

OPINION NO. 92-036**Syllabus:**

1. Pursuant to R.C. 4749.13(A), unless one of the express exceptions contained in R.C. 4749.01(H) applies, an independent insurance adjuster not licensed under R.C. 3951.01-.09 as a public insurance adjuster is subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, investigations to determine the cause of or responsibility for a fire, accident, or damage to property, and engages in other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B).
2. A person licensed under R.C. 3951.01-.09 as a public insurance adjuster is not subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, an investigation to determine the cause of or responsibility for a fire, accident, or damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property. If, however, the person engages in any other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B), R.C. 4749.13(A) requires, unless one of the express exceptions contained in R.C. 4749.01(H) applies, that the person be licensed under R.C. Chapter 4749.

To: Nancy S. Chiles, Director, Department of Commerce, Columbus, Ohio
By: Lee Fisher, Attorney General, July 29, 1992

You have requested an opinion concerning the applicability of R.C. Chapter 4749, which governs the licensure of the business of private investigation and the business of security services, to independent insurance adjusters. Specifically, you ask:

1. If a person is an independent insurance adjuster, licensed as a public insurance adjuster under [R.C. Chapter 3951], and during the course of performing his services determines the cause of or responsibility for any fire, accident, or damage to property, but does not engage in any of the other activities specified in [R.C. 4749.01(B)], does the person need to be also licensed pursuant to [R.C. Chapter 4749]?
2. If a person is an independent insurance adjuster, licensed as a public insurance adjuster under [R.C. Chapter 3951], and during the course of performing his services determines the cause of or responsibility for any fire, accident, or damage to property, and in addition engages in other activities specified in [R.C. 4749.01(B)], does the person need to be also licensed pursuant to [R.C. Chapter 4749]?
3. If a person is an independent insurance adjuster, *not* licensed as a public insurance adjuster under [R.C. Chapter 3951], and during

the course of performing his services determines the cause of or responsibility for any fire, accident, or damage to property, and in addition engages in other activities specified in [R.C. 4749.01(B)], does the person need to be licensed pursuant to [R.C. Chapter 4749]?

I. Introduction: The Business Of Private Investigation

For purposes of this opinion, it is appropriate to discuss your third question first. R.C. 4749.13(A) provides: "No person shall engage in the business of private investigation, the business of security services, or both businesses in this state unless he is licensed pursuant to [R.C. Chapter 4749]." For purposes of R.C. Chapter 4749, the business of private investigation

means, except when performed by one excluded under division (H) of this section,¹ *the conducting, for hire, in person or through a partner or employees, of any investigation relevant to any crime or wrong done or threatened, or to obtain information on the identity, habits, conduct, movements, whereabouts, affiliations, transactions, reputation, credibility, or character of any person, or to locate and recover lost or stolen property, or to determine the cause of or responsibility for any libel or slander, or any fire, accident, or damage to property, or to secure evidence for use in any legislative, administrative, or judicial investigation or proceeding.* (Footnote and emphasis added.)

R.C. 4749.01(B). As the plain language of these statutes conveys, unless one of the exceptions of R.C. 4749.01(H) applies, a person who conducts, for hire, an investigation to determine the cause of or responsibility for any fire, accident, or damage to property is engaged in the business of private investigation and is thus required to be licensed under R.C. Chapter 4749.

¹ Pursuant to division (H) of R.C. 4749.01, the business of private investigation does not include:

(1) Public officers and employees whose official duties require them to engage in investigatory activities;

(2) Attorneys at law;

(3) Credit bureaus and other persons engaged in the business of obtaining and furnishing financial ratings and personnel information;

(4) Insurers, inspection bureaus, and persons who act as employees of such entities as the term "employee" is defined in section 4101.01 of the Revised Code, engaged in investigating matters related to insurance policies or bonds.

(5) An employee in the regular course of his employment, engaged in investigating matters pertinent to the business of his employer or protecting property in the possession of his employer, provided such employee is not employed by, associated with, or acting for or on behalf of any private investigator or security guard provider.

(6) Any better business bureau or similar organization or any of its employees while engaged in the maintenance of the quality of business activities relating to consumer sales and services.

II. An Independent Insurance Adjuster Not Licensed Under R.C. 3951.01-.09 As A Public Insurance Adjuster May Be Subject To The Licensure Requirements Of R.C. Chapter 4749

Review of the express exceptions listed in R.C. 4749.01(H) discloses no exception for independent insurance adjusters.² There are also no other statutes which purport to exempt independent insurance adjusters from the licensure requirements of R.C. Chapter 4749. Accordingly, pursuant to R.C. 4749.13(A), unless one of the exceptions of R.C. 4749.01(H) applies, an independent insurance adjuster not licensed under R.C. 3951.01-.09 as a public insurance adjuster is subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, investigations to determine the cause of or responsibility for a fire, accident, or damage to property, and engages in other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B). *See generally Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

III. Certified Public Insurance Adjusters Are Not, As A General Matter, Subject To The Licensure Requirements Of R.C. Chapter 4749

A. Certified Public Insurance Adjusters

Your first and second questions concern the applicability of R.C. Chapter 4749 to certified public insurance adjusters. *See generally* R.C. 3951.02 (a person licensed under R.C. 3951.01-.09 is known as a "certified public insurance adjuster"). In Ohio, no person shall act as a public insurance adjuster, unless he is the holder of a certificate of authority to act as a public insurance adjuster, issued pursuant to R.C. 3951.01-.09. R.C. 3951.02. As used in R.C. 3951.01-.09, the term public insurance adjuster

means any person, firm, association, partnership, or corporation who, for compensation, acts on behalf of or aids in any manner, an insurer or insured or another in negotiating for, or effecting the settlement of a claim or claims for loss or damage under any policy of insurance covering real or personal property, and any person, firm, association, partnership, or corporation who advertises, solicits business, or holds itself out to the public as an adjuster of such insurance claims, and any person who for compensation investigates, settles, adjusts, advises, or assists an insurer or insured with reference to claims for such losses, on behalf of any such public insurance adjuster.

R.C. 3951.01(A). Thus, a person who conducts, for compensation, an investigation related to a claim or claims for loss or damage under a policy of insurance covering real or personal property is acting as a public insurance adjuster, and is, as a general

² Although no exception listed in R.C. 4749.01(H) explicitly exempts an independent insurance adjuster from the licensure requirements of R.C. Chapter 4749, such an adjuster is exempt, if he is an insurer or an employee of an insurer or inspection bureau engaged in investigating matters related to insurance policies or bonds. *See* R.C. 4749.01(H)(4). In your letter of request, you state that for purposes of answering your questions, it is to be assumed that the independent insurance adjuster is not an insurer or an employee of an insurer or inspection bureau engaged in investigating matters related to insurance policies or bonds.

matter, subject to the licensure requirements of R.C. 3951.01-.09.³

B. Construing R.C. 3951.01-.09 And R.C. Chapter 4749 Together

Except as provided in R.C. 3951.01(D) and R.C. 4749.01(H), the statutory language of both R.C. 3951.01-.09 and R.C. Chapter 4749 requires the licensure of a person who conducts, for compensation, an investigation to determine the cause of or responsibility for a fire, accident, or damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property. However, if a person who is licensed under R.C. 3951.01-.09 to act as a public insurance adjuster and who is not exempt, pursuant to R.C. 4749.01(H), from the operation of R.C. Chapter 4749 were also required to be licensed under R.C. Chapter 4749 in order to conduct, for compensation, an investigation to determine the cause of or responsibility for a fire, accident, or damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property, the licensure requirements of R.C. Chapter 4749 would effectively repeal some of the rights granted to a person licensed under R.C. 3951.01-.09.

It is well-settled in Ohio "that the repeal of rights granted by one statute does not occur, unless the intent to supercede the operation of that statute is clear from enactment of another provision, or there is no reasonable way to read the statutes in a conciliatory fashion." *General Motors Corp. v. McAvoy*, 63 Ohio St. 2d 232, 235, 407 N.E.2d 527, 530 (1980); *accord In re Montheith*, 23 Bankr. 601, 603 (N.D. Ohio 1982); *County of San Diego v. Elavsky*, 58 Ohio St. 2d 81, 86, 388 N.E.2d 1229, 1233 (1979). Further, whenever possible, related and coexisting statutes are to be construed harmoniously. *General Motors Corp. v. McAvoy*, 63 Ohio St. 2d at 235, 407 N.E.2d at 530; *Couts v. Rose*, 152 Ohio St. 458, 461, 90 N.E.2d 139, 141 (1950).

³ R.C. 3951.01(D) provides that the provisions of R.C. Chapter 3951 do not apply to the following:

- (1) An attorney at law admitted to practice in this state who adjusts insurance losses in the course of the practice of his profession and who does not hold himself out by sign, advertisement, or otherwise as offering such services to the general public;
- (2) An officer, agent, or regular salaried employee of an insurer, or underwriter, or any attorney in fact of any reciprocal insurer of Lloyds underwriter licensed to do business in this state who adjusts losses arising under his employer's or principal's own policies; or an underwriter by whom a policy of insurance against loss or damage or other causes has been written upon property within this state, in adjusting loss or damage under such policy, nor to an agent or broker acting as adjuster for his own company;
- (3) An adjustment bureau or association owned and maintained by insurers to adjust or investigate losses of such insurers, or any regularly salaried employee thereof who devotes substantially all of his time to the business of such bureau or association;
- (4) Any licensed agent or employee or officer of such agent or agency of an authorized insurer who adjusts losses for such insurer solely under policies issued through such agency;
- (5) Any independent adjuster representing an insurer.

Accordingly, a person listed in R.C. 3951.01(D) is exempt from the licensure requirements of R.C. 3951.01-.09.

Nothing in the language of R.C. Chapter 4749 indicates that the General Assembly's intention in enacting this chapter was to supplant the provisions of R.C. 3951.01-.09 with regard to the licensure of public insurance adjusters. Moreover, it is not impossible to read R.C. 3951.01-.09 and R.C. Chapter 4749 in a conciliatory manner. Insofar as R.C. 3951.01-.09 specifically requires the licensure of a person who conducts investigations related to a claim or claims for loss or damage under a policy of insurance covering real or personal property, R.C. 3951.01-.09 may be read as a limited exception to R.C. Chapter 4749. Cf. R.C. 1.51 (if an irreconcilable conflict exists between a special and general provision, the special prevails as an exception to the general). This exception, however, extends only to the conducting of investigations to determine the cause of or responsibility for a fire, accident, or damage to property related to a claim or claims for loss or damage under a policy of insurance covering real or personal property. By reading R.C. 3951.01-.09 as an exception to R.C. Chapter 4749, it is possible to reconcile R.C. 3951.01-.09 and R.C. Chapter 4749 in a manner whereby R.C. Chapter 4749 does not repeal any of the rights granted to a person licensed under R.C. 3951.01-.09 as a public insurance adjuster.

Accordingly, a person licensed under R.C. 3951.01-.09 as a public insurance adjuster is not subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, an investigation to determine the cause of or responsibility for a fire, accident, or damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property. If, however, the person engages in any other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B), R.C. 4749.13(A) requires, unless one of the exceptions of R.C. 4749.01(H) applies, that the person be licensed under R.C. Chapter 4749.

IV. Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 4749.13(A), unless one of the express exceptions contained in R.C. 4749.01(H) applies, an independent insurance adjuster not licensed under R.C. 3951.01-.09 as a public insurance adjuster is subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, investigations to determine the cause of or responsibility for a fire, accident, or damage to property, and engages in other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B).
2. A person licensed under R.C. 3951.01-.09 as a public insurance adjuster is not subject to the licensure requirements of R.C. Chapter 4749 when he conducts, for compensation, an investigation to determine the cause of or responsibility for a fire, accident, or damage to property with respect to a claim or claims for loss or damage under a policy of insurance covering real or personal property. If, however, the person engages in any other conduct that constitutes the business of private investigation, as defined by R.C. 4749.01(B), R.C. 4749.13(A) requires, unless one of the express exceptions contained in R.C. 4749.01(H) applies, that the person be licensed under R.C. Chapter 4749.