

OPINION NO. 98-006**Syllabus:**

In the reasonable exercise of its authority to hold adjudication hearings, the Liquor Control Commission may, through the adoption of appropriate procedures, permit parties and witnesses to participate in adjudication hearings by means of video conferencing procedures, provided that there is compliance with all relevant constitutional and statutory requirements.

To: Wallace E. Edwards, Chairman, Liquor Control Commission, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, January 27, 1998

We have received your request for an opinion concerning the authority of the Liquor Control Commission to use video conferencing procedures to hold hearings. You have asked the following questions:

May the Liquor Control Commission conduct hearings pursuant to R.C. Chapter 4301 by means of video conferencing, with parties and witnesses participating from locations apart from the central hearing site? If such a procedure cannot be mandated, is it permissible with the consent of the parties?

The proposed procedure would allow adjudication hearings to be held with parties or witnesses present at one or more sites within Ohio other than the central hearing site. The persons at the different sites would communicate with one another through the use of video teleconferencing equipment. The Liquor Control Commission would, thus, receive testimony by viewing it on a screen, and would, in turn, be seen and heard by means of electronic transmissions.

You indicate that cost savings would result from the fact that Ohio Department of Public Safety agents assigned to areas other than central Ohio would not need to travel to Columbus for hearings, thereby saving both travel and overtime expenses. Additionally, local police officers and other witnesses could testify from locations closer to their homes or places of work, resulting in reduced mileage expenses.

You state that the use of remote locations for witness testimony would make the hearing procedure more accessible for witnesses—including law enforcement personnel, elected officials, citizens, permit holders, and attorneys—by permitting them to testify without traveling to Columbus. For example, if there is an objection in Cleveland to renewal of a liquor permit issued to a location near a school, affected neighbors, school officials, students, and others could testify in Cleveland instead of being required to travel to Columbus.

You have acknowledged that numerous technical and operational concerns would need to be worked out before video teleconferencing procedures could go into effect.¹ At this point, you are raising a general question as to whether the Liquor Control Commission has authority to establish such procedures.

In order to answer your question, let us consider the statutes governing the Liquor Control Commission. The Liquor Control Commission exists pursuant to R.C. 4301.022 and consists of three commissioners appointed by the Governor. R.C. 4301.022. As a creature of statute, the Liquor Control Commission has only those powers that it is expressly granted by statute and such implied powers as are necessary to exercise the express powers. *See Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); *Rashid v. Ohio Liquor Control Comm'n*, 50 Ohio App. 3d 32, 33, 552 N.E.2d 663, 664 (Stark County 1988) (“[t]he commission is a creature of statute and must extrapolate its power and authority to act from the enabling legislation”); *see also* R.C. 4301.05.

Among the Commission’s express powers is the power to adopt, promulgate, repeal, rescind, and amend, in the manner prescribed by statute, rules necessary to carry out R.C. Chapters 4301 and 4303. R.C. 4301.03; *see Hi Rise, Inc. v. Ohio Liquor Control Comm'n*, 106 Ohio App. 3d 151, 154, 665 N.E.2d 707, 709 (Hamilton County 1995).² The Commission also has express power to suspend, revoke, and cancel permits. *See* R.C. 4301.04(A).

¹For example, it would be necessary to determine how to achieve clear communications among various individuals and how to make an adequate record of a video teleconference, with people speaking at different sites and communications made by means of video teleconferencing equipment. *See* R.C. 119.09 (defining “stenographic record” as “a record provided by stenographic means or by the use of audio electronic recording devices, as the agency determines”). *See generally* R.C. 2151.3511; R.C. 2945.481.

²The Liquor Control Commission has adopted rules, which appear in 10 Ohio Admin. Code Chapter 4301:1-1. Provisions governing the procedure for hearings before the Commission appear in 10 Ohio Admin. Code 4301:1-1-65. Rule 4301:1-1-65 states, in part: “In all hearings before the commission, and the determination thereon, the production of evidence shall be governed in general by the rules of evidence and burden of proof required by Ohio courts in civil cases.” 10 Ohio Admin. Code 4301:1-1-65(D). Ohio R. Civ. P. 30(B)(6) permits

The Liquor Control Commission has been given express authority “[t]o consider, hear, and determine all appeals authorized by [R.C. Chapters 4301 and 4303], to be taken from any decision, determination, or order of the division of liquor control, and all complaints for the revocation of permits.” R.C. 4301.04(B); *see also, e.g.*, R.C. 4301.28; R.C. 4303.271(D)(2)(b). In considering those appeals, the Commission “shall accord a hearing to any person appealing or complained against, at which such person has the right to be present, to be represented by counsel, to offer evidence, and to require the attendance of witnesses.” R.C. 4301.04(B). The Commission also has power to adopt bylaws “in relation to its meetings and the transaction of its business and regulating its procedure on appeal.” R.C. 4301.04(C). In addition, the Commission may administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of documents. R.C. 4301.04(G); *see also* 10 Ohio Admin. Code 4301:1-1-65.

R.C. Chapter 119 contains additional provisions governing adjudication hearings held by the Liquor Control Commission. *See* R.C. 119.01(A) (“[a]gency” includes “the licensing functions of any ... commission of the government of the state having the authority or responsibility of issuing, suspending, revoking, or canceling licenses”); R.C. 119.01(B), (D), (E); R.C. 119.06 (“[n]o adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with [R.C. 119.01-.13]”); R.C. 119.09 (provisions governing adjudication hearings, including attendance of witnesses, taking of stenographic record, and admission of evidence); *see also Office of Disciplinary Counsel v. Molnar*, 57 Ohio Misc. 2d 39, 39, 567 N.E.2d 1355, 1355 (Bd. of Comm’rs on the Unauthorized Practice of Law 1990) (“R.C. Chapter 119 governs certain administrative procedures of state agencies, including the Liquor Control Commission”); *Houndcorp, Inc. v. Ohio Liquor Control Comm’n*, 62 Ohio Misc. 2d 155, 593 N.E.2d 519 (C.P. Hamilton County 1991) (in suspending a liquor permit, the Liquor Control Commission is required to provide notice of a right to a hearing in accordance with R.C. 119.07); 1953 Op. Att’y Gen. No. 2422, p. 118, at 120 (the general provisions of the Administrative Procedure Act (R.C. Chapter 119) are applicable “except to the extent that conflicting special provisions are found in the liquor control act”).

With respect to the location of an adjudication hearing, R.C. Chapter 119 provides:

The date, time, and *place* of each adjudication hearing required by [R.C. 119.01-119.13] shall be determined by the agency. If requested by the party in writing, the agency may designate as *the place of hearing* the county seat of the county wherein such person resides or a place within fifty miles of such person’s residence.

R.C. 119.08 (emphasis added); *see also* 10 Ohio Admin. Code 4301:1-1-65. It has been found that, pursuant to this provision, the Board of Liquor Control (now the Liquor Control Commission, *see* R.C. 4301.022; R.C. 4301.03; 130 Ohio Laws 983-84, 1427 (Am. Sub. S.B. 24, eff. Apr. 17, 1963)) may hold hearings at locations throughout the state. *See* 1953 Op. Att’y Gen. No. 2422, p. 118. For the convenience of a requesting party, R.C. 119.08 permits the hearing to be moved to a location near that party.

Permitting parties and witnesses to use video teleconferencing procedures to participate in a hearing from a location that is apart from the central hearing site is consistent with the intent of R.C. 119.08 that an agency may select a hearing location that is convenient for the parties. The use of the word “place” in R.C. 119.08 does not prevent such a result, since the “place” of hearing can be considered to be the location of the hearing officer or officers—in

a deposition to be taken by telephone upon written stipulation of the parties or upon order of the court made upon motion.

this case, the Commission—regardless of how evidence and argument reach that location. In any event, for purposes of the Revised Code, “[t]he singular includes the plural.” R.C. 1.43. Thus, the Commission’s authority to determine the place of a hearing does not prevent it from using video teleconferencing procedures to receive testimony or argument from distant sites in appropriate circumstances.

The statutes governing hearings before the Liquor Control Commission do not expressly address the question whether the Commission may permit parties or witnesses to participate in the hearing by means of video teleconferencing procedures. The statutes, however, do grant the Commission authority to consider, hear, and determine complaints and appeals, to adopt rules governing its hearings, and to determine the location of its hearings. *See* R.C. 119.08; R.C. 4301.03; R.C. 4301.04.

The Commission’s statutory authority to schedule and hold adjudication hearings permits it to establish appropriate procedures for those hearings, subject to the condition that the hearings meet constitutional and statutory requirements. *See, e.g., Ohio Ass’n of Public School Employees, AFSCME, AFL-CIO v. Lakewood City School Dist. Bd. of Educ.*, 68 Ohio St. 3d 175, 624 N.E.2d 1043 (1994); *State ex rel. Finley v. Dusty Drilling Co.*, 2 Ohio App. 3d 323, 324-25, 441 N.E.2d 1128, 1129-30 (Franklin County 1981) (procedural due process requirements apply to administrative hearings); *Houndcorp, Inc. v. Ohio Liquor Control Comm’n*. In the reasonable exercise of its authority to hold adjudication hearings, the Liquor Control Commission may, through the adoption of appropriate procedures, permit parties and witnesses to participate in adjudication hearings by means of video teleconferencing procedures, provided that there is compliance with all relevant constitutional and statutory requirements.

In recent years, with the advancement of technology, various types of electronic methods have been used in different circumstances to aid in the process of adjudication without requiring the actual presence of all individuals in a single location.³ Our research has not disclosed case law discussing the use of video teleconferencing procedures in the circumstances you have described. We have been informed, however, that other entities that are

³For example, the United States Supreme Court has held that the use of one-way closed-circuit television for taking the testimony of child witnesses is permitted under the Confrontation Clause when the teleconferencing procedure “adequately ensures that the testimony is both reliable and subject to rigorous adversarial testing in a manner functionally equivalent to that accorded live, in-person testimony.” *Maryland v. Craig*, 497 U.S. 836, 851 (1990). R.C. 2151.3511 and R.C. 2945.481 (formerly R.C. 2907.41, *see* S.B. 53, 122nd Gen. A. (1997) (eff. Oct. 14, 1997)) establish procedures for securing the testimony of alleged victims of violent or sexual offenses who are under age thirteen through two-way closed-circuit television in certain circumstances. *See State v. Sibert*, 98 Ohio App. 3d 412, 648 N.E.2d 861 (Adams County 1994), *motion denied*, 71 Ohio St. 3d 1479, 645 N.E.2d 1258 (1995); *In re Burchfield*, 51 Ohio App. 3d 148, 555 N.E.2d 325 (Athens County 1988).

The Ohio Supreme Court has held that the “arraignment of an accused via closed-circuit television is constitutionally adequate when the procedure is functionally equivalent to live, in-person arraignment.” *State v. Phillips*, 74 Ohio St. 3d 72, 94-95, 656 N.E.2d 643, 655 (1995). The Ohio Supreme Court also found that procedural due process was satisfied in a post-termination grievance arbitration hearing when the terminated public employee was permitted to cross-examine an adverse witness via closed-circuit television. *Ohio Ass’n of Public School Employees, AFSCME, AFL-CIO v. Lakewood City School Dist. Bd. of Educ.*, 68 Ohio St. 3d 175, 624 N.E.2d 1043 (1994). *See generally* Annotation, *Closed-Circuit Television Witness Examination*, 61 A.L.R. 4th 1155 (1988 & Supp. 1997); note 2, *supra*.

subject to R.C. Chapter 119 have used video teleconferencing procedures for hearings in some circumstances.

It should be noted that the conclusion reached in this opinion is merely permissive. Nothing in this opinion compels the Commission to use video teleconferencing procedures in any adjudication hearing. Rather, the question whether to use those procedures is left to the Commission to decide, in the reasonable exercise of its discretion. *See, e.g., Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d at 385, 329 N.E.2d at 698 (recognizing the wide discretion reposed in the Liquor Control Commission).

For the reasons discussed above, it is my opinion, and you are advised, that in the reasonable exercise of its authority to hold adjudication hearings, the Liquor Control Commission may, through the adoption of appropriate procedures, permit parties and witnesses to participate in adjudication hearings by means of video teleconferencing procedures, provided that there is compliance with all relevant constitutional and statutory requirements.