of what constitutes a public office. I have no difficulty, therefore, in concluding that the accounts and records of such organizations are subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices.

See Op. No. 83-059 (reaching a similar conclusion with respect to a county-wide organization for civil defense under the definition of "public office" adopted in 1981); 1978 Op. Att'y Gen. No. 78-005 at 2-10 (citing 1954 Op. Att'y Gen. No. 4224, p. 460) ("[t]he test of what constitutes a state office for the purpose of R.C. Chapter 117 is merely that the agency or organization be clothed with some part of the sovereignty of the state"); see also 1982 Op. Att'y Gen. No. 82-003 at 2-5 ("[t]he Department of Mental Health and the institutions under its jurisdiction which exercise the functions set forth in R.C. Chapter 5119 are clearly 'public offices' the accounts of which the Bureau must inspect pursuant to R.C. 117.01"); 1978 Op. Att'y Gen. No. 78-050 (concluding that a county welfare department was an office of a taxing district and was, therefore, subject to audit and examination by the Bureau of Inspection and Supervision of Public Offices); 1975 Op. Att'y Gen. No. 75-079 (finding that moneys in the development fund of a state college or university were subject to audit under R.C. 117.01 and 117.10); 1964 Op. Att'y Gen. No. 1207, p. 2-259 (finding that a regional planning commission was a public office and that its accounts and records were subject to examination by the Bureau of Inspection and Supervision of Public Offices); 1939 Op. Att'y Gen. No. 490, vol. 1, p. 604 (finding that accounts of trustees appointed by a municipal court were subject to examination and audit by the Bureau of Inspection and Supervision of Public Offices); Gilchrist, *Change of Procedures: A summary of H.B. 440's Effects on Public Offices*, 54 Ohio St. B. A. Rep. 346, 347 (1981) (stating that definitions of "public office" and "state agency" were inserted into R.C. 117.01 "[t]o add consistency and clarity," and summarizing the definition of "public office" added by H.B. 440 as meaning "all state agencies, counties, municipal corporations, townships, all districts, all political subdivisions, and all taxing districts").

Both prior and subsequent to the enactment of Sub. H.B. 201, R.C. Chapter 117 has recognized a distinction between public offices and private bodies receiving public money. R.C. 117.10 currently states, in part:

The auditor of state shall audit all public offices as provided in this chapter. He also may audit the accounts of private institutions, associations, boards, and corporations receiving public money for their use and may require of them annual reports in such form as he prescribes. (Emphasis added.)

Prior to the enactment of Sub. H.B. 201, R.C. 117.01 established a similar distinction:

This section creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall inspect and supervise the accounts and reports of all public offices as provided in sections 117.01 to 117.19 of the Revised Code. The bureau may examine the accounts of every private institution, association, board, or corporation receiving public money for its use, and may require of them annual reports in such form as it prescribes.

1985-1986 Ohio Laws, Part I, 1794-95 (emphasis added). There is no indication that amendment of the definition of "public office" appearing in R.C. 117.01(D) was intended to modify this distinction. See generally R.C. 117.13 (providing that "costs arising from an audit of a private institution, association, board, or

corporation receiving public money for its use shall be charged to the public office providing the public money in the same manner as costs of an audit of the public office"); Op. No. 83-059; 1956 Op. Att'y Gen. No. 6184, p. 22 (classifying a law library association as a private association receiving public money for its use).

R.C. 149.011 was enacted as part of a bill that made appropriations and made a variety of statutory changes. See 1985-1986 Ohio Laws, Part II, 2761, 2768 (Am. Sub. H.B. 238, eff. July 1, 1985); Ohio Legislative Service Commission, *Summary of Enactments January - July 1985*, at 5 (1985) (Sub. H.B. 238). Prior to the enactment of R.C. 149.011 in 1985, the Ohio public records law used the term "governmental unit," rather than "public office." Before it was amended by Am. Sub. H.B. 238, R.C. 149.43(A)(1) stated, in part: "'Public record' means any record that is required to be kept by any governmental unit, including, but not limited to, state, county, city, village, township, and school district units...." 1985-1986 Ohio Laws, Part II, 2774. As amended, R.C. 149.43(A)(1) states: "'Public record' means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units...." The changes enacted by Am. Sub. H.B. 238 were clearly intended to expand the scope of the public records law by applying it to all records that are kept, rather than only to records that are required to be kept. See *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d 170, 527 N.E.2d 1230 (1988); 1986 Op. Att'y Gen. No. 86-089 at 2-507 n. 3. Use of the word "including" in R.C. 149.43(A)(1) and the word "includes" in R.C. 149.011(A) indicates that the concept of "public office" used in the public records law should be given an expansive, rather than a restrictive, interpretation. *State ex rel. Cincinnati Post v. Schweikert*. See generally *In re Hartman*, 2 Ohio St. 3d 154, 443 N.E.2d 516 (1983).

Like R.C. Chapter 117, the public records law recognizes a distinction between public offices and private entities that receive public money. R.C. 149.431, as enacted by 1979-1980 Ohio Laws, Part II, 4376, 4376-77 (Am. Sub. H.B. 1011, eff. Jan. 6, 1981) and 1979-1980 Ohio Laws, Part II, 4870, 4897-98 (Am. Sub. H.B. 1237, eff. Sept. 30, 1980, with R.C. 149.431 as amended taking effect only upon the taking effect of Am. Sub. H.B. 1011), had as its purpose: "to classify as public records financial records of nonprofit corporations or associations that receive funds from the federal, state, or local governments pursuant to contracts or agreements for services...." 1979-1980 Ohio Laws, Part II, 4376. R.C. 149.431 was not amended by Am. Sub. H.B. 238. R.C. 149.431 currently states:

(A) Any governmental entity or agency and any nonprofit corporation or association, except a corporation organized pursuant to Chapter 1719. of the Revised Code prior to January 1, 1980 or organized pursuant to Chapter 3941. of the Revised Code, that enters into a contract or other agreement with the federal government, a unit of state government, or a political subdivision or taxing unit of this state for the provision of services shall keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles. Such contract or agreement and such financial records shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and are subject to the requirements of division (B) of that section, except that:

(1) Any information directly or indirectly identifying a present or former individual patient or client or his diagnosis, prognosis, or medical treatment, treatment for a mental or emotional disorder, treatment for mental retardation, treatment for drug abuse or alcoholism, or counseling for personal or social problems is not a public record;

(2) If disclosure of the contract or agreement or financial records is requested at a time when confidential professional services are being provided to a patient or client whose confidentiality might be violated if disclosure were made at that time, disclosure may be deferred if reasonable times are established when the contract or agreement or financial records will be disclosed.

(3) Any nonprofit corporation or association that receives both public and private funds in fulfillment of any such contract or other

agreement is not required to keep as public records the financial records of any private funds expended in relation to the performance of services pursuant to the contract or agreement.

(B) *Any nonprofit corporation or association that receives more than fifty per cent of its gross receipts excluding moneys received pursuant to Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, in a calendar year in fulfillment of a contract or other agreement for services with a governmental entity shall maintain information setting forth the compensation of any individual serving the nonprofit corporation or association in an executive or administrative capacity. Such information shall be deemed to be public records as defined in division (A)(1) of section 149.43 of the Revised Code and is subject to the requirements of division (B) of that section.*

Nothing in this section shall be construed to otherwise limit the provisions of section 149.43 of the Revised Code. (Emphasis added.)

The public records law and the law governing operations of the Auditor of State have different histories and purposes. The public records law "represents a legislative policy in favor of the open conduct of government and free public access to government records." *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d at 172, 527 N.E.2d at 1232. Laws providing for the disclosure of public records have consistently been construed broadly. As was stated in *State ex rel. Cincinnati Post v. Schweikert*, 38 Ohio St. 3d at 173, 527 N.E.2d at 1232: "[T]he law's public purpose requires a broad construction of the provisions defining public records. Because the law is intended to benefit the public through access to records, the court has resolved doubts in favor of disclosure." *See also, e.g.*, 1988 Op. Att'y Gen. No. 88-103. The Ohio Supreme Court's decision in the *Fostoria* case is consistent with this philosophy.

The decision of the court in the *Fostoria* case was based upon the record before the court in that case. In determining whether the hospital under consideration in that case was a "public office," *see* note 1, *supra*, the court quoted the first paragraph of the syllabus of *State ex rel. Fox v. Cuyahoga County Hospital System*,³ 39 Ohio St. 3d 108, 529 N.E.2d 443 (1988), as follows:

³ *State ex rel. Fox v. Cuyahoga County Hospital System*, 39 Ohio St. 3d 108, 529 N.E.2d 443 (1988), contains the following discussion of "public office":

R.C. 149.011(A) defines "public office" as "any state agency, public institution, political subdivision, or any other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government." (Emphasis added.)

In *Halaby v. Bd. of Directors of Univ. of Cincinnati* (1954), 162 Ohio St. 290, 298, 55 O.O. 171, 175, 123 N.E.2d 3, 7, this court described the University of Cincinnati as a "****public institution organized for the purpose of rendering a public service to the residents of the city of Cincinnati. It is supported in part by public taxation and in this respect stands in the same category as the city's water service, garbage-collection service, fire-department service, and its public-school service.****" (Emphasis added.) "Public institution" is defined in Black's Law Dictionary (5 Ed. 1979) 719, as: "One which is created and exists by law or public authority, for benefit of [the] public in general; e.g., a public hospital, charity, college, university, etc." (Emphasis added.)

Under *Halaby*, an entity organized for rendering service to the residents of its community and supported by public taxation is deemed a public institution. The Cuyahoga County Hospital System renders a public service to residents of Cuyahoga County and is supported by public taxation. As such, it

A public hospital, which renders a public service to residents of a county and which is supported by public taxation is a "public institution" and thus a "public office" pursuant to R.C. 149.011(A), making it subject to the public records disclosure requirements of R.C. 149.43.

State ex rel. Fostoria Daily Review Co. v. Fostoria Hospital Association, 40 Ohio St. 3d at 11-12, 531 N.E.2d at 315. The court then stated: "Thus, if we find that a particular hospital is a public hospital, renders a public service to residents, and is supported by public taxation, we must hold that it is a public office required to disclose its public records." 40 Ohio St. 3d at 12, 531 N.E.2d at 315. The *Fostoria* court found, under the law and on the facts before it, that the Fostoria City Hospital was a public hospital rendering a public service to the residents of the city. The court found, further, that, by allowing the nonprofit corporation to use the hospital building without paying rent, the city provided support by public taxation. The court concluded, accordingly, that the hospital was a public institution and that its public records were required to be disclosed by the nonprofit corporation under R.C. 149.43. See generally R.C. 149.011(G) ("['records' includes any document, device, or item, regardless of physical form or characteristic, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office]").

The fact that the court found that the hospital under consideration in the *Fostoria* case was a public office for purposes of R.C. 149.011(A) does not require that the same conclusion be reached under R.C. Chapter 117. The court stated expressly that its decision in the *Fostoria* case was made "under the law and the facts." 40 Ohio St. 3d at 12, 531 N.E.2d at 315. The court was limited to the facts on the record before it; the Auditor of State, in contrast, may make an independent determination as to whether a particular entity comes within R.C. 117.01(D).

I reject the suggestion that the definitions appearing in R.C. 117.01(D) and 149.011(A) must be interpreted and applied in the same manner. Many terms used in the Revised Code have varying meanings, depending upon the contexts in which they are used. See, e.g., *Halaby v. Board of Directors*, 162 Ohio St. 290, 123 N.E.2d 3 (1954) (discussing different meanings of the word "citizen" as used in various contexts); 1987 Op. Att'y Gen. No. 87-104 at 2-693 n. 3 (discussing different meanings of the words "employ" and "work" as used in the Revised Code and stating: "The meanings attributed to the words "work" and "employ" in other provisions of the Revised Code are...not determinative of their meanings for purposes of R.C. Chapter 4109"); Op. No. 83-059 at 2-247 (citing various statutory definitions of "political subdivision" and stating that the term "is susceptible of a wide variety of definitions, depending upon the context in which it is used"); 1981 Op. Att'y Gen. No. 81-049 at 2-191 to 2-192 (discussing the definition of "employee" appearing in R.C. 124.01(F) and stating that a person who meets its requirements "is an employee for the purposes of R.C. 124.39, notwithstanding the fact that he may be considered a public officer for some other purpose"); Op. No. 78-050 at 2-116 (discussing the definition of "taxing district" appearing in R.C. 5711.01(E) and stating: "By its own terms, however, this definition is limited to R.C. Chapter 5711., and when applied to R.C. 117.01 is of limited value"). See generally *Radcliffe v. Artromick International, Inc.*, 31 Ohio St. 3d 40, 42 n. 3, 508 N.E.2d 953, 955 n. 3 (1987) (quoting Judge Learned Hand's observation, in *Commissioner v. National Carbide Co.*, 167 F.2d 304, 306 (2d Cir. 1948), that "[w]ords are chameleons, which reflect the color of their environment"). The Ohio Supreme Court has recognized that the same words

is a "public institution" and thus a "public office" pursuant to R.C. 149.011(A).

39 Ohio St. 3d at 110, 529 N.E.2d at 445. The entity under consideration in the *Fox* case was a county hospital, presumably established by a board of county commissioners pursuant to R.C. 339.01-.17 and managed by a board of county hospital trustees created under R.C. 339.02. See generally 1986 Op. Att'y Gen. No. 86-067.

may have different meanings when they are used in different contexts. *See, e.g., State v. Dickinson*, 28 Ohio St. 2d 65, 70, 275 N.E.2d 599, 602 (1971) ("where two statutes do not expressly state that the word has the same meaning in both, it is apparent that it might have different meanings"); *State ex rel. Belford v. Hueston*, 44 Ohio St. 1, 6, 4 N.E. 471, 473 (1886) ("it by no means follows that the legislature, in using the word in connection with an entirely different subject-matter, intended it should have the same meaning"). *See generally Lake Shore Electric Railway Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the legislature intended that a term have a particular meaning, "it would not have been difficult to find language which would express that purpose," since the legislature used such language in other contexts). Had the General Assembly intended to provide that entities classified as public offices under R.C. 149.011(A) should necessarily be classified as public offices under R.C. 117.01(D), it could easily have done so by incorporating in R.C. 117.01(D) by reference the definition appearing in R.C. 149.011(A). The General Assembly did not do so. *See generally* R.C. 9.38 (as transferred from former R.C. 117.17 and amended by Sub. H.B. 201, *see* 1985-1986 Ohio Laws, Part I, 1772) ("[a]s used in this section and section 9.39 of the Revised Code, 'color of office,' 'public office,' and 'public official' have the same meanings as in section 117.01 of the Revised Code"). R.C. 117.01 states expressly that definitions appearing therein apply to the defined terms "[a]s used in" R.C. Chapter 117, and R.C. 149.011 contains similar language restricting its definitions to R.C. Chapter 149. R.C. Chapter 117 is not *in pari materia* with the public records provisions of R.C. Chapter 149 and the two statutes need not be read together or have their definitions harmonized. *See generally, e.g., State v. Fremont Lodge of Loyal Order of Moose*, 151 Ohio St. 19, 84 N.E.2d 498 (1949).

You have asked specifically whether a nonprofit institution that is found by a court of law to be a public office for purposes of R.C. 149.011(A) is also a public office for purposes of R.C. 117.01(D) so that it must be audited by the Auditor of State, and also whether such an institution is subject to other requirements applicable to public offices under R.C. Chapter 117. I conclude that a finding made under R.C. 149.011(A) is not determinative under R.C. 117.01(D) for any provisions contained in R.C. Chapter 117. *See generally* note 1, *supra*.

The responsibility of implementing the provisions of R.C. Chapter 117 has been placed by the General Assembly upon the Auditor of State. *See, e.g.,* R.C. 117.10-.11; *see also* 1984 Op. Att'y Gen. No. 84-067. It is your duty, as Auditor of State, to interpret and apply the provisions of R.C. Chapter 117. In order to carry out such duty, you have discretion to adopt and implement an interpretation of "public office" that is consistent with R.C. 117.01(D) and with general provisions of statutory construction. In adopting and implementing that definition, you may consider the interpretation that has been given by courts to similar definitions appearing elsewhere in the Revised Code, such as the interpretation set forth in the *Fostoria* case. You may, however, also consider such factors as the language of R.C. Chapter 117 and the history of its provisions, prior administrative interpretation, and the purposes that R.C. Chapter 117 seeks to attain. *See, e.g.,* R.C. 1.42, 1.47, 1.49. It may, further, be necessary for you to make findings of fact regarding a particular situation in order to apply the definition of public office to that situation.

The definition of "public office" contained in R.C. 117.01(D) clearly includes certain entities, such as counties and townships. *See generally, e.g.,* Op. No. 86-067 at 2-369 (finding it "apparent that a county hospital qualifies as a public office as defined in R.C. 117.01(D), insofar as it is a public institution established under the laws of this state"). It clearly excludes certain entities, such as private corporations that receive no governmental funds. There may, however, be certain entities that are not readily classified as coming within the definition, but are subject to findings of fact as to whether they are "established by the laws of this state for the exercise of any function of government." R.C. 117.01(D). The Auditor of State is given discretion, in the first instance, to make those findings. The General Assembly has delegated to you the responsibility of carrying out the provisions of R.C. Chapter 117, and has entrusted to you the determination of matters involving discretion. *See generally, e.g.,* 1987 Op. Att'y Gen. No. 87-017 at 2-112 ("[t]he Registrar of Motor Vehicles is given the statutory responsibility of administering the provisions of R.C. Chapter 4738 and, where no statutory direction

is given as to the manner in which duties are to be performed, has the discretion to perform those duties in any reasonable manner that he deems appropriate"); 1986 Op. Att'y Gen. No. 86-076; Op. No. 84-067. I shall not attempt to interfere with your exercise of discretion. *See generally, e.g.*, Op. No. 86-076; 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098; Op. No. 84-067. It is, further, inappropriate to use an opinion of the Attorney General as a means for making findings of fact. *See generally, e.g.*, Op. No. 86-076. I am, accordingly, refraining from using this opinion to render advice concerning the application of the definition of "public office" to particular entities. I note, however, that the distinction set forth in R.C. 117.10 between "public offices" and "private institutions, associations, boards, and corporations receiving public money for their use" indicates that the receipt of public money is not, in itself, sufficient to require that an entity be classified as a public office for purposes of R.C. Chapter 117. *See generally* R.C. 149.431; 1956 Op. No. 6184. Rather, the characteristics that define an entity as a public office appear to be those set forth in R.C. 117.01 - that the entity is "established by the laws of this state for the exercise of any function of government" - or, in other words, that the entity is clothed with part of the sovereignty of the state. *See* 1954 Op. No. 4224.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. A judicial determination that a particular entity is a public office under R.C. 149.011(A) for purposes of the public records law is not determinative of the question whether that entity is a public office under R.C. 117.01(D) for purposes of audit and regulation by the Auditor of State under R.C. Chapter 117.
2. The Auditor of State has discretion to interpret and apply the definition of "public office" appearing in R.C. 117.01(D) in the exercise of his responsibilities under R.C. Chapter 117.
3. The receipt of public money is not, in itself, sufficient to require that an entity be classified as a public office for purposes of R.C. Chapter 117; rather, pursuant to R.C. 117.01(D), an entity may not be classified as a public office for purposes of R.C. Chapter 117 unless it is "established by the laws of this state for the exercise of any function of government."