

**OPINION NO. 79-071****Syllabus:**

1. Pursuant to R.C. 1777.05, the county recorder must maintain a register which contains an alphabetical listing of each partnership which has filed a certificate in the county recorder's office. In conjunction with each partnership's entry in the register, the county recorder must maintain a list of the partners interested in the partnership.
2. Pursuant to R.C. 1777.02, the county recorder must index each partnership certificate filed in the county recorder's office, but need not compile an index of the names of the partners mentioned in such certificates.

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**To: J. Walter Dragevich, Trumbull County Pros. Atty., Warren, Ohio**  
**By: William J. Brown, Attorney General, November 2, 1979**

I have before me your request regarding the duties of the county recorder in maintaining records on partnerships. Specifically, your letter presents the issues as follows:

1. Whether the certificates required under Section 1777.02, including the names of partners, need merely to be indexed or whether the individual names are required to be indexed;
2. Whether the name of the partnership or the individual names of the partners are required to be entered in alphabetical order in the register required under Section 1777.05.

The two sections mentioned in your questions are a part of a series of Revised Code sections, enacted in substance as part of the General Code by 91 Ohio Laws H.B. 657 (1894), which deal with the registration of partnerships.<sup>1</sup> R.C. 1777.02 requires a partnership to file a certificate containing the names and addresses of all the partners if all partners' names are not included in the partnership name. R.C. 1777.05 imposes certain duties on the county recorder regarding these certificates. For ease of analysis of these sections, I will address your second question first.

R.C. 1777.05, which describes part of the county recorder's responsibilities, states:

Every county recorder must keep a register of the names of firms and persons mentioned in the partnership certificates filed in his office, entering in alphabetical order the name of every such partnership, and of each partner interested therein.

It is the language of this provision which forms the basis for your second question. It is not immediately clear from this provision whether the intent of the General Assembly was to require an alphabetical listing of partnerships, with a list of partners included within each partnership's heading, or whether the register is to be more like a telephone directory, with the name of each partnership and the name of each partner in any such partnership set forth in a single alphabetical list.

Upon further examination, however, the meaning of this statute can be determined with some degree of certainty. The General Assembly has enacted several provisions which provide guidance for the interpretation of statutory language. See R.C. Chapter 1.

Of relevance in the instant case is R.C. 1.42, which requires application of the rules of grammar when attempting to discern the meaning of a statute. The rules of grammar relevant to the construction of R.C. 1777.05 concern the use of commas. See generally Birk and Birk, Understanding and Using English, 470-474 (4th ed. 1965). In this case, it appears that the inclusion of the comma in R.C. 1777.05 is vital to the meaning of the sentence. If the sentence read: "Every county recorder must keep a register, entering in alphabetical order the name of every such partnership and of each partner interested therein," there would be no separation of the phrase "in alphabetical order" from the phrase "of each partner interested therein." Without the separating comma, the sentence would be grammatically read to mean that the names of the partners would have to be alphabetized in the register along with the names of the partnerships. With the comma, however, a different result is indicated. The comma is used to separate the prepositional phrases to keep the sentence from being misread.

In addition to the analysis of grammatical rules, the intent of the General Assembly in using the comma must be considered. No portion of the Revised Code is to be regarded as superfluous. See R.C. 1.47(B) and Eastland v. Dept. of Education, 50 Ohio St. 2d 91 (1977). Hence, since the meaning of the sentence with the comma omitted is clear, and since insertion of the comma is not optional under established rules of punctuation, it must be presumed that a different meaning was intended by the insertion of the comma. It follows that separation of the phrases by the comma must be given effect, and that "in alphabetical order" does not control the manner of entering the names of partners. I conclude, therefore, that the county recorder must maintain an alphabetical list only of the partnerships, with each individual partner listed in conjunction with such partner's respective partnership listing.

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<sup>1</sup>The sections have undergone several alterations since 1894, but the substance has remained the same. The duties of registration were shifted from the clerk of the court of common pleas of a county to the county recorder by H.B. 323 (eff. March 15, 1979). I understand that the practices of the clerks of the courts of common pleas in implementing the sections varied widely, and that a uniform method is now sought.

The construction outlined above is consistent with the general case law on Ohio's provisions regarding fictitious partnership names, *i.e.*, R.C. Chapter 1777. The various sections of the chapter, since they concern the same subject matter, should be read together. State ex rel. Pratt v. Weygandt, 164 Ohio St. 463 (1956). Thus, the interpretation of R.C. 1777.05 must be consistent with the purpose of the chapter as a whole. The purpose of Ohio's fictitious name provisions was described in Clarke & Snyder v. Doe, 7 Ohio N.P. 613 (Logan County C.P. 1896), as follows:

It is the intent of the statute to furnish the public a means of finding out who are the members of a partnership, going under a fictitious name. . . .

Another court wrote, in Burkhart v. German-American Bank, 137 F. 958, 960 (S.D. Ohio 1904):

One of the purposes of this law manifestly is to advise those dealing with . . . partnerships who the partners are, so that they may be able to enforce their rights against not only the partnership but its members.

Thus, the courts have concluded that, by enacting the fictitious name statutes, the General Assembly was seeking a way of protecting partnership creditors by enabling the creditors to discover the identity of persons ultimately liable for partnership debts. Courts have not recognized a concurrent intent to provide the public with a list of the business concerns in which an individual who is a partner in some enterprise has been involved. In fact, a Maine court expressly found that no such purpose was served by the Maine fictitious name act, which is comparable to that of Ohio, although it does not require an alphabetical register. The court stated:

The purpose of the statute is not to enable one dealing with [an individual] to ascertain from the records in what trade name or names he may be doing business. Globe Slicing Machine Co., Inc. v. Casco Bank & Trust Co., 142 A. 2d 30, 34 (1958) (construing Me. Rev. Stat. Ann. tit. 31, §4.)

Further support for the conclusion that the General Assembly did not intend the county recorder's register to be a record of a person's business pursuits is derived from the fact that there is no requirement that a partnership register if its name contains at least the surnames of all its partners. If one of the purposes of the statute were to list the partnerships to which a person belongs, it would seem that such a partnership should also be required to file a certificate in order that the partners' names be entered correctly in the register.

Given the above discussion, it is my opinion that the county recorder must keep a register which contains an alphabetical listing of each partnership which has filed a certificate. In conjunction with each partnership heading, a list of partners must be made so as to enable a user to ascertain the identity of the persons interested in a given partnership.

Turning to your other question, regarding the manner of indexing, the relevant statutory provision is R.C. 1777.02, which states in pertinent part:

Except as provided in this section, every partnership transacting business in this state under a fictitious name, or under a designation not showing the names of the persons interested as partners therein, must file, with the county recorder of the county in which its principal office or place of business is situated and of each county in which it owns real property, a certificate to be indexed by him, stating the names in full of all the members of the partnership and their places of residence. (Emphasis added.)

It is clear from the language of the statute that each partnership certificate must be indexed. There is, however, no requirement that there be an index of any of the

contents of the certificates. Hence, I conclude that the recorder has no statutory duty to compile an index of individual names mentioned in partnership certificates. This interpretation of R.C. 1777.02 is consistent with the construction of R.C. 1777.05 discussed above, a required result since the two sections are in pari materia and must be read together. State ex rel. Pratt v. Weygandt, supra.

In conclusion, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 1777.05, the county recorder must maintain a register which contains an alphabetical listing of each partnership which has filed a certificate in the county recorder's office. In conjunction with each partnership's entry in the register, the county recorder must maintain a list of the partners interested in the partnership.
2. Pursuant to R.C. 1777.02, the county recorder must index each partnership certificate filed in the county recorder's office, but need not compile an index of the names of the partners mentioned in such certificates.