

OPINION NO. 87-056**Syllabus:**

The Ohio Educational Broadcasting Network Commission is not authorized under R.C. 3353.04, or other statute, to lease its excess electronic transmission and reception facilities to business entities organized for profit.

To: Dave L. Fornshell, Executive Director, Ohio Educational Broadcasting Network Commission, Columbus, Ohio

By: Anthony J. Celebrezze, Jr., Attorney General, August 3, 1987

I have before me your request for my opinion in which you ask the following question:

Is Ohio Educational Broadcasting Network Commission, a Commission organized and existing under Chapter 3353, Ohio Revised Code, authorized to permit leased use of electronic transmission and reception facilities owned by the State of Ohio and operated by such Commission, by business entities organized for profit, where such use does not interfere with actual or contemplated use by the State of Ohio, its agencies, or other non-commercial or non-profit organizations which normally use such facilities, and where such use by

such business entities will result in revenue to agencies of the State of Ohio or such non-commercial and non-profit organizations using such facilities as authorized under said Chapter.

As a creature of statute, the Ohio Educational Broadcasting Network Commission ("the Commission") possesses only the powers and duties conferred by statute or those necessarily implied therefrom. See 1977 Op. Att'y Gen. No. 77-059. R.C. 3353.04 sets forth the powers of the Commission, providing as follows:

The Ohio educational broadcasting commission may:

(A) Own and operate transmission facilities and interconnection facilities, or contract for transmission facilities and interconnection facilities, for an educational television or radio network;

(B) Establish standards for interconnection facilities used in the transmission of educational television or radio by the commission;

(C) Enter into agreements with noncommercial educational television or radio broadcasting stations for the transmission to the broadcasting stations of identical programs for broadcasting either simultaneously or through the use of transcription discs, video tapes, film, or audio tapes;

(D) Enter into agreements with noncommercial educational television or radio production centers and broadcasting stations for the production and use of educational television or radio programs to be transmitted by the educational broadcasting network;

(E) Execute contracts and other agreements necessary and desirable to carry out the purposes of sections 3353.01 to 3353.04 of the Revised Code;

(F) Determine programs to be distributed through the Ohio educational broadcasting network;

(G) Act as consultant with educational television and educational radio stations toward coordination within the state of the distribution of federal funds that may become available for the development of educational broadcasting;

(H) Make payments to noncommercial Ohio educational television or radio broadcasting stations to sustain the operation of such stations, and may consign equipment to them in exchange for services rendered. (Emphasis added.)

Although subsection (E) authorizes the Commission to enter into agreements "necessary and desirable" to carry out the purposes of R.C. Chapter 3353, the express powers conferred illustrate a clear intent that the purpose of R.C. Chapter 3353 is to promote noncommercial educational television and radio broadcasting. Thus, R.C. 3353.04(C), (D), and (H) must be read in pari materia to the general grant of authority in R.C. 3353.04(E). See State ex rel. Pratt v. Weygandt, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject...are in pari materia and should be read together to ascertain and effectuate if possible the legislative intent"); Eggleston v. Harnson, 61 Ohio St. 397, 404, 55 N.E. 993, 996 (1900) ("acts upon the same subject are to be construed as a whole with reference to an entire system of which all are parts"). Accordingly, those agreements "necessary and desirable" to carry out the purposes of R.C. Chapter 3353 means such

agreements as will promote noncommercial interests in educational television and radio broadcasting. While leasing arrangements may be desirable in that they may generate additional revenue for the Commission, such arrangements are not necessary to the dissemination of educational information in a noncommercial manner. Moreover, because R.C. 3353.04 refers to agreements with noncommercial educational television or radio broadcasting stations, by implication commercial ventures are excluded. See State ex rel. Boda v. Brown, 157 Ohio St. 368, 105 N.E.2d 643 (1952) (under the rule of statutory construction, expressio unius est exclusio alterius, the express mention of but one class of persons or things in a statute implies the exclusion of all others).

You have asked specifically whether the Ohio Educational Broadcasting Network Commission may lease its excess electronic transmission and reception facilities to business entities organized for profit. Since for-profit entities operate in a commercial manner, see Webster's New World Dictionary 285 (2d college ed. 1978) (defining "commercial" as something "made, done, or operating primarily for profit"), it is clear that the Commission, being authorized only to enter into agreements with noncommercial entities, may not lease its facilities to for-profit businesses. While the generation of additional revenue by the lease of facilities would financially benefit the Commission, I am constrained to conclude that it is not authorized by R.C. Chapter 3353.

Accordingly, it is my conclusion, and you are advised that the Ohio Educational Broadcasting Network Commission is not authorized under R.C. 3353.04, or other statute, to lease its excess electronic transmission and reception facilities to business entities organized for profit.