

OPINION NO. 77-021**Syllabus:**

Travel of employees of the Rehabilitation Services Commission, which is at the request of the federal government pursuant to an agreement between the Commission and the Secretary of Health, Education and Welfare providing federal monies to the Commission, is authorized by the terms of R.C. 3304.16 and, therefore, is not subject under the terms of R.C. 127.05 to Emergency Board approval.

**To: Richard P. Oestreich, Administrator, Rehabilitation Services Commission,
Columbus, Ohio**

By: William J. Brown, Attorney General, May 2, 1977

I have before me your request for my opinion relative to out-of-state travel expenses incurred by certain employees of the Rehabilitation Services Commission where the expense of such travel is met through funds provided to the Commission by the federal government and such travel is required by the federal agency involved. Your question is whether R.C. 127.05 requires Emergency Board approval of such travel.

R.C. 3304.11 to 3304.27 provides for the rehabilitation of the handicapped and creates the Rehabilitation Services Commission. R.C. 3304.16 specifies the powers and duties of the Commission, in pertinent part, as follows:

"In carrying out the purposes of sections 3304.11 to 3304.27, inclusive, of the Revised Code, the rehabilitation services commission:

(E) May take any other necessary or appropriate action for cooperation with public and private agencies and organizations which may include:

(1) Reciprocal agreements with other states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the trust territory of the Pacific Islands, to provide for the vocational rehabilitation of individuals within the states concerned;

(2) Contracts or other arrangements with public and other non-profit agencies and organizations for the construction or establishment and operation of vocational rehabilitation programs and facilities;

(3) Cooperative arrangements with the federal government for carrying out sections 3304.11 to 3304.27, inclusive, of the Revised Code, the 'Vocational Rehabilitation Act,' 41 Stat. 735 (1920), 29 U.S.C. 31, as amended, or other federal statutes pertaining to vocational rehabilitation, and to this end, may adopt plans and methods of administration found necessary by the federal government for the efficient application of any federal statutes;

(4) Upon the designation of the governor, performing functions and services for the federal government relating to individuals under a physical or mental disability;

(5) Compliance with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible;

(emphasis added)

Pursuant to the authority vested in the Commission by this statutory provision, the Rehabilitation Services Commission has entered into an agreement with the United States Secretary of Health, Education and Welfare to carry out various provisions of the Social Security Act.

Under the terms, of this agreement, the Rehabilitation Services Commission Bureau of Disability Determination acts as a state agency in the administration of the Social Security Disability Insurance program and receives federal monies for this purpose. It is my understanding that the employees of the Bureau are paid by warrant of the Auditor of State from monies received from the federal government and appropriated by Section 10, of Am. Sub. H.B. 155, which appropriates for

the purposes allotted all revenues received from the federal government.

From information you have supplied, it is my understanding that, as part of the agreement between the Commission and the Secretary, which provides funds for the operation of the Bureau of Disability Determination, the Social Security Administration requires that Bureau staff members travel on a number of occasions to participate in Social Security training, educational and administrative programs. Your question is whether, under the terms of R.C. 127.05, Emergency Board approval of such travel is required.

I recently had occasion to discuss the history of R.C. 127.05 in 1976 Op. Att'y. Gen. No. 76-035. As discussed in that opinion, prior to the enactment of R.C. 127.05, the general rule of law was that where a public officer or employee was required to travel in the proper performance of his duties, expenses incurred in such travel could be reimbursed. The Ohio Supreme Court in State, ex rel. Ferguson v. Maloon, 172 Ohio St. 343 1961, voided the general rule and longstanding administrative practice by finding that there must be specific statutory authority for reimbursement of travel expenses before such can be paid from public funds. As the result of the Maloon decision, the 104th General Assembly enacted R.C. 127.05 to provide authority for reimbursement of expenses where such authority was otherwise lacking. R.C. 127.05 provides as follows:

"No executive, legislative, or judicial officer, board, commission, or employee of the state shall, at state expense, attend any association, conference, convention, or perform official duties outside the state unless authorized by law or by the emergency board. Before such allowance may be made, the head of the department shall make application in writing to the emergency board showing necessity for such attendance and the probable cost to the state. If a majority of the members of the emergency board approve the application, such expense shall be paid from any moneys appropriated to said department, board, bureau, or commission for traveling expenses. (emphasis added)

For the reasons set forth in the following analysis, it is my conclusion that travel of employees of the Bureau of Disability Determination, which is at the request of the federal government pursuant to an agreement between the Rehabilitation Services Commission and the Secretary of Health, Education and Welfare, is authorized by the terms of R.C. 3304.16 and, thus, under the terms of R.C. 127.05 is not subject to Emergency Board approval.

Shortly after the enactment of R.C. 127.05, one of my predecessors had occasion to analyze the requirements of this statutory provision. See 1961 Op. Att'y. Gen. No. 76-035.

Noting that the enactment of R.C. 127.05 was in response to the Court's ruling in The State, ex rel. Ferguson v. Maloon, supra, he observed that R.C. 127.05 provided general authority for reimbursement of expenses, where such authority was lacking, though specific statutory provisions authorizing expenditures remained effective. In this regard he said at p. 592:

Considering the provision of Section 127.05, supra, as to expenses incurred outside the state, if the person claiming the reimbursement is entitled to reimbursement for necessary expenses under a special provision of law such as above discussed, and if the expenses were incurred in pursuance of his official duties, then such person is entitled to be reimbursed for the expenses incurred without any action by the emergency board. . . .

See also 1976 Op. Att'y. Gen. No. 76-035, in which I relied on my predecessor's opinion in holding that the determination whether a state employee's duties include travel outside the state requires an examination of the statutes pertaining to such duties, as well as the facts involved.

As set out above, R.C. 3304.16 expressly authorizes the Rehabilitation Services Commission to enter into cooperative agreements with the federal government to carry out federal statutes pertaining to vocational rehabilitation. The Commission is further authorized to adopt methods of administration found necessary by the federal government for the efficient operation of any joint arrangements for the application of any federal statute. R.C. 3304.16(E)(5) further specifies that the Commission is authorized to comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible.

It follows that where, pursuant to a cooperative arrangement between the Rehabilitation Services Commission and the federal government, which provides federal funds to the Commission, out-of-state travel of Commission employees is required by the federal government, such travel is authorized by R.C. 3304.16. R.C. 127.05 prohibits out-of-state travel at state expense unless such travel is authorized by law or by the Emergency Board. Where travel is authorized by R.C. 3304.16, Emergency Board approval is not required by R.C. 127.05.

It is my opinion, therefore, and you are so advised, that travel of employees of the Rehabilitation Services Commission, which is at the request of the federal government pursuant to an agreement between the Commission and the Secretary of Health, Education and Welfare providing federal monies to the Commission, is authorized by the terms of R.C. 3304.16 and, therefore, is not subject under the terms of R.C. 127.05 to Emergency Board approval.