OPINION NO. 88-030

Syllabus:

1. Pursuant to R.C. 4117.10(B), where a public employer submits to the General Assembly a request for funds necessary to implement a collective bargaining agreement and for approval of any other matter requiring the approval of the General Assembly, rejection of the submission occurs only if both houses of the General Assembly reject the submission.

2. Once a submission made to the General Assembly under R.C. 4117.10(B) is approved by the General Assembly, or deemed approved in accordance with that division, no further action by the General Assembly is necessary to implement the matters contained in the submission.

3. Pursuant to R.C. 4117.10(B), where a public employer submits to the General Assembly a request for funds necessary to implement a collective bargaining agreement and for approval of any other matter requiring the approval of the General Assembly, the General Assembly must approve or reject the submission as a whole.

4. R.C. 4117.10(B) requires a public employer for whom the General Assembly is the legislative body to make the submission required by that division to the General Assembly during the period of the first and second regular sessions, as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A), until adjournment sine die, or when the General Assembly is convened in special session which has not been limited by proclamation to exclude consideration of a submission made pursuant to R.C. 4117.10(B).

5. A public employer may make a submission to the General Assembly as required by R.C. 4117.10(B) in any reasonable manner.

6. Pursuant to R.C. 4117.10(C), a collective bargaining agreement does not become binding on the General Assembly, the public employer, or the employee organization or employees covered by the agreement until the submission, where required to be made under R.C. 4117.10(B), is approved by the General Assembly and the agreement is approved by the employee organization.

7. An action in mandamus is the appropriate remedy where a public employer fails to make a submission to the General Assembly as required by R.C. 4117.10(B).

June 1988

To: Paul E. Gillmor, President, Ohio Senate, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 21, 1988

I have before me your opinion request, S. Res. 859, 116th Gen. A. (1986), concerning the constitutionality of several portions of R.C. 4117.10 and the procedural requirements for approval of collective bargaining agreements by the General Assembly for certain state employees. You specifically ask the following questions:

> (1) May the General Assembly constitutionally delegate to public employers and employee organizations the power to override State and local statutes by contract? What is the legal significance of a contract if the answer is yes or if the answer is in the negative?
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> (2) May the General Assembly constitutionally provide for automatic legislative ratification of a collective bargaining contract if the legislative body fails to act by a specified deadline? May the General Assembly, by statute, reverse the normal legislative process under which binding action of the General Assembly can only be taken with the affirmative concurrence of both houses of the General Assembly?
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> (3) Does section 4117.10 of the Revised Code require, in the case of the General Assembly, that rejection of a submission or request for funds is only effective if both the House of Representatives and the Senate vote to reject the submission or request for funds or is the rejection by a single house sufficient to result in rejection?
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> (4) Where the General Assembly allows a collective bargaining contract to be ratified by its failure to act within the specified 30-day deadline, does that operate to obligate the General Assembly to subsequently appropriate the funds necessary to implement the agreement and pass such laws as are called for by the agreement? Is the answer dependent on whether it is determined that legislative rejection of a submission requires rejection by both houses of the General Assembly or only one house?
>
> (5) What are the legal liabilities and status of the parties to a collective bargaining contract in a situation in which the General Assembly enacts none or only part of the laws and appropriates none or only part of the funds necessary to implement a previously ratified collective bargaining agreement?
>
> (6) May a submission or request for funds necessary to implement a collective bargaining agreement under section 4117.10 of the Revised Code validly be submitted to one or both houses of the General Assembly on a day when that house is not in session, or during periods when the house or the General Assembly is in recess, or on a day when the General Assembly or a house is in what is commonly known as a "skeleton" session? Does such a submission begin the running of the 30-day period?
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> (7) Was the contract identified as "Contract of Agreement Between the State of Ohio and United Food and Commercial Workers" properly submitted to the General Assembly within the required 14-day period following its execution? What procedures are sufficient to produce a proper submission to the General Assembly? What is the legal status of a contract where a submission is not made within the specified 14-day period? What recourse do the parties to the contract or the General Assembly have if the public employer does not make a proper and timely submission as required under the statute?

I am unable to address your first two questions which seek a determination of the constitutionality of specific provisions of the Public Employees Collective Bargaining Act, R.C. Chapter 4117. As part of the executive branch of government, the Attorney General is not empowered to determine the constitutionality of state statutes. Rather, that is the function exclusively of the judiciary. *Maloney* v.

Rhodes, 45 Ohio St. 2d 319, 324, 345 N.E.2d 407, 411 (1976) ("[a]n attack upon the constitutional validity of a law must be made in a proper court. The judicial power to declare a law unconstitutional is exclusively within the judicial branch of government"); *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 169, 114 N.E. 55, 59 (1916), *aff'd*, 241 U.S. 565 (1916) ("[t]he power of determining whether a law or constitutional provision is valid or otherwise is lodged solely in the judicial department"); 1986 Op. Att'y Gen. No. 86-010. Since no court has addressed the constitutionality of the statutory provisions about which you ask, such provisions must be presumed to be constitutional, *see* R.C. 1.47(A), until they are repealed by the General Assembly or declared unconstitutional by the judiciary. *See* 1981 Op. Att'y Gen. No. 81-100 at 2-377 (where a statute is clear, executive officers should act in accordance with the plain language of the statute, on the assumption that the statute is constitutional). *See generally State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 128 N.E.2d 59 (1955) (syllabus, paragraph one) ("[a]n enactment of the General Assembly is presumed to be constitutional, and before a court may declare it unconstitutional it must appear beyond a reasonable doubt that the legislation and constitutional provisions are clearly incompatible").

Your third question reads as follows:

> Does section 4117.10 of the Revised Code require, in the case of the General Assembly, that rejection of a submission or request for funds is only effective if both the House of Representatives and the Senate vote to reject the submission or request for funds or is the rejection by a single house sufficient to result in rejection?

R.C. 4117.10 states in pertinent part:

> (A) An agreement between a public employer[1] and an exclusive representative [2] entered into pursuant to Chapter 4117. of the Revised Code governs the wages, hours, and terms and conditions of public employment covered by the agreement....
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> (B) The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative

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1 R.C. 4117.01(B) defines the term "public employer" as, "the state or any political subdivision of the state located entirely within the state including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census, county, township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census, school district, state institution of higher learning, any public or special district, any state agency, authority, commission, or board, or other branch of public employment." R.C. 4117.10(D) states that the office of collective bargaining is established "for the purpose of negotiating with and entering into written agreements between state agencies, departments, boards, and commissions and the exclusive representative," and "shall not negotiate on behalf of other statewide elected officials or boards of trustees of state institutions of higher education who shall be considered as separate public employers for the purposes of [R.C. Chapter 4117]."

2 The term "exclusive representative" is defined in R.C. 4117.01(E) as, "the employee organization certified or recognized as an exclusive representative under [R.C. 4117.05]." *See generally* R.C. 4117.01(D) (defining "employee organization").

> body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.
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> As used in this section, "legislative body" includes the general assembly, the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction. (Footnotes added.)

As applicable to the General Assembly, R.C. 4117.10(B) requires a public employer for whom the General Assembly is the legislative body to submit "a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the [General Assembly] to the [General Assembly] within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified." The General Assembly must then "approve or reject the submission as a whole, and the submission shall be deemed approved if the [General Assembly] fails to act within thirty days after the public employer submits the agreement." In light of these requirements, you ask whether rejection of a submission under R.C. 4117.10(B) may be effected by a single house's rejection of the matter or whether a rejection occurs only if both houses vote to reject the submission.

The terms "approve" and "reject," as used in R.C. 4117.10(B), are not defined by statute. Further, R.C. 4117.10(B) does not specify any particular procedure to be followed by a legislative body in approving or rejecting a submission made under that division. *Cf.* R.C. 4117.14(C)(6) (concerning the findings and recommendations of the fact-finding panel in a dispute settlement proceeding, stating, "the legislative body, by a three-fifths vote of its total membership, and in the case of the public employee organization, the membership, by a three-fifths vote of the total membership, may reject the recommendations..."). It is, therefore, necessary to look to the common meaning of those terms. R.C. 1.42 (stating, in part, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). The term "approve" is defined as: "1. to give one's consent to; sanction; confirm 2. to be favorable toward; think or declare to be good, satisfactory, etc." ***Webster's New World Dictionary*** 68 (2d college ed. 1972). The word "reject" is defined in part as: "to refuse to take, agree to, accede to...." *Id.* at 1198. Based upon these definitions, it appears that the term "approve," as used in R.C. 4117.10(B), means simply to authorize. In order to answer your specific question concerning the means by which the General Assembly may "reject" a submission made by a public employer under R.C. 4117.10(B), it is first useful to examine the means by which the legislature ordinarily passes legislation, and, more specifically, the manner in which the legislature authorizes the expenditure of funds from the state treasury.

Ohio Const. art. II, §22 states: "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law...." The General Assembly's approval of expenditures from the state treasury is, as a general rule, accomplished through an appropriation made in accordance with the constitutional requirements for the enactment of laws. 1957 Op. Att'y Gen. No. 460, p. 127 (the authorization for the expenditure of public funds from the state treasury can be accomplished only by a specific appropriation in accordance with the Constitution). *See* 1927 Op. Att'y Gen. No. 658, vol. II, p. 1110 (syllabus, paragraph one) ("[a]n appropriation may be made only by law and not by joint resolution"). Pursuant to art. II, §15(A), "[t]he general assembly shall enact no law except by bill, and no bill shall be passed without the concurrence of a majority of the members elected to each house. Bills may originate in either house, but may be altered, amended, or rejected in the other." *See generally* 1927 Op. Att'y Gen. No. 60, vol. I, p. 80 (syllabus, paragraph one) ("[a] majority vote only in each house of those elected thereto is necessary to pass an appropriation bill, unless such appropriation bill contains items mentioned in Section 29 of Article II of the Constitution, in which event a vote of two-thirds of the members elected to each branch of the General Assembly is necessary"). Thus, pursuant to art. II, §§15 and 22, the General Assembly's authorization of the expenditure from the state treasury of funds necessary to implement a collective bargaining agreement appears to require an appropriation passed by each house of the General Assembly.

I note, however, that recently some question has arisen as to the possible impact of Ohio Const. art. II, §34 upon various provisions of R.C. Chapter 4117.[3] In a recent case, *City of Kettering v. State Employment Relations Board*, 26 Ohio St. 3d 50, 496 N.E.2d 983 (1986), the court determined that R.C. 4117.01(F)(2)[4] is constitutional and does not violate a municipality's right to exercise its powers of local self-government under Ohio Const. art. XVIII, §3. In that case, the city had, prior to the enactment of R.C. Chapter 4117, adopted a resolution which excluded from collective bargaining units all supervisory employees or those formulating personnel policy. Pursuant to this resolution, the city refused to recognize or bargain with any employee organization representing police sergeants, lieutenants or captains. Subsequent to the adoption of the resolution by the City of Kettering, the General Assembly enacted R.C. Chapter 4117, including R.C. 4117.01(C)(10) which excludes supervisors from coverage. R.C. 4117.01(F)(2), however, limited the persons in a police or fire department who are considered to be supervisors to the chief of the department or those who may exercise the chief's powers and duties in his absence. *See* note 4, *supra*.

As stated by the court: "The issue presented is whether R.C. 4117.01(F)(2), which would require Kettering to bargain collectively with a union representing its police command officers, is constitutional and, if so, whether Kettering's local ordinance runs afoul of that provision." 26 Ohio St. 3d at 51, 496 N.E.2d at 985. In its analysis, the court stated that a city's power of local self-government is subordinate to the exercise of the state's police powers in matters of statewide concern. The court reasoned as follows:

> Undeniably, the General Assembly was exercising its police power to promote the general safety and welfare in enacting the Public Employees Collective Bargaining Act....The Act was designed to "minimize the possibility of public-sector labor disputes," to bring "stability and clarity to an area where there had been none," and to "facilitate the determination of the rights and obligations of government employees and employers, and give them more time to provide safety, education, sanitation, and other important services." [quoting *State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Employment Relations Board*, 22 Ohio St. 3d 1, 5, 488 N.E.2d 181, 185 (1986)].
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> What the statewide concern doctrine perceives is that a comprehensive statutory plan is, in certain circumstances, necessary to promote the safety and welfare of all the citizens of this state, be they public employees or those whom public employees must serve and protect....
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> ....
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> Similarly, the enactment of statutes governing public-sector labor relations in Ohio has become a matter of statewide concern which, in the instant case, must prevail over Kettering's attempt to nullify a key and unambiguous statutory provision of the Public Employees Collective Bargaining Act.

26 Ohio St. 3d at 55-56, 496 N.E.2d at 987-88. Based upon this reasoning, the court in *City of Kettering* concluded that, since the subject of R.C. Chapter 4117 is a

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3 Ohio Const. art. II, §34 states:

> Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all [employees]; and no other provision of the constitution shall impair or limit this power.

4 The portion of R.C. 4117.01(F)(2) examined by the court states: "With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department."

matter of statewide concern, R.C. 4117.01(F)(2) does not violate a municipality's home-rule power under Ohio Const. art. XVIII, §3.

Although not addressed by the majority in *City of Kettering*, Ohio Const. art. II, §34 and its impact on the operation and effect of R.C. 4117.01(F)(2) were discussed by Justice Douglas in his concurring opinion. Noting that Ohio Const. art. XVIII, §3 was adopted at the same time as various other constitutional provisions dealing with the welfare and rights of employees, Justice Douglas stated:

> Probably the most comprehensive of the provisions [adopted for the welfare and rights of employees at the Ohio Constitutional Convention of 1912] was Section 34, Article II, which manifested the broad purpose of proclaiming and securing to the General Assembly the power to enact legislation establishing employee rights and protections. Section 34, Article II of the Ohio Constitution provides:
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> "Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes; ***and no other provision of the constitution shall impair or limit this power.***" (Emphasis added.)
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> Again, it should be emphasized that the foregoing section was adopted ***at the same time*** as was the home-rule section. It should be obvious that the drafters of the various sections consciously included, in Section 34, Article II, a broad grant of authority to pass laws "for the comfort, health, safety and general welfare of all employes" and then provided further that no other provision of the Constitution shall limit the power to enact legislation for the welfare of employees. If this section is read in the way in which it is written, there is no conflict on this subject between state legislative authority and the power granted local governments under home rule.
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> Pursuant to its [constitutional] and general legislative authority, the General Assembly enacted Am. Sub. S.B. No. 133 in an effort to bring some order to the many problems existing in public employee labor relations....
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> ....
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> ...It is hard for me to conceive what could be more of a subject of the general welfare of employees than to have the right to collectively bargain concerning wages and other conditions of employment.

26 Ohio St. 3d at 57-58, 496 N.E.2d at 989-90. Justice Douglas's opinion, therefore, suggests that R.C. Chapter 4117, having been enacted under art. II, §34 as a law providing for the general welfare of employees, may not be impaired or limited by any other provision of the Constitution.[5]

Justice Douglas's conclusion is supported by language in the recent case of *City of Columbus v. State Employment Relations Board*, 29 Ohio Misc. 2d 35, 505 N.E.2d 651 (C.P. Franklin County 1985), *appeal voluntarily dismissed*, No. 85AP-253 (Ct. App. Franklin County Aug. 6, 1985), where the court found the binding arbitration provisions of R.C. Chapter 4117 to be a valid exercise of the legislative function under Ohio Const. art. II, §34. In *City of Columbus*, the city challenged the validity of the binding arbitration provisions of R.C. Chapter 4117 as being in violation of the home rule provisions of the Ohio Constitution and as creating an unlawful delegation of legislative authority. Appellees denied any violation of the home rule provisions of the Constitution and argued that art. II, §34

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[5] Recently in *State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Employment Relations Board*, 22 Ohio St. 3d 1, 488 N.E.2d 181 (1986), decided prior to *City of Kettering v. State Employment Relations Board*, 26 Ohio St. 3d 50, 496 N.E.2d 983 (1986), the court found the second sentence of R.C. 4117.01(F)(2) to be in violation of Ohio Const. art. II, §26 in that it does not have uniform operation throughout the state and further found the provision to be null and void due to its failure to comport with the equal protection guarantees of Ohio Const. art. I, §2 and the fourteenth amendment to the United States Constitution. The application of art. II, §34 was not, however, addressed by the court.

"supersedes the home rule provisions of the Constitution and [that R.C. Chapter 4117] is in conformity with the welfare provision; thus, [R.C. Chapter 4117] is constitutional." 29 Ohio Misc. 2d at 40, 505 N.E.2d at 657. The court concluded that: "the binding arbitration provisions of R.C. Chapter 4117 are a matter of statewide concern and, applying the presumption of validity of the Act, the court holds that the arbitration provisions are not violative of the home rule provisions of the Constitution of Ohio." 29 Ohio Misc. 2d at 41, 505 N.E.2d at 658 (footnote omitted). The court further found that, "the binding arbitration provisions of [R.C. Chapter 4117] do not create an unconstitutional delegation of legislative authority." 29 Ohio Misc. 2d at 43, 505 N.E.2d at 659. After finding the binding arbitration provisions of R.C. Chapter 4117 to be constitutional, the court addressed the appellees' assertion that art. II, §34 takes precedence over all other provisions of the Constitution and all of the appellant's other constitutional arguments. The court stated:

> Because of this court's previous holdings, this question need not be answered. However, a logical conclusion would be that Section 34, Article II can be read to override the home rule provisions of the Constitution (Sections 3 and 7, Article XVIII) but not the allegation of impermissible delegation of legislative authority.

29 Ohio Misc. 2d at 43, 505 N.E.2d at 659.

Both the concurring opinion of Justice Douglas in *City of Kettering v. State Employment Relations Board, supra*, and the court in *City of Columbus v. State Employment Relations Board, supra*, refer to the analysis of Ohio Const. art. II, §34 set forth in *State ex rel. Board of Trustees v. Board of Trustees*, 12 Ohio St. 2d 105, 233 N.E.2d 135 (1967). In *Board of Trustees*, a city challenged the legislation which established the Police and Firemen's Disability and Pension Fund (R.C. Chapter 742) and required the transfer to the newly created state fund of the assets and liabilities of each police relief and pension fund established under R.C. 741.32 and each firemen's relief and pension fund established under R.C. 521.02 or R.C. 741.02. The city alleged violations of, not only art. XVIII, §3, but also various other constitutional provisions. The court dismissed the constitutional challenges, finding art. II, §34 to be dispositive of the issues presented, stating:

> There can be no question that the adopters, the people, intended this section of the Constitution to apply both to local government and state employees. The cities and towns and other political subdivisions of the state of Ohio constitute en masse one of the largest of the employers in the state. It is our conclusion that the firemen and police of the various localities of Ohio are employees within the scope of this provision. *It appears in clear, certain and unambiguous language that no other provision of the Constitution may impair the intent, purpose and provisions of the above section of Article II.* (Emphasis added.)

12 Ohio St. 2d at 107, 233 N.E.2d at 137.

Thus, although Justice Douglas in his concurring opinion in *City of Kettering* and the court in *City of Columbus* discuss the application of art. II, §34 to only one portion of R.C. Chapter 4117, they suggest that R.C. Chapter 4117, as a whole (1983-1984 Ohio Laws, Part I, 336 (Am. Sub. S.B. 133, eff., in part, Oct. 6, 1983)), was enacted under the specific authority granted to the General Assembly under art. II, §34. In addition, *Board of Trustees* clearly supports the further conclusion that art. II, §34 supersedes any other provision of the Constitution which may impair or limit the intent or purpose of a statute providing for the general welfare of employees. *See, e.g., Strain v. Southerton*, 148 Ohio St. 153, 74 N.E.2d 69 (1947) (syllabus, paragraph two) ("[t]he Minimum Wage Act of Ohio...is a welfare measure passed by the General Assembly pursuant to the authority conferred by Section 34 of Article II of the Constitution"); *City of Cincinnati v. Correll*, 141 Ohio St. 535, 543, 49 N.E.2d 412, 416 (1943) ("[t]he power to pass laws fixing and regulating the hours of labor is granted by the Constitution [under Ohio Const. art. II, §34] to the General Assembly only, and municipalities are without authority to accomplish such purpose by ordinance"); *Vincent v. Elyria Board of Education*, 7 Ohio App. 2d 58, 61, 218 N.E.2d 764, 766 (Lorain County 1966) (art. II, §34 "has

declared the public policy of this state in respect to hours of labor and wages for work in excess of forty hours per week and specifically authorizes legislation of the kind here under consideration [R.C. 3319.086]; and, as a consequence, the provisions of the state and federal Constitutions inhibiting laws impairing the obligation of contracts do not affect this power of the state to enact legislation directed to establishing the 'comfort, health, safety and general welfare of all employees'").

It appears, therefore, that it was pursuant to art. II, §34 that the General Assembly enacted R.C. Chapter 4117. To the extent that the constitutional provisions governing the procedure for the passage of laws by the General Assembly, *e.g.*, Ohio Const. art. II, §15, would impair or limit the operation of R.C. 4117.10(B), art. II, §34, thus, prohibits their application.

As set forth above, the portion of R.C. 4117.10(B) about which you ask states in pertinent part: "The legislative body must approve or reject the submission as a whole, and the submission shall be deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement." In the absence of legislative definition of the phrase "approve or reject" and absent a specific statutory method for effecting such approval or rejection, it appears that the General Assembly intended that each legislative body "approve or reject" a submission in any reasonable manner. *See Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner").

Pursuant to the Constitution, the General Assembly's authorization of a request for funds or other matter requiring legislative approval requires an act of legislation, which, as set forth above, is accomplished by passage of a bill by "the concurrence of a majority of the members elected to each house," Ohio Const. art. II, §15(A). Specifically concerning rejection of a bill, art. II, §15(A) states: "*Bills may originate in either house, but may be* altered, amended, or *rejected in the other*," (emphasis added). The Constitution thus provides for the passage of a bill only by passage by a majority in each house and rejection of a bill may occur, therefore, by rejection of the bill by a single house. The question then arises as to whether the constitutional procedures for the passage of laws by the General Assembly impair or limit the provisions of R.C. 4117.10(B) in contravention of Ohio Const. art. II, §34.

It is a well-settled rule of statutory construction that words and phrases in a statute must be read in context. R.C. 1.42. Upon examination of R.C. 4117.10 in its entirety, it appears that the legislature did not contemplate that approval or rejection of a submission would require legislation enacted in accordance with the procedures otherwise governing the passage of laws by the General Assembly. If approval of a submission to the General Assembly under R.C. 4117.10(B) required compliance with the generally applicable constitutional requirements for the enactment of laws, art. II, §15(E) would require the General Assembly, upon passage of a bill by both houses, to present the bill to the Governor for his approval. Then, pursuant to Ohio Const. art. II, §16, the Governor would have the power to veto or approve such legislation. Absent submission to the Governor by the General Assembly in accordance with art. II, §15(E), the approval of a bill appropriating money or approving any other matter requiring legislative approval would not become a law. *See Patterson Foundry & Machine Co. v. Ohio River Power Co.*, 99 Ohio St. 429, 434, 124 N.E. 241, 242 (1919) ("[u]nder the provisions of our constitution, before a bill passed by both houses may become a law it shall be presented to the governor and if he approves the same it thereupon becomes a law. If it is not approved and signed by him, and is not returned to the house where it originated...it becomes a law in like manner as if signed"). R.C. 4117.10 clearly does not contemplate approval by the Governor of any portion of a collective bargaining agreement. Rather, by requiring approval or rejection only by the "legislative body," defined in pertinent part as "the general assembly," R.C. 4117.10(B), without mention of approval or veto by the governor, the legislature expressed its intention that the act of approval or rejection by the General Assembly under R.C. 4117.10(B) is not governed by otherwise applicable constitutional procedures required for the enactment of laws. *See* R.C. 4117.10(C) (providing that an agreement is binding upon the legislative body, the employer, the employee organization, and the employees covered by the agreement once the terms about which there is agreement

are reduced to writing and approved by the employee organization and the legislative body).

In order to determine the action necessary to effect a rejection of a submission by the General Assembly, it is necessary to bear in mind that approval may occur in two ways, either by an affirmative act of approval by the General Assembly or by that body's failure "to act" within thirty days after the public employer makes a submission. Unlike the other legislative bodies charged with approving or rejecting submissions under R.C. 4117.10(B), the General Assembly is a bicameral body, each part of which functions independently in the execution of its part of the legislative function. *See generally Ritzman v. Campbell*, 93 Ohio St. 246, 112 N.E. 591 (1915) (discussing the duties of each house in the passage of legislation); *State ex rel. The Robertson Realty Co. v. Guilbert*, 75 Ohio St. 1, 44, 78 N.E. 931, 934 (1906) ("[t]he Constitution explicitly grants and defines the separate powers of each branch of the General Assembly....The powers of each house are not general and subject only to limitation in the Constitution, as is the legislative power of the entire General Assembly; but they are specific or enumerated powers").

R.C. 4117.10(B) imposes upon the General Assembly the duty to approve or reject a submission, and the General Assembly's failure "to act" under that division obviously refers to the failure to take the steps necessary to approve or reject the submission.[6] Since approval of a submission may occur through the

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[6] In *State ex rel. Brothers v. Zellar*, 7 Ohio St. 2d 109, 218 N.E.2d 729 (1966), the court addressed the provisions of Ohio Const. art. III, §21 which states:

> When required by law, appointments to state office shall be subject to the advice and consent of the Senate. All statutory provisions requiring advice and consent of the Senate to appointments to state office heretofore enacted by the General Assembly are hereby validated, ratified and confirmed as to all appointments made hereafter, but any such provision may be altered or repealed by law.
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> No appointment shall be consented to without concurrence of a majority of the total number of Senators provided for by this Constitution, except as hereinafter provided for in the case of failure of the Senate to act. If the Senate has acted upon any appointment to which its consent is required and has refused to consent, an appointment of another person shall be made to fill the vacancy.
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> If an appointment is submitted during a session of the General Assembly, it shall be acted upon by the Senate during such session of the General Assembly, except that if such session of the General Assembly adjourns sine die within ten days after such submission without acting upon such appointment, it may be acted upon at the next session of the General Assembly.
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> If an appointment is made after the Senate has adjourned sine die, it shall be submitted to the Senate during the next session of the General Assembly.
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> In acting upon an appointment a vote shall be taken by a yea and nay vote of the members of the Senate and shall be entered upon its journal. Failure of the Senate to act by a roll call vote on an appointment by the governor within the time provided for herein shall constitute consent to such appointment.

In that case an appointment was submitted to the Senate for its advice and consent. The appointment was referred to committee, but the Senate adjourned sine die without considering the appointment. The court concluded that the Senate's mere referral of the appointment to committee did not constitute action by the Senate. The court stated: "The action of the Senate referred to in [art. III, §21] relates to the Senate's either accepting or rejecting the appointment; it does not relate to the administrative action in the internal operation of the Senate." 7 Ohio St. 2d at 115, 218 N.E.2d at 734.

General Assembly's affirmative act of approving the submission or through its failure to act, and since approval of the General Assembly as a whole may not occur by approval of one house and rejection by the other, it appears that anything other than the consonant action of both houses in rejecting the submission results in its approval. In answer to your third question, therefore, R.C. 4117.10(B) requires that both houses of the General Assembly reject a submission before it is considered to have been rejected.

Your fourth question asks:

> Where the General Assembly allows a collective bargaining contract to be ratified by its failure to act within the specified 30-day deadline, does that operate to obligate the General Assembly to subsequently appropriate the funds necessary to implement the agreement and pass such laws as are called for by the agreement? Is the answer dependent on whether it is determined that legislative rejection of a submission requires rejection by both houses of the General Assembly or only one house?

R.C. 4117.10(B) requires a public employer to submit to the legislative body "a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the...legislative body." The legislative body must then approve or reject the submission as a whole; the legislative body's failure to act within the specified time period results in the submission's being "deemed approved." The word "deem" is defined in part as meaning, "[t]o...treat as if." *Black's Law Dictionary* 374 (5th ed. 1979). Thus, should the General Assembly fail to act within the time specified in R.C. 4117.10(B), those matters submitted for its approval, a request for funds or any other matter requiring its approval, are to be treated as if the General Assembly had affirmatively acted to approve the submission.

Answering your fourth question requires addressing the extent to which the General Assembly must take further action once a submission to that body under R.C. 4117.10(B) has been approved or "deemed approved." As set forth in response to your third question, I note that the act of appropriating funds or passing other legislation ordinarily requires the General Assembly's compliance with various procedures established by the Constitution, *e.g.*, art. II, §§15 and 22. In light of art. II, §34, however, such constitutional requirements would not appear to apply to that portion of R.C. 4117.10(B) providing for the approval of a submission, either through the General Assembly's affirmative act of approval or the submission's being "deemed approved" due to the General Assembly's failure to act, since such procedural requirements would clearly impair or limit the operation of the portion of R.C. 4117.10(B) about which you ask. Rather, once the submission is approved or "deemed approved," R.C. 4117.10(B) does not contemplate that the General Assembly need take any further steps to authorize a public employer's expenditure of funds necessary to implement the agreement or any other matter requiring its approval. In the situation about which you ask, if the General Assembly fails to act on the submission within thirty days, the submission is treated as if the General Assembly had taken the affirmative steps necessary for approval. R.C. 4117.10(B) does not require any subsequent legislative action by the General Assembly to appropriate funds necessary to implement the agreement or to pass any other legislation in order to implement the matters contained in the submission after the submission has been approved or deemed approved.

Part of your fourth question is whether the answer to the above question is dependent upon whether rejection of a submission occurs only upon rejection by only one house or by both houses. Since no further action by the General Assembly is necessary once a submission has been approved or "deemed approved," it is irrelevant whether rejection of a submission occurs through rejection of only one or both houses.

Your fifth question reads as follows: "What are the legal liabilities and status of the parties to a collective bargaining contract in a situation in which the General Assembly enacts none or only part of the laws and appropriates none or only part of the funds necessary to implement a previously ratified collective bargaining agreement?" Initially, I note that I am assuming that approval of the submission by the General Assembly under R.C. 4117.10(B) is the process to which you refer in

asking about "a previously ratified collective bargaining agreement." As stated in answer to your fourth question, once a submission is approved by the General Assembly, whether through action or inaction, R.C. 4117.10(B) does not require further legislative action to implement the provisions in the submission. Further, pursuant to R.C. 4117.10(B), "[t]he legislative body must approve or reject the submission *as a whole*...." (Emphasis added.) Thus, where a public employer submits to the General Assembly a "request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the [General Assembly]," and the submission is approved or deemed approved, the submission in its entirety has the approval of the General Assembly.

Pursuant to R.C. 4117.10(C), "[w]hen the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement." Thus, once the "request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the [General Assembly]" has been approved by the General Assembly or deemed approved under R.C. 4117.10(B), R.C. 4117.10(C) merely requires the approval of the agreement by the employee organization in order for the agreement to be binding upon the General Assembly, the employer and the employee organization and the employees covered by the agreement.

Your sixth question asks:

> May a submission or request for funds necessary to implement a collective bargaining agreement under section 4117.10 of the Revised Code validly be submitted to one or both houses of the General Assembly on a day when that house is not in session, or during periods when the house or the General Assembly is in recess, or on a day when the General Assembly or a house is in what is commonly known as a "skeleton" session? Does such a submission begin the running of the 30-day period?

The time within which a public employer must make a submission to the General Assembly in accordance with R.C. 4117.10(B) is specified as, "within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the [General Assembly] is not *in session* at the time, then within fourteen days after it convenes" (emphasis added). The term "in session," as used in R.C. 4117.10(B), is not defined by statute. In this regard, I note that, the word "session," as used with respect to the proceedings of the General Assembly, has various meanings. *See generally* 1985 Op. Att'y Gen. No. 85-091 (syllabus). Even as used in the rules adopted by the two houses of the General Assembly, the word "session" has more than one meaning. *See, e.g., Rules of the Senate of the 117th General Assembly* (1987) at 6 (rule 1) ("[t]he sessions of the Senate shall be held at such times as are determined by majority approval of the members present"); at 9 (rule 20) ("[n]o committee shall sit during the daily sessions of the Senate without leave of a majority of the Senate"); at 10 (rule 31) ("[b]ills to be introduced in the Senate...shall be filed in the Clerk's office one hour prior to the next convening session of the Senate"); at 18 (rule 88) ("[t]he interim between any two sessions of the Senate on the same day shall be termed a recess..."); at 21 (rule 103) ("[t]aping or filming of a member or members of the Senate in the Senate chamber or in committee rooms when the Senate is not in session is permissible..."); *Rules of the House of Representatives of the 117th General Assembly, recorded in* Ohio House of Representatives Journal (corrected version, January 13, 1987) at 24 (rule 1) ("[t]he sessions of the House of Representatives shall be held on such dates and at such times as shall be determined by a vote of the House"); at 25 (rule 8) ("[t]he interim between any two sessions of the House, on the same day, shall be termed a recess; when so ordered by the House, the interim between five or more calendar days likewise shall be termed a recess"); at 33 (rule 53) ("[a]ll bills to be introduced in the House shall be filed in the Legislative Clerk's office in sextuplicate not later than one hour prior to the time set for the next convening session"); at 44 (rule 110) ("[i]f a House bill or resolution is defeated or indefinitely postponed in the House it shall not be reintroduced during either annual session of the same General Assembly").

In the case of *State ex rel. Horner v. Anderson*, 41 Ohio St. 2d 166, 324 N.E.2d 572 (1975), the court examined the meaning of the word "session," as used in Ohio Const. art. III, §21, concerning appointments to state office, which states in part:

> When required by law, appointments to state office shall be subject to the advice and consent of the Senate....
>
> ....
>
> If an appointment is submitted during a session of the General Assembly, it shall be acted upon by the Senate during such session of the General Assembly, except that if such session of the General Assembly adjourns sine die within ten days after such submission without acting upon such appointment, it may be acted upon at the next session of the General Assembly.
>
> If an appointment is made after the Senate has adjourned sine die, it shall be submitted to the Senate during the next session of the General Assembly.

In examining the meaning of the word "session," the court in *State ex rel. Horner v. Anderson* examined the history of art. III, §21 and noted that, at the time art. III, §21 was adopted, a session of the General Assembly was either the period of a special session or the period from the first meeting of the General Assembly until adjournment sine die, which could occur at any time within the two-year period of the electoral term of the General Assembly. 41 Ohio St. 2d at 168, 324 N.E.2d at 573-74. As noted by the *Horner* court, however, over the years the practice developed of continuing sessions into the second year by adjournment to a named date. In recognition of this practice, art. II, §8 was adopted, stating in part: "Each general assembly shall convene in first regular session on the first Monday of January in the odd-numbered year, or on the succeeding day if the first Monday of January is a legal holiday, and in second regular session on the same date of the following year." Thus, art. II, §8 establishes two regular sessions during the term of each General Assembly. 41 Ohio St. 2d at 169, 324 N.E.2d at 574. *See* R.C. 101.01(A) (fixing the date for the convening of the first and second regular sessions of the General Assembly).

Because of the adoption of art. II, §8, establishing two regular sessions of each General Assembly, the *Horner* court had to determine whether the word "session," as used in art. III, §21, refers to a single regular session or whether a session includes both such regular sessions. The court examined the text of the Ohio Constitutional Revision Commission's recommendation with regard to art. II, §8 and concluded:

> The intent of the commission was clearly to bring constitutional provisions into conformance with practice and to provide a definite and regular starting date for the second regular session of the General Assembly. This intent is shown by the commission's adoption of the language of then existing R.C. 101.01, which specifically provided for a second session of each General Assembly, which was to be "a continuum of the regular session." The commission specifically disclaimed any intention to modify the current practice and procedures of the General Assembly, and considered that "the General Assembly would have continued authority to determine its own policy on this matter."

41 Ohio St.2d at 171, 324 N.E.2d at 575. The *Horner* court then noted that, in conformance with the new constitutional language adopted in art. II, §8, the General Assembly amended R.C. 101.01 to recognize that: "The second regular session of each general assembly shall be a continuum of the first regular session." 1973 Ohio Laws, Part I, 1989 (Am. H.B. 994, eff. Sept. 17, 1973). The court then concluded that:

> the purpose of the framers of Section 8 of Article II is clear—to provide a definite starting date for the second session of the General Assembly, while allowing the General Assembly to establish its own procedural rules for its term of office. We do not find any conflict with Section 21 of Article III, in which the period of a session

> encompasses both the first and second regular sessions of the General Assembly, as these were later established by Section 8 of Article II.

41 Ohio St. 2d at 172, 324 N.E.2d at 576. Thus, the *Horner* court concluded that, for purposes of art. III, §21, a session of the General Assembly includes both the first and second regular sessions of the General Assembly as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A).

As in art. III, §21, the word "session," as used in R.C. 4117.10(B), is not modified by any term, such as "daily," "special," or "regular," which would clarify the type of session to which it refers. Rather, R.C. 4117.10(B) merely refers to the time when a legislative body, including the General Assembly, "is not ***in session***" (emphasis added). The court in ***Heidtman v. City of Shaker Heights***, 163 Ohio St. 109, 126 N.E.2d 138 (1955) (syllabus, paragraph one), however, set forth the following rule of statutory construction:

> Where a statute is silent as to the meaning of a word contained therein and that word has both a wide and a restricted meaning, courts in interpreting such a statute must give such word a meaning consistent with other provisions of the statute and the objective to be achieved thereby.

Applying this rule of statutory construction to the meaning of the phrase, "in session," as used in R.C. 4117.10(B), it is useful to examine the case of *State ex rel. v. Harmon*, 31 Ohio St. 250 (1877), in which the court discussed the meaning of the General Assembly's being "in session."

The question presented in *Harmon* was the meaning of the phrase "between the sixth and tenth days after the commencement of the first general assembly after the election," as used in a statute fixing the time for filing a notice of an election contest with the clerk of the Senate. The *Harmon* court stated:

> The provision requiring notice to be filed with the clerk of the senate, between the sixth and tenth days after the commencement of the first general assembly, has reference to the time of the meeting of the general assembly as an organized body for the transaction of business.
>
> The general assembly, in legal contemplation, is a continuing body, as enduring as the constitution; but when not in session it has merely a potential existence. Its members are at all times liable to be called together to act as an organized body; and it is only when they are thus convened that the general assembly can be said to be in session, or competent for the transaction of business.
>
> As respects the power or capacity of the general assembly, it is a matter of indifference whether it is convened in pursuance of the express injunction of the constitution, at the time prescribed for the regular session, or under the call of the governor, or at a time fixed by itself. Its authority is as ample at one session as at another.

31 Ohio St. at 262. The court then concluded that since the purpose of establishing a time limit for filing the notice was to require promptness of action on the part of those intending to contest the election rather than to delay the contest by requiring that it be conducted at a particular session of the general assembly, there was no reason to read the statute restrictively. Thus, whenever the General Assembly was convened and competent for the transaction of business it was considered to be "in session." Similarly, the submission and approval provisions of R.C. 4117.10(B) appear to be designed to encourage prompt consideration of any matter submitted under that division. Thus, a broad reading of the phrase "in session," as used in R.C. 4117.10(B), would be appropriate.

Support for such a reading may be found in a line of cases broadly interpreting the same phrase as used in R.C. 3.03 which requires the Senate's approval of appointments made by the Governor. R.C. 3.03 states in pertinent part:

> When a vacancy in an office filled by appointment of the governor, with the advice and consent of the senate, occurs by expiration of term or otherwise during a regular session of the senate, the governor shall appoint a person to fill such vacancy....If such vacancy occurs when the senate is not *in session*...the governor shall fill the vacancy and report the appointment to the next regular session of the senate....A person appointed by the governor when the senate is not in session or on or after the convening of the first regular session and more than ten days before the *adjournment sine die* of the second regular session to fill an office for which a fixed term expires or a vacancy otherwise occurs is considered qualified to fill such office until the senate before the adjournment sine die of its second regular session acts or fails to act upon such appointment pursuant to section 21 of Article III, Ohio Constitution.[7] (Emphasis and footnote added.)

The phrase "in session," as used in R.C. 3.03, has consistently been interpreted as excluding those times when the General Assembly has adjourned sine die. *See, e.g., State ex rel. Allen v. Ferguson*, 155 Ohio St. 26, 97 N.E.2d 660 (1951); 1958 Op. Att'y Gen. No. 1870, p. 175 (syllabus, paragraph two) ("[w]hen, pursuant to [R.C. 3.03], the governor is required to make an appointment while the senate is in session, the failure of the governor to do so while the senate is, in fact, in session, precludes him from making an appointment after *sine die* adjournment and during the subsequent recess of that body"); 1958 Op. Att'y Gen. No. 1869, p. 166 (syllabus, paragraph three) ("[w]here there is a failure of the senate to act, prior to *sine die* adjournment, on the requested confirmation of a nominee, or of a 'recess' appointee under the provisions of [R.C. 3.03], the provision in that section that thereafter a 'new appointment shall be made'[:] (1) authorizes the governor to make such appointment following *sine die* adjournment of the senate, (2) permits him a reasonable time in which to do so, and (3) permits continued *de facto* incumbency in such office during such reasonable time"); 1958 Op. Att'y Gen. No. 1868, p. 157 (syllabus, paragraph two) ("[w]hen a vacancy occurs, during the time the senate is in session, in an office required by law to be filled by the governor with the advice and consent of the senate, the failure of the governor to present a nomination to the senate before adjournment *sine die* precludes the making of a valid appointment while the senate is not in session"). Thus, it appears that once the General Assembly has adjourned *sine die*, it is no longer "in session." *See generally* E. Hughes, *Hughes' American Parliamentary Guide* at 222–23 (1928) ("[a]djournment does not dissolve the assembly, except when no provision has been made for a future sitting, that is if the assembly adjourns without fixing a future time to meet....It is the practice of our American legislative bodies when they desire to wind up the business of a legislative body to adjourn sine die").

In addition, I note that, the Ohio Constitution provides for the convening of the General Assembly in "special" sessions. Pursuant to Ohio Const. art. II, §8, "[e]ither the governor, or the presiding officers of the general assembly chosen by the members thereof, acting jointly, may convene the general assembly in special session by a proclamation which may limit the purpose of the session." Further, Ohio Const. art. III, §8 authorizes the Governor, on extraordinary occasions, to:

> convene the general assembly by proclamation and shall state in the proclamation the purpose for which such special session is called, and no other business shall be transacted at such special session except that named in the proclamation, or in a subsequent public proclamation or message to the general assembly issued by the governor during said special session....

Thus, it appears that, so long as the General Assembly is convened in special session, and the purpose of that session has not been so limited by proclamation to exclude consideration of a submission made pursuant to R.C. 4117.10(B), the General Assembly is, during such special session, "in session" for purposes of R.C. 4117.10(B).

Your question specifically mentions periods when a single house is not in session, or when a house is "in recess," or when the General Assembly or a single

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7 *See* note 6, *supra*, for text of Ohio Const. art. III, §21.

house is in "skeleton session." Addressing the portion of your question concerning periods when the General Assembly is in "skeleton session," I note that the term "skeleton session" has no legal definition, but has developed a common meaning through legislative practice. It appears that the purpose of skeleton sessions is to enable the legislature to conduct certain of its business, e.g., the introduction of bills, although only the presiding officer and one other member of the house are present. *See generally* 2 Ohio Constitutional Revision Commission 1970–1977, 821–22, 850 (discussing the purpose of skeleton sessions). Concerning the meaning of the term, "in recess," I note that an examination of the rules of the House of Representatives and of the Senate reveals that the word "recess" has no single meaning. Rather, the term "recess" refers either to the period between sessions on the same day, Senate rule 88 and House rule 8, or, in certain instances, to "the interim between five or more calendar days," House rule 8.

In answer to this portion of your sixth question, I conclude that, where the particular periods of time to which you refer as "a recess," and the periods in which skeleton sessions are held, other than periods in which the General Assembly has adjourned sine die, fall within the first and second regular sessions of the General Assembly as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A) or when the General Assembly is convened in special session which has not been limited by proclamation to exclude consideration of a submission made pursuant to R.C. 4117.10(B), such periods constitute periods when the General Assembly is "in session" for purposes of R.C. 4117.10(B).[8]

Part of your sixth question asks whether periods when a single house of the General Assembly is not "in session" constitute periods when the General Assembly "is not in session" for purposes of R.C. 4117.10(B). As set forth above, the General Assembly is considered to be "in session," for purposes of R.C. 4117.10(B), during the

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[8] I note, however, that there is support for the proposition that the General Assembly may, by rule, determine what constitutes a session for purposes of its own proceedings. As stated in E. Hughes, *Hughes' American Parliamentary Guide* at 223–24 (1928):

> (I) There is neither constitutional, statutory nor parliamentary law that governs or abridges the right of the assembly to bring to a close its sittings, or session. It may recess, adjourn or dissolve, and in the first two instances it may at its pleasure terminate such recess or adjournment by fixing a time and way for future convening. It may legally recess five minutes, five months or more, so long as the day fixed is within the constitutional life of the Assembly. The constitutions of all the states expressly grant authority to each house of the legislature to make its own rules....The laws further fix a time the assembly shall meet, but nowhere in the Ohio laws...is the time or manner of suspending business enjoined upon the legislature. It is supposed to be an inherent right of the legislature to decide this matter for itself. We have been unable to find a single instance where any court has passed upon this question, and this fact of itself is a strong argument that the court will not concern itself with deciding purely legislative or parliamentary questions except when the constitution is involved.

See State ex rel. City Loan & Savings Co. v. Moore, 124 Ohio St. 256, 259, 177 N.E. 910, 911 (1931) (Ohio Const. art. II, §8 "authorizes each house to determine its own rules of proceeding. Sections 9 and 16 prescribe certain rules which are mandatory, and a failure to observe them might be inquired into by the courts, and if it is found that the Legislature has violated the constitutional limitations it would be within the power of the court to declare the legislation invalid. The provision for reconsideration is no part of the Constitution and is therefore entirely within the control of the General Assembly. Having made the rule, it should be regarded, but a failure to regard it is not the subject-matter of judicial inquiry").

period of the first and second regular sessions, as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A), until adjournment sine die, or when the General Assembly is convened in special session which has not been limited by proclamation to exclude consideration of a submission made pursuant to R.C. 4117.10(B). Since there is no constitutional or statutory provision or rule authorizing a single house to adjourn sine die or to exclude itself from a special session, it does not appear that a single house may be considered "not in session" in the sense that term is used in R.C. 4117.10(B).

In answer to the second part of your sixth question, once a submission is made within the time specified in R.C. 4117.10(B), during the period of the first and second regular sessions as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A), until adjournment sine die, or during a special session when consideration of the submission is not prohibited by proclamation, the General Assembly has thirty days to approve or reject the submission. Should the General Assembly fail to act within such thirty days, the submission is deemed approved.

Your next question asks: "Was the contract identified as 'Contract of Agreement Between the State of Ohio and United Food and Commercial Workers' properly submitted to the General Assembly within the required 14-day period following its execution?" Resolution of this particular question necessarily involves the making of certain factual determinations. As stated in 1983 Op. Att'y Gen. No. 83-057 at 2-232: "This office is not equipped to serve as a fact-finding body; that function may be served...ultimately, by the judiciary." *See* 1986 Op. Att'y Gen. No. 86-039 at 2-198 ("I am unable to use the opinion-rendering function of this office to make determinations concerning the validity of particular documents, or the rights of persons under such documents"). I am, therefore, unable to address this question.

The next question asks: "What procedures are sufficient to produce a proper submission to the General Assembly?" R.C. 4117.10(B) imposes a duty upon those public employers for whom the General Assembly is the legislative body to make a submission to the General Assembly for its approval or rejection, but specifies only the time within which such submission is to be made. In the absence of statutory guidelines as to the manner in which the submission is to be made, it is presumed that the legislature intended that the submission be made in any reasonable manner. *See Jewett v. Valley Ry. Co. See also State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 112 N.E. 138 (1915) (syllabus, paragraph four) ("[w]here an officer is directed by the constitution or a statute of the state to do a particular thing, in the absence of specific directions covering in detail the manner and method of doing it, the command carries with it the implied power and authority necessary to the performance of the duty imposed").

The next question reads as follows: "What is the legal status of a contract where a submission is not made within the specified 14-day period?" As discussed above, R.C. 4117.10(B) states that a public employer shall make a submission to the legislative body "within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes." As set forth above, R.C. 4117.10(B) requires a public employer to submit to the legislative body only "a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body." Thus, there may be instances where an agreement contains none of the matters required to be submitted to the legislative body under R.C. 4117.10(B). I will, however, address this question assuming that you are asking about a situation where a proposed collective bargaining agreement does include a matter requiring legislative approval.

The first issue to be addressed in answering this question is whether the provision specifying the time within which a submission shall be made is mandatory or merely directory. The analysis to be used in making such a determination is set forth in *State ex rel. Jones v. Farrar*, 146 Ohio St. 467, 472-73, 66 N.E.2d 531, 534 (1946), as follows:

> Whether a statute is mandatory or directory is to be ascertained from a consideration of the entire act, its nature, its effect and the consequences which would result from construing it one way or another. In each instance, it is necessary to look to the subject matter

> of the statute and consider the importance of the provision which has been disregarded and the relation of that provision to the general object intended to be secured by the act.
>
> As a general rule, a statute which provides a time for the performance of an official duty will be construed as directory so far as time for performance is concerned, especially where the statute fixes the time simply for convenience or orderly procedure; and, unless the object or purpose of a statutory provision requiring some act to be performed within a specified period of time is discernible from the language employed, the statute is directory and not mandatory....
>
> ...The character of the statute may be determined by the consideration of (1) the words of the statute, (2) the nature, context and object of the statute and (3) the consequences of the various constructions. (Citations omitted.)

Applying the above test to the provision of R.C. 4117.10(B) about which you ask, it becomes apparent that the provision concerning the time within which the public employer is to make a submission to the legislative body is merely directory. The language of R.C. 4117.10(B) reveals that it is not critical for the submission to be made within fourteen days, since the statute also allows the parties to specify otherwise. Further, it is clear that the object of this requirement is merely to provide an opportunity for prompt consideration of the submission by the legislative body; the public employer's submission within a time period sufficient to accomplish this objective would, therefore, appear to comport with the duty imposed by R.C. 4117.10(B), even though not within the fourteen day time period. Finally, the third prong of the test is to consider the consequences of reading the fourteen-day provision as mandatory. Because the negotiation process is often lengthy, it would be unreasonable to conclude that a public employer's failure to make the submission to the legislative body within the precise time requirements set forth in R.C. 4117.10(B) could prevent the legislative body from having the opportunity to act upon the submission and thereby require new negotiations. It is clear, therefore, that the portion of R.C. 4117.10(B) imposing a fourteen-day time limit upon the employer to make a submission to the legislative body is merely directory. Failure of the employer to make a submission within the precise period does not preclude the legislative body from considering the submission.

Part of your question appears to concern the possible effectiveness of any portions of the agreement prior to the legislative body's approval or rejection of the matters submitted to it under R.C. 4117.10(B). In this regard, I note that, R.C. 4117.10(B) states in part: "The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section."[9] Pursuant to R.C. 4117.10(B), so long as there

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9 R.C. 4117.10(C) states:

> The chief executive officer, or his representative, of each municipal corporation, the designated representative of the board of education of each school district, college or university or any other body that has authority to approve the budget of their public jurisdiction, the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations, and the designated representative of the village or the board of township trustees of each township is responsible for negotiations in the collective bargaining process; except that the legislative body may accept or reject a proposed collective bargaining agreement. When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.

is compliance with R.C. 4117.10(C), the parties to a collective bargaining agreement may provide in the agreement for the effectiveness and operation of those portions of the agreement not requiring action by the legislative body.

Your final question asks: "What recourse do the parties to the contract or the General Assembly have if the public employer does not make a proper and timely submission as required under the statute?" Again, assuming that a submission is required under R.C. 4117.10(B), it appears that since R.C. 4117.10(B) imposes upon a public employer the duty to make a submission in accordance with the requirements set forth in that division, a mandamus action to compel the public employer to make the submission would be appropriate where the public employer fails to make the submission. *See generally State ex rel. Willis v. Sheboy*, 6 Ohio St. 3d 167, 451 N.E.2d 1200 (1983) (syllabus, paragraph two) ("[t]he function of mandamus is to compel the performance of a present existing duty as to which there is a default. It is not granted to take effect prospectively, and it contemplates the performance of an act which is incumbent on the respondent when the application for a writ is made"); *State ex rel. Mahoning County Community Corrections Ass'n v. Shoemaker*, 12 Ohio App. 3d 36, 37, 465 N.E.2d 1351, 1352-53 (Franklin County 1983) ("mandamus is the proper remedy to compel a state official to perform a clear legal duty, and that...remedy was not extinguished by enactment of the Court of Claims Act, since such an action is not a suit against the state").

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

1. Pursuant to R.C. 4117.10(B), where a public employer submits to the General Assembly a request for funds necessary to implement a collective bargaining agreement and for approval of any other matter requiring the approval of the General Assembly, rejection of the submission occurs only if both houses of the General Assembly reject the submission.

2. Once a submission made to the General Assembly under R.C. 4117.10(B) is approved by the General Assembly, or deemed approved in accordance with that division, no further action by the General Assembly is necessary to implement the matters contained in the submission.

3. Pursuant to R.C. 4117.10(B), where a public employer submits to the General Assembly a request for funds necessary to implement a collective bargaining agreement and for approval of any other matter requiring the approval of the General Assembly, the General Assembly must approve or reject the submission as a whole.

4. R.C. 4117.10(B) requires a public employer for whom the General Assembly is the legislative body to make the submission required by that division to the General Assembly during the period of the first and second regular sessions, as provided for in Ohio Const. art. II, §8 and R.C. 101.01(A), until adjournment sine die, or when the General Assembly is convened in special session which has not been limited by proclamation to exclude consideration of a submission made pursuant to R.C. 4117.10(B).

5. A public employer may make a submission to the General Assembly as required by R.C. 4117.10(B) in any reasonable manner.

6. Pursuant to R.C. 4117.10(C), a collective bargaining agreement does not become binding on the General Assembly, the public employer, or the employee organization or employees covered by the agreement until the submission, where required to be made under R.C. 4117.10(B), is approved by the General Assembly and the agreement is approved by the employee organization.

7. An action in mandamus is the appropriate remedy where a public employer fails to make a submission to the General Assembly as required by R.C. 4117.10(B).