

OPINION NO. 90-038**Syllabus:**

In compliance with Am. Sub. H.B. 317, 118th Gen. A. (1989) (eff. Oct. 10, 1989), and R.C. 340.02, the Director of Alcohol and Drug Addiction Services is required to make four initial appointments to each board of alcohol, drug addiction and mental health services, regardless of whether these appointments may temporarily cause some boards to exceed eighteen members. The Director of Alcohol and Drug Addiction Services is further required to make initial appointments to ensure that the board's continuing composition includes persons representing the classes of consumers and persons interested in the delivery of alcohol and drug addiction services as specified in R.C. 340.02.

To: Lucelle Fleming, Director, Department of Alcohol and Drug Addiction Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 20, 1990

I have before me your request for my opinion regarding the appointment of certain members to the boards of alcohol, drug addiction and mental health services. You have expressed a concern that making these appointments, as required by R.C. 340.02, will cause some such boards to exceed eighteen members. Your specific question is whether you may make initial appointments to these boards in order to ensure representation of consumers and those interested in the delivery of alcohol and drug addiction services even if these appointments temporarily cause some boards to exceed eighteen members.

Your question arises because the board of alcohol, drug addiction, and mental health services is the successor, in some counties, to the community mental health board under former R.C. 340.02. Prior to amendment by Am. Sub. H.B. 317, 118th Gen. A. (1989) (eff. Oct. 10, 1989), R.C. 340.02 permitted a community mental health board to have a number of members ranging from twelve to twenty-one. Since you, as the Director of Alcohol and Drug Addiction Services, are required to appoint members and ensure the composition of the board pursuant to R.C. 340.02, in some cases your appointments will cause boards of alcohol, drug addiction and mental health services to exceed the maximum composition of eighteen members, in apparent violation of R.C. 340.02.

A meaningful answer to your question requires that I briefly discuss the provision of alcohol and drug addiction services at the local level. The present system for delivery of drug and alcohol addiction services is structured largely according to the provisions of Am. Sub. H.B. 317. Broadly outlined, alcohol and drug addiction services are provided under the aegis of the recently created state administrative department named "the department of alcohol and drug addiction services." R.C. 121.02(T). Powers and duties of the department are set forth in R.C. Chapter 3793, including the duty "to promote and coordinate efforts in the provision of alcohol and drug addiction services by other state agencies...[and] boards of alcohol, drug addiction, and mental health services." R.C. 3793.02(B)(1). To carry out this mandate in relation to boards of alcohol, drug addiction and mental health services, R.C. 340.02 mandates, by stating in pertinent part, that:

the director of alcohol and drug addiction services shall appoint four members....

....

The director of alcohol and drug addiction services shall ensure that at least one member of the board is a professional in the field of alcohol or drug addiction services and one member of the board is an advocate for persons receiving treatment for alcohol or drug addiction. Of the members appointed by the director of alcohol and drug addiction services, at least one shall be a person who has received or is receiving services for alcohol or drug addiction and at least one member shall be a parent or other relative of such a person.

One of the primary purposes of the alcohol, drug addiction and mental health services board is to "[p]romote the delivery of high quality and cost-effective alcohol and drug addiction services." R.C. 340.011(A)(7). To fulfill this purpose, a board of alcohol, drug addiction and mental health services "shall serve as the planning agency for alcohol and drug addiction services for the county or counties in its service district." R.C. 340.033(A). *See also* R.C. 3793.04 (plan for alcohol and drug addiction services to be submitted to department of alcohol and drug addiction services by each board of alcohol, drug addiction and mental health services).

The General Assembly contemplated that the eighteen member composition of the boards of alcohol, drug addiction and mental health services mandated by R.C. 340.02 would be temporarily exceeded. This is apparent from the legislature's recognition in uncodified section 27 of Am. Sub. H.B. 317 that:

Notwithstanding section 340.02 of the Revised Code as enacted by this act, in the case of a board of alcohol, drug addiction, and mental health services having a greater number of members than the number specified in that section, the board is not required to reduce its number by any means other than not making a new appointment or reappointment to the board on the occurrence of a vacancy or the expiration of a member's term of office.

The intent of the General Assembly is, thus, that in the transition period following the amendment of R.C. 340.02, it is likely that boards of alcohol, drug addiction and mental health services will exceed eighteen members. This interpretation is reinforced by another statement in section 27 that expressly permits a member of a community mental health board, who continues to serve on the successor alcohol, drug addition and mental health services board, to serve the full term to which the member was appointed, "notwithstanding the composition of the board of alcohol, drug addiction, and mental health services specified by section 340.02 of the Revised Code as enacted by this act."

Am. Sub. H.B. 317, at section 27, also expressly requires the Director of Alcohol and Drug Addiction Services to "appoint such persons who have the special qualifications specified in section 340.02 of the Revised Code, as enacted by this act, so that the board becomes constituted as specified in that section." This clear direction mandates that the Director of Alcohol and Drug Addiction Services appoints at least one consumer of drug or alcohol addiction services and one relative of a person receiving such services. In addition, the Director shall ensure that at least one advocate for persons receiving drug or alcohol addiction treatment and one

professional in the field of drug or alcohol addiction services are members of the board. If members of predecessor community mental health boards who are completing their unexpired terms on a board of alcohol, drug addiction and mental health services are representatives of the classes of consumers and those interested in the delivery of alcohol and drug addiction services specified in R.C. 340.02, these members may serve in their capacity as the representatives of the required class or group. If, however, in order to reduce the number of members to eighteen, members of the predecessor community mental health board will not be reappointed, the Director's initial appointments should be of persons of the requisite qualifications to ensure that the board's composition continues to comply with R.C. 340.02.

Therefore, it is my opinion and you are hereby advised that in compliance with Am. Sub. H.B. 317 and R.C. 340.02, the Director of Alcohol and Drug Addiction Services is required to make four initial appointments to each board of alcohol, drug addiction and mental health services, regardless of whether these appointments may temporarily cause some boards to exceed eighteen members. The Director of Alcohol and Drug Addiction Services is further required to make initial appointments to ensure that the board's continuing composition includes persons representing the classes of consumers and persons interested in the delivery of alcohol and drug addiction services as specified in R.C. 340.02.