

**OPINION NO. 81-055****Syllabus:**

1. County hospitals which engage in the sale of, practice of dealing in, or fitting of hearing aids are not subject to R.C. Chapter 4747.
2. Employees of county hospitals who engage in the sale of, practice of dealing in, or fitting of hearing aids must comply with R.C. Chapter 4747, unless such employees are exempt from licensure under R.C. 4747.15.

**To: Paul L. Barenfeld, Secretary, Ohio Hearing Aid Dealers and Fitters Licensing Board, Columbus, Ohio**

**By: William J. Brown, Attorney General, September 23, 1981**

I have before me your request for my opinion concerning the application of R.C. Chapter 4747 to services performed by Hillside Hospital of Warren, Ohio.

As I understand the background of your question, Hillside is a county hospital established by the Trumbull County Commissioners and operated by the board of county hospital trustees. Hillside Hospital's Department of Audiology performs various tests for the measurement of human hearing and assists in the selection of hearing aids which it dispenses to its patients. Hospital personnel also fit the aids, and the patients are billed by the Hospital on a cost plus basis.

You have received a complaint from a patient fit by the Audiology Department with an aid sold by the Hospital. The Board is uncertain, however, whether the law governing the sale and fitting of hearing aids is applicable to a county hospital or its employees. While your request asks a number of questions, your basic concerns can be summed up in the following two questions:

1. Is a county hospital exempt from R.C. Chapter 4747, which provides for licensure and regulation of the practice of dealing in or fitting of hearing aids?
2. Are personnel of a county hospital who engage in the practice of dealing in or fitting of hearing aids exempt from the provisions of R.C. Chapter 4747 by virtue of their status as employees of a county hospital?

According to the provisions of R.C. Chapter 339, a county hospital is characterized as a county institution. See 1951 Op. Att'y Gen. No. 854, p. 635, 636 ("it is clear that the county hospital is, and remains a county institution"). Similarly, in 1973 Op. Att'y Gen. No. 73-017, I stated that a county hospital is clearly a county agency and "is no less a county agency merely because its management is conferred by statute upon" the board of county hospital trustees.

R.C. Chapter 4747 regulates the practice of dealing in and fitting hearing aids. The scope of the chapter's coverage is set out in R.C. 4747.02, which provides in relevant part: "No person, firm, partnership, association, or corporation shall . . . engage in the sale, practice of dealing in or fitting of hearing aids. . . without first being licensed as provided in this chapter." Thus, in order to find that a county hospital is subject to the provisions of R.C. Chapter 4747, it must be determined that the hospital is a person, firm, partnership, association, or corporation.

Absent a statutory definition to the contrary, Ohio courts have consistently found that a county is not a body corporate, but rather a local political organization established for the civil administration of the state's policies. Board of

County Commissioners v. Gates, 83 Ohio St. 19 (1910); Board of County Commissioners v. Mighels, 7 Ohio St. 109 (1857). See 1978 Op. Att'y Gen. No. 78-030. Statutes including corporations within their scope have, in the past, been interpreted as excluding counties. See 1979 Op. Att'y Gen. No. 79-055; 1978 Op. Att'y Gen. No. 78-030; 1974 Op. Att'y Gen. No. 74-008; 1970 Op. Att'y Gen. No. 70-164. Similarly, the terms "firm," "partnership," and "association" have been construed to exclude counties from the operation of otherwise applicable statutes. See Op. No. 79-055; Op. No. 74-008; Op. No. 70-164.

Examining the common definitions of the terms under consideration, it becomes apparent that these words are descriptive of various types of business relationships. A corporation may be formed in Ohio for profit, see R.C. 1701.01(A), or a corporation may be nonprofit. A nonprofit corporation is defined in R.C. 1702.01(C) as:

a corporation which is not formed for the pecuniary gain or profit of, and whose net earnings or any part thereof is not distributable to, its members, trustees, officers, or other private persons; provided however, that the payment of reasonable compensation for services rendered and the distribution of assets on dissolution as permitted by section 1702.49 of the Revised Code shall not be deemed pecuniary gain or profit or distribution of earnings. In a corporation all of whose members are non-profit corporations, distribution to members does not deprive it of the status of a non-profit corporation.

A charitable corporation is defined in R.C. 1702.01(D) as "a corporation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, exclusively for the prevention of cruelty to children or animals, or exclusively for a home for the aged, as defined in section 5701.13 of the Revised Code." "Partnership" is defined in R.C. 1775.05(A) as "an association of two or more persons to carry on as co-owners of a business for profit." It is obvious that a county does not fall within any of the above definitions. I am aware that the use of the definitions concerning corporations are specifically limited to the specific statutory chapters in which the terms are found. However, these definitions, along with the statutory schemes in which they are used, are certainly indicative of the common meaning of the term "corporation." Clearly, a county does not fit into any of these concepts, nor within the concept of a partnership. Although "firm" and "association" have no statutory definitions, under the rule of statutory construction of "ejusdem generis," they should be read as referring to entities of a character similar to that of a corporation or partnership. See State v. Aspell, 10 Ohio St. 2d 1, 225 N.E.2d 226 (1967). Thus, I interpret "firm" and "association" as used in R.C. Chapter 4747 to mean types of business relationships, rather than governmental entities.

There is nothing in R.C. Chapter 4747 to indicate that corporation, firm, partnership, or association is to be interpreted expansively to include political subdivisions. Indeed, R.C. 4747.05 supports my conclusion that the terms corporation, firm, partnership, and association are being used in R.C. Chapter 4747 to describe various types of business relationships. R.C. 4747.05(B) states in part: "If the applicant [for licensure] is a firm, partnership, association, or corporation, the application, in addition to such information as the board requires, shall be accompanied by an application for a license for each person, whether owner or employee, of the firm, partnership, association, or corporation, who engages in dealing in or fitting of hearing aids. . . ." (Emphasis added.) While a county may have employees, it is certainly inconceivable that a county may be considered as having an "owner."

For the reasons outlined above, I conclude that a county is not a firm, partnership, association, or corporation for purposes of R.C. 4747.02.

I turn now to the question whether a county may be considered a "person" for purposes of R.C. 4747.02. There is no definition of "person" in R.C. Chapter 4747.

The well-established rule in Ohio is that a public body is not a "person" in the absence of a statutory definition to the contrary, see Summers v. Hamilton County, 7 Ohio N.P. 542 (C.P. Hamilton County 1900); Op. No. 78-030, unless the language, purpose, or context of a statute demonstrates that a broad interpretation of the word is intended. See City of Dayton v. McPherson, 57 Ohio Op. 2d 361, 280 N.E.2d 106 (C.P. Montgomery County 1969); 1974 Op. Att'y Gen. No. 74-058. Clearly, as used in R.C. 4747.02, the word "person" must be given a narrow interpretation which excludes counties as well as other artificial entities. From the context in which "person" is used in R.C. Chapter 4747, it is apparent that the word, as used in R.C. 4747.02, refers only to individuals or natural persons.

R.C. 4747.05, which sets out the requirements for licensure as a hearing aid dealer or fitter, divides applicants for licensure into two categories. R.C. 4747.05(B) covers applicants which are either a firm, partnership, association or corporation. As discussed above, counties do not fall within this category. R.C. 4747.05(A) lists those qualifications of applicants who are not a firm, partnership, association, or corporation. (These applicants must be persons under R.C. 4747.02, since this section refers only to persons, firms, partnerships, associations, and corporations.) R.C. 4747.05(A) states in part that the licensing board "shall issue to each applicant. . . a hearing aid dealer's or fitter's license if the applicant, if an individual [as opposed to a firm, partnership, association, or corporation] is: (1) At least eighteen years of age; (2) A person of good moral character; (3) Free of contagious or infectious disease." (Emphasis added.) Obviously, these qualifications have no relevance to a county or any other artificial entity. R.C. 4747.05(A) demonstrates that the words "individual" and "person" are used interchangeably to define the scope of the licensing requirements of R.C. 4747.02.<sup>1</sup>

R.C. 4747.08 states that "no person shall be issued a hearing aid dealer's or fitter's license unless such person has successfully taken and passed a qualifying examination." R.C. 4747.08 further provides that: "The qualifying examination shall be a thorough testing of knowledge required for the proper selecting, fitting, and sale of hearing aids, but shall not be such that a medical or surgical education is required for successful completion." Again, as used in this section, "person" could only mean an individual. See also R.C. 4747.05(B) ("each person, whether owner or employee, . . . who engages in dealing in or fitting of hearing aids"). Because of the use given to "person" in R.C. 4747.05 and 4747.08, I conclude that, as used in R.C. 4747.02, "person" refers only to individuals, and does not include counties.

I am aware that R.C. 1.59 provides in part: "As used in any statute, unless another definition is provided: . . . (C) 'Person' includes an individual, corporation, business trust, estate, trust, partnership and association." R.C. 1.59(C) has, on occasion, been interpreted to include governmental entities. See City of Dayton v. McPherson, *supra* (interpreting R.C. 1.02(A), the forerunner of R.C. 1.59(C)); 1974 Op. Att'y Gen. No. 74-058. Although R.C. Chapter 4747 does not specifically provide another definition, I believe, as discussed above, that it is implicit from the way "person" is used in R.C. Chapter 4747 that R.C. 1.59(C) does not apply to R.C. 4747.02. If "person" as used in R.C. 4747.02 were given the meaning provided in R.C. 1.59(C), the terms "partnership," "association" and "corporation," as used in R.C. 4747.02, would be unnecessary, since they are included within the scope of "person" as defined by R.C. 1.59(C).

In response to your first question, I conclude that a county hospital is not within the scope of R.C. Chapter 4747, as set out in R.C. 4747.02, and thus need not comply with the provisions of R.C. Chapter 4747.

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<sup>1</sup> I note that, in the first sentence of R.C. 4747.06, "person" seems to be used to mean "applicant." The term "applicant" is, however, limited by its use in R.C. 4747.05.

The second question is whether the personnel of a county hospital are exempt from the provisions of R.C. Chapter 4747 when the personnel engage in the practice of dealing in or fitting hearing aids as employees of the county hospital. It is my understanding that the particular individual whose alleged actions prompted your request was at the time of those actions the Director of the Department of Audiology at Hillside Hospital. It is also my understanding that this particular position on the county hospital's staff is compensated by county moneys. Clearly, a person holding such a position is a county employee. See 1951 Op. No. 854, at p. 636 ("[a]ccordingly, the employees of the hospital are county employees"). A county employee is clearly an individual, and as such, fits neatly within the meaning of "person" as used in R.C. 4747.02. Consequently, a county employee is within the scope of R.C. Chapter 4747, and is subject to the licensure and other regulatory provisions of that chapter.

R.C. 4747.15 names those who are exempt from the licensing provisions of R.C. Chapter 4747, and reads as follows:

The licensing provisions of this chapter do not apply to any person engaged in the practice of measuring human hearing for the purpose of selection of hearing aids provided that such selection does not result in an actual sale of a hearing aid by such person. The licensing provisions do not apply to any practicing physician who is licensed by the Ohio state medical board.

Under the rule of statutory construction, "expressio unius est exclusio alterius," those persons not specifically exempted by R.C. 4747.15, including governmental employees, are necessarily included within the purview of R.C. Chapter 4747. Cf. 4753.12(C) (specifically exempting persons employed by a state or federal agency as speech pathologists or audiologists from R.C. Chapter 4753, regulating the practice of speech pathology and audiology). Of course, if a county employee were to qualify in another respect for exemption under R.C. 4747.15 (for example, as a physician), he would not be required to be licensed under R.C. Chapter 4747.

Because a county employee is a "person" for purposes of R.C. Chapter 4747, and because county employees are not exempt under R.C. 4747.15 from the provisions of that chapter, employees of a county hospital are subject to R.C. Chapter 4747, even though the hospital for which the employees work does not fall within the chapter's scope. See Op. No. 70-164.

Accordingly, it is my opinion, and you are advised, that:

1. County hospitals engage in the sale of, practice of dealing in, or fitting of hearing aids are not subject to R.C. Chapter 4747.
2. Employees of county hospitals who engage in the sale of, practice of dealing in, or fitting of hearing aids must comply with R.C. Chapter 4747, unless such employees are exempt from licensure under R.C. 4747.15.