

## OPINION NO. 86-075

## Syllabus:

1. Cash payments made by the Rehabilitation Services Commission to reimburse clients for maintenance and transportation costs incurred as a result of the client's participation in a vocational rehabilitation program do not constitute the purchase or acquisition of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.
2. The disbursement of federal funds to accredited nonprofit rehabilitation facilities for the purpose of aiding the facilities in establishing vocational rehabilitation programs is not a purchase or acquisition of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.
3. Payments made by the Rehabilitation Services Commission to its employees as reimbursement for travel expenses, tuition and registration fees incurred by the employees within the course of their employment, do not constitute purchases or acquisitions of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.

To: Robert L. Rabe, Administrator, Rehabilitation Services Commission, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, November 13, 1986

I have before me your request for my opinion, in which you inquire whether various types of payments made by the Rehabilitation Services Commission (RSC) constitute purchases or acquisitions for purposes of R.C. 126.30. R.C. 126.30 provides, in part:

(A) Any state agency that purchases, leases, or otherwise acquires any equipment, materials, goods, supplies, or services from any person and fails to make payment for the equipment, materials, goods, supplies, or services by the required payment date shall pay an interest charge to the person in accordance with division (E) of this section. Except as otherwise provided in division (B), (C), or (D) of this section, the required payment date shall be the date on which payment is due under the terms of a written agreement between the state agency and the person or, if a specific payment date is not established by such a written agreement, the required payment date shall be thirty days after the state agency receives a proper invoice for the amount of the payment due. (Emphasis added.)

Thus, by the express terms of R.C. 126.30, a state agency is required to pay an interest charge for late payments to any person from whom the state agency has purchased, leased, or otherwise acquired equipment, materials, goods, supplies, or services.

Specifically, you have asked whether the following are purchases or acquisitions for purposes of R.C. 126.30:

1. Maintenance and transportation allowances, in the form of cash payments, made by RSC to clients as reimbursement for costs incurred as a result of participation in a vocational rehabilitation program.
2. The disbursement of federal funds to accredited nonprofit rehabilitation facilities for the purpose of establishing vocational rehabilitation programs.
3. Reimbursement to state employees for travel expenses, tuition and registration fees.

I turn now to your first question. You state in your letter of request:

The Rehabilitation Services Commission is required by federal and state law to provide maintenance and transportation allowances to some clients to assist them with transportation costs and the costs of meals and other incidental expenses which they incur due to their participation in a vocational rehabilitation program. (34 CFR, Sections 361.42(a)(5) and (a)(6); Section 3304.19 ORC; Section 3304-2-12 and 3304-2-13 OAC). The allowances are cash payments made to the clients, not to the vendors who provide the clients with transportation, meals, etc. RSC gets nothing in return for these payments, and does not directly benefit in any way from them. It acts as a conveyor, passing federal and state monies to clients.

The Rehabilitation Act of 1973, as amended, 29 U.S.C. §§701-794, authorizes states to submit plans for vocational rehabilitation service programs. See 29 U.S.C. §721. If a state's plan meets federal requirements, a state becomes eligible for federal grants. See 29 U.S.C. §§720, 721; note one, *infra*. Such state programs aid the federal government in developing and implementing "comprehensive and coordinated programs of vocational rehabilitation and independent living." 29 U.S.C. §701. See also 29 U.S.C. §723 (scope of vocational rehabilitation services). RSC is the sole state agency authorized and designated to administer the state plan under the Rehabilitation Act of 1973 and provides vocational rehabilitation services to all eligible handicapped persons. R.C. 3304.16(D); R.C. 3304.17. See R.C. 3304.11(D) (defining "vocational rehabilitation" and "vocational rehabilitation services"); R.C. 3304.16(K)(3) and (5); R.C. 3304.16(M). See also Rone v. Fireman, 473 F. Supp. 92, 126 (N.D. Ohio 1979) ("[t]he primary function of the commission is to assist persons with a physical or mental disability which is a substantial impediment to employment and who could benefit in terms of employability from vocational rehabilitation services").

Under the state plan to provide vocational rehabilitation services, RSC is directed to provide maintenance and transportation allowances to clients who incur such costs during their participation in a vocational rehabilitation program. See 29 U.S.C. §723(a)(5) and (10); 34 C.F.R. §§361.42(a)(5) and (6); 3 Ohio Administrative Code 3304-2-05, 3304-2-12, 3304-2-13. See also R.C. 3304.11(I); R.C. 3304.16(L); R.C. 3304.19. I understand from a telephone conversation which you had with a member of my staff, that

these cash payments are made pursuant to a written plan signed by the client and RSC.

You have indicated that the allowances are cash payments made directly to the client; they are not made to the vendors who provide clients with transportation, meals, or other services. The common meaning of the term "purchase" is: "1. to obtain for money or by paying a price; buy 2. to obtain at a cost...to acquire (land, buildings, etc.) by means other than inheritance or descent." Webster's New World Dictionary 1153 (2d college ed. 1978). Similarly, the term "acquire" means: "to get or gain by one's own efforts or actions...to get or come to have as one's own." Id. at 12. Thus, both terms contemplate that a party will either pay money or perform some act, for which he will obtain something in return. In this instance, RSC is not paying allowance costs to clients in order to obtain equipment, materials, goods, supplies, or services. RSC receives nothing from clients in exchange for the payments. Rather, RSC is the conduit for conveying state and federal funds<sup>1</sup> as reimbursement to clients who receive vocational rehabilitation services. Therefore, I conclude that cash payments made by RSC to clients, as reimbursement, do not constitute the purchase or acquisition of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.

In regard to your second question you have inquired whether the disbursement of federal funds to accredited nonprofit rehabilitation facilities, for the purpose of establishing vocational rehabilitation programs, constitutes a purchase or acquisition for purposes of R.C. 126.30.

Pursuant to a state plan, a state may determine the need for establishing any rehabilitation facility for the purpose of providing vocational rehabilitation services. 29 U.S.C. §723(b)(2); 34 C.F.R. §§361.51, 361.52. See also R.C. 3304.11(E), (F), and (I); R.C. 3304.16(K)(2). Federal financial participation is available for the establishment and construction of public or nonprofit rehabilitation facilities. See 34 C.F.R. §§361.73, 361.74, 365.1, 365.12, 365.41. See generally 1971 Op. Att'y Gen. No. 71-082.

As you have explained in your letter requesting an opinion:

The purpose of the grants is to make funds available to the [accredited nonprofit rehabilitation] facilities to establish vocational rehabilitation programs to which RSC may refer clients for services. Of course when RSC does refer clients to the aforementioned programs, it is charged for the service by the facility. Under the terms of the grants, the grantee purchases goods and services to establish the aforementioned programs, as permitted under the terms of the grant and then "bills" RSC for the purchase price. RSC charges these "billings" against the facility's grant and makes payment for the price of the goods and services to the facility, not the vendor.

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<sup>1</sup> 29 U.S.C. §720 authorizes federal "grants to assist States to meet the current and future needs of handicapped individuals, so that such individuals may prepare for and engage in gainful employment to the extent of their capabilities."

Further, you have indicated by telephone conversation, that once the grant funds have been expended, the facility becomes a self-sufficient "fee for service program." At that point, when RSC refers clients for services and is charged for the services by the facility, you understand that payments for services are subject to the provisions of R.C. 126.30. Your question is limited to the disbursement of federal funds to the facility while the facility is in the process of establishing vocational rehabilitation programs to which RSC may later refer its clients.

The disbursement of federal grant funds to nonprofit rehabilitation facilities which are in the process of establishing vocational rehabilitation programs does not constitute a purchase or acquisition for purposes of R.C. 126.30. RSC is not, at that time, obtaining anything in return for the disbursement of funds, nor is it making payment directly to the vendors. Rather, RSC is channeling funds from the federal government to the facility in order to reimburse the facility for the costs of establishing vocational rehabilitation programs. Thus, I conclude that the disbursement of federal funds to accredited nonprofit rehabilitation facilities for the purpose of aiding the facilities in establishing vocational rehabilitation programs is not a purchase or acquisition for purposes of R.C. 126.30.

I turn now to your third question, concerning reimbursements to state employees for necessary travel expenses, tuition and registration fees. Again, RSC is not obtaining any equipment, materials, goods, supplies or services from its employees in exchange for the payments. RSC is merely reimbursing its employees for expenses which they have incurred within the course of their employment. Thus, such payments do not fall within the scope of R.C. 126.30.

My conclusion is supported by rules promulgated by the Office of Budget and Management construing R.C. 126.30. [1985-1986 Monthly Record] Ohio Admin. Code 126-3-01(B) provides in part at 988: "(1) Each state agency shall make prompt payment for all equipment, materials, goods, supplies, or services which it purchases, leases, or otherwise acquires from any vendor....(3) A state agency which fails to make payment by the required payment date shall pay an interest charge to the vendor." (Emphasis added.) Rule 126-3-01(A)(8) defines "vendor" as:

any person, partnership, corporation, association, organization, state agency or other party who sells, leases, or otherwise provides equipment, materials, goods, supplies, or services to a state agency pursuant to a written or oral contract between the vendor and a state agency but shall not include any executive officer, legislative officer, judicial officer, member, or employee of any state agency in his capacity as such officer, member, or employee. (Emphasis added.)

Thus, it is clear that payments made by a state agency to an employee of the agency in his capacity as an employee are not covered by R.C. 126.30. I conclude, therefore, that payments made by RSC to its employees, as reimbursement for travel expenses, tuition and registration fees, do not constitute purchases or acquisitions for purposes of R.C. 126.30.

It is, therefore, my opinion, and you are advised that:

1. Cash payments made by the Rehabilitation Services Commission to reimburse clients for maintenance and transportation costs incurred as a result of the client's participation in a vocational rehabilitation program do not constitute the purchase or acquisition of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.
2. The disbursement of federal funds to accredited nonprofit rehabilitation facilities for the purpose of aiding the facilities in establishing vocational rehabilitation programs is not a purchase or acquisition of equipment, materials, goods, supplies, or services for purposes of R.C. 126.30.
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