OPINION NO. 73-011

Syllabus:

Under the provisions of R.C. 4109.12 (U), assuming that neither subsections (1) nor (2) is applicable, a child under the age of 18 is prohibited from being employed either as the operator of a motor vehicle or as a helper thereon.

To: Joe Shump, Director, Dept. of Industrial Relations, Columbus, Ohio
By: William J. Brown, Attorney General, February 20, 1973

Your request for my opinion raises the following questions:

> Under the provisions of Subsection (U) of Section 4109.12, Revised Code, assuming that neither Subparagraph (1) nor (2) is applicable, is a child under the age of eighteen prohibited from being employed or working if he is engaged either in the operation of a motor vehicle or is working as a helper thereon, or must such child be engaged in both activities to fall within the scope of the statutory prohibitions?

The answer to your question depends entirely upon the construction of the language of R.C. 4109.12 (U). The pertinent language of that Sections reads, in part, as follows:

> No child under eighteen shall be employed or permitted to work:
>
> * * * * * * * * *
>
> (U) In the operation of motor vehicles and work as a helper thereon, except the following:
>
> (1) Farm tractors;
>
> (2) Motor vehicles operated in connection with employment which is incidental to a bona fide program of vocational co-operative or

> special education training which meets the standards of the state board of education.
> (Emphasis added.)

Succinctly your question raises the issue whether the word "and" in subsection (U) should be read "or".

Statutes must be interpreted according to their plain meaning. However, rules of statutory construction must be relied upon where there is an ambiguity. The rule in Ohio concerning the construction of the word "and" is established by statute.

R.C. 1.02 (F) states the rule as follows:

> "And" may be read "or", and "or" be read "and" if the sense requires it.

It is apparent that R.C. 4109.12 and related Sections were enacted by the Ohio General Assembly to protect the welfare of minors. One of my predecessors, speaking to R.C. 4109.12 in Opinion No. 161, Opinions of the Attorney General for 1927, stated as follows:

> No argument is required to show that Section 13007-3 [4109.12, Revised Code], supra, and kindred sections, were enacted to protect the youth of the state and to prevent the health and physical well being of the state's future citizens from being injured or harmed by employment in dangerous, unhealthful or objectionable occupations, or by contact with machinery of a dangerous character. * * *
> (Bracketed material added.)

As my predecessor stated, R.C. 4109.12 was enacted to protect children by preventing them from engaging in dangerous occupations. Since the same individual cannot at the same time both operate a motor vehicle and act as a helper thereon, the General Assembly must have concluded that both occupations were dangerous. Any other conclusion would be anamolous since it would be pointless for the legislature to extend coverage to both occupations if only one of them was considered to be dangerous. And if both are dangerous, the sense of the statute requires "and" to be read as "or" since both of them involve the danger the legislature intended to prohibit.

Further examination of Opinion No. 161, supra, reveals another pertinent rule of statutory construction. That rule requires a liberal construction of a statute enacted for the public welfare or for the protection of life and health. The language as stated in the Opinion is as follows:

> "In construing a remedial statute which has for its end the promotion of important and beneficial public objects a large construction is to be given when it can be done without doing actual violence to its terms; * * * So a law respecting public rights and interest generally should be liberally construed so as to make it effectual against the evil it was intended to abate, when this can be done without depriving any individual of his just rights."

In order to give R.C. 4109.12 (U) a liberal or broad reading, "and" must be read "or". Otherwise, fewer dangerous activities would be brought within its reach since the statute would not apply unless a child was engaged in both occupations. A similar use of the word "and" in the same statute appears in subsection (D) which prohibits children under the age of 18 from being employed in "the outside erection and repair of electric wires." "[W]henever it is necessary to effectuate the obvious intention of the legislature, the courts have the power to change, and will change, 'and' to 'or' and vice versa." Cincinnati v. Carpenter, 22 Ohio C.C.R. (n.s.) 65, 43 Ohio C.C.R. 457, reversed on other grounds, 92 Ohio St. 473.

In specific answer to your question it is my opinion, and you are so advised, that under the provisions of R.C. 4109.12 (U), assuming that neither subsections (1) nor (2) is applicable, a child under the age of 18 is prohibited from being employed either as the operator of a motor vehicle or as a helper thereon.