

OPINION NO. 89-014**Syllabus:**

1. Pursuant to R.C. 3733.01(B), an area set aside for a flea market constitutes a "recreational vehicle park" if five or more self-contained recreational vehicles, as defined in R.C. 3733.01(E), are used for overnight accommodation on the flea market property.
2. A non-profit corporation which sponsors an event which includes a recreational vehicle park is not exempt from the licensing requirement of R.C. 3733.03(A) if the corporation charges vendors rental fees for front-footage occupied in conjunction with the event, even though the same fee is charged regardless of whether or not the vendor has a self-contained recreational vehicle.

To: Michael G. Spahr, Washington County Prosecuting Attorney, Marietta, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 22, 1989

I have before me your request for my opinion on the applicability of county health department recreational vehicle park regulations to an Octoberfest held by a village citizen organization in your county. Your request states that the Octoberfest consists of a number of events, including food booths and a very large flea market. You also state that many of the vendors at the flea market use recreational vehicles "as part of their sales booth" and that "an indeterminate but significant" number of the recreational vehicles are used as overnight accommodations by the participants. Spaces in the flea market are rented on a front-footage basis with no distinction as to use. Your request asks the following questions:

1. Does permitting five or more recreational vehicles to be parked and occupied in the area set aside for the flea market constitute a "recreational vehicle park" as defined in R.C. 3733.01(B)?
2. If the use does constitute a "recreational vehicle park," are the sponsors exempt from the licensing requirements of Revised Code Section 3733.03(A) because they charge all vendors for front-footage whether the vendors have a self-contained recreational vehicle or not? Does this compensation constitute receiving "anything of value arising from the use of, or the sale of goods or services, in connection with the use of, a recreational vehicle park...?"

Your first question asks whether the area set aside for the flea market constitutes a "recreational vehicle park". In addressing your question, I note that recreational vehicle parks are regulated by R.C. Chapter 3733. The term "recreational vehicle park" is defined in R.C. 3733.01(B) as follows:

(B) "Recreational vehicle park" means any tract of land used for parking five or more self-contained recreational vehicles used as such, including any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the park facilities and any tract of land which is subdivided for lease or other contract of the individual lots for the express or implied purpose of occupancy by self-contained recreational vehicles.

"Recreational vehicle park" does not include any tract of land used solely for the storage or display for sale of self-contained recreational vehicles. (Emphasis added.)

R.C. 3733.01(D), which defines recreational vehicle, states: "[R]ecreational vehicle [has] the meaning set forth in section 4501.01 of the Revised Code." R.C. 4501.01(Q) states, in relevant part, "'Recreational vehicle' means a vehicular portable structure designed and constructed to be used as a temporary dwelling for travel, recreational, and vacation uses..." One type of recreational vehicle recognized by R.C. Chapter 3733 is the self-contained recreational vehicle, defined as a "recreational vehicle which can operate independent of connections to sewer and water and has plumbing fixtures or appliances all of which are connected to sewage holding tanks located within the vehicle." R.C. 3733.01(E). Thus, a self-contained recreational vehicle is a vehicle defined by R.C. 4501.01(Q) to be used as a temporary dwelling for travel, recreational and vacation uses which can operate independent of connections to sewer and water and has plumbing fixtures and sewage holding tanks located within the vehicle.

Accordingly, a self-contained recreational vehicle used as such, for purposes of R.C. 3733.01(B), must be used as a "temporary dwelling." The term "dwell" is synonymous with "inhabit, live, sojourn, reside, stay, rest." *Black's Law Dictionary* 454 (5th ed. 1979). The term "used as such" in R.C. 3733.01(B) means used as a temporary dwelling for travel, recreation or vacation. You state that an "indeterminate but significant" number of vehicles are used for "overnight accommodation" during the Octoberfest, in the area set aside for a flea market. These recreational vehicles, therefore, are used as "temporary dwellings." Therefore, I conclude that if five or more self-contained recreational vehicles are parked and used for overnight accommodation in the area set aside for the flea market, that area constitutes a "recreational vehicle park" under R.C. 3733.01(B) provided that the area set aside constitutes a "tract of land."¹

¹ I note that if the vehicles used as overnight accommodation fit the description in R.C. 3733.01(F) of "dependent recreational vehicle," i.e., recreational vehicle other than a self-contained recreational vehicle, they are considered "portable camping units" under R.C. 3733.01(C). If five or more dependent recreational vehicles use the property for overnight accommodation, the property is a "recreation camp" under R.C. 3733.01(G). If there is a combination of five or more dependent and self-contained recreational vehicles, the property constitutes a "combined park-camp," under R.C. 3733.01(H). Recreation camps and combined park-camps, as well as recreational vehicle camps require licensure under R.C. 3733.03(A).

I must now determine whether the property in question is a "tract of land" as contemplated by R.C. 3733.01. I have previously noted that statutory definitions listed in R.C. 3733.01 may encompass property not conventionally identified as a campground. 1988 Op. Att'y Gen. No. 88-046. Furthermore, in 1982 Op. Att'y Gen. No. 82-061, my predecessor concluded that a tract of land with four trailers distributed upon a forty-acre area fell within the definition of "house trailer park" in R.C. 3733.01(A),² and required licensure,³ even though that result appeared anomalous. Most recently, in Op. No. 88-046, I concluded that if the number and type of vehicles located on fairground property met the criteria set forth in R.C. 3733.01, the fairgrounds constituted a "recreational vehicle park," "recreation camp" or "combined park-camp" requiring licensure under R.C. Chapter 3733. In that opinion, I found that a county agricultural society is required to obtain a license, pursuant to R.C. Chapter 3733, before permitting persons using recreational vehicles or portable camping units to remain overnight on fairground property while attending private events in fairground buildings, when the agricultural society receives rental fees for the use of the fairground building. In accordance with the conclusions noted in these opinions, it is clear that property need not be permanently used or commercially marketed as a park or campground to constitute a recreational vehicle park under R.C. 3733.01(B). Thus, if the property is used for parking five or more self-contained recreational vehicles which are used as such, this area is a recreational vehicle park pursuant to R.C. 3733.01(B), even if it is not property conventionally identified or permanently used as a recreational vehicle park.

Your second and third questions concern the licensing requirements of R.C. 3733.03(A) and thus may be addressed together. Your second question asks whether the sponsors of the Octoberfest are exempt from the licensing requirements of R.C. 3733.03(A) because they charge all vendors for front-footage whether the vendors have a self-contained recreational vehicle or not. R.C. 3733.03(A) states in relevant part:

[E]very person or governmental entity that intends to operate a manufactured home park, recreational vehicle park, recreation camp, or combined park-camp shall procure a license to operate such park or camp for said year from the licensor. No such park, camp, or park-camp shall be maintained or operated in this state after January 1, 1952, without a license. However, no person or governmental entity that neither intends to nor receives anything of value arising from the use of, or the sale of goods or services in connection with the use of, a recreational vehicle park, recreation camp, or combined park-camp shall be required to procure a license under this division. (Emphasis added.)

I have been advised that the sponsor of the Octoberfest is a non-profit corporation. Assuming that the Octoberfest constitutes the use of the property as a recreational vehicle park, the corporation would be required to procure a license if it is a "person" that receives "anything of value arising from the use of, or the sale of goods or services in connection with the use of [the] recreational vehicle park...." *Id.* A corporation is a "person" for purposes of statutory construction under R.C. 1.59. In accordance with R.C. 1.59, which provides definitions of terms used in the Revised Code, the term "person," when used in any statute, includes a corporation unless another definition is provided in such statute or a related statute. *Id.* No other definition for the term "person" is provided in Chapter 3733. Furthermore, there is nothing in R.C. 1.59 to exempt or distinguish a non-profit corporation from other corporations which are "persons" when that term is used in a statute.

² 1983-1984 Ohio Laws, Part I, 790 (Am. S.B. 231, eff. Sept. 20, 1984) changed the term "house trailer park" used in 1982 Op. Att'y Gen. No. 82-061 to "manufactured home park." The pertinent definitional elements of a house trailer park and a manufactured home park remain essentially the same.

³ The park and camping facilities defined in R.C. 3733.01 and which require licensing under R.C. 3733.03(A) include manufactured home parks, previously referred to as house trailer parks. See note 2, *supra*.

Moreover, since R.C. 3733.03 specifically includes governmental entities among the operators required to obtain a license, R.C. 3733.03 is clearly intended to require licensing of "persons" other than individuals and to require licensing of entities whether or not they are for-profit entities. See Op. No. 88-046 (county agricultural society was required to obtain a license). Further, R.C. 3733.03(D) expressly exempts from the licensure requirement certain entities which operate parks or camp facilities for limited purposes and periods. R.C. 3733.03(D) states:

Any person or governmental entity that operates a county or state fair or any independent agricultural society organized pursuant to section 1711.02 of the Revised Code that operates a fair shall not be required to obtain a license under sections 3733.01 to 3733.08 of the Revised Code if recreational vehicles are parked at the site of the fair only during the time of preparation for, operation of, and dismantling of the fair and if such recreational vehicles belong to participants in the fair.

This language of R.C. 3733.03(D) thus grants a limited exemption from the licensing requirements of R.C. 3733.03(A) by allowing recreational vehicles belonging to fair participants to be located on fairgrounds during the county fair. The exemption of R.C. 3733.03(D) suggests that events operated by a governmental entity or independent agricultural society would otherwise be subject to licensure under R.C. 3733.03(A). Surely the legislature would not have enacted an exemption to R.C. 3733.03(A) unless such events were otherwise subject to licensure.

There is nothing that suggests that an annual event held by a village citizen organization falls within the exemption from licensing for fair events under R.C. 3733.03(D). That exemption, applies only to persons or governmental entities operating state or county fairs or to an independent agricultural society.⁴ In accordance with the maxim *expressio unius est exclusio alterius*, the naming of a specific class implies the exclusion of those not named. *Kroger v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965); *State ex rel. Boda v. Brown*, 157 Ohio St. 368, 105 N.E.2d 643 (1952). Since local fairs and festivals sponsored by citizen-organized non-profit corporations or associations are not mentioned in R.C. 3733.03(D), I conclude they are not exempted from licensure.

You ask whether the fee charged all vendors for front footage constitutes something "of value arising from the use or sale of goods or services in connection with the use of a 'recreational vehicle park.'" R.C. 3733.03(A). As noted in Op. No. 88-046, a fee charged constitutes something of value under R.C. 1.03, even if it is a fee for rental of a building for an event which incidentally permits overnight stay on adjacent property and not a fee for "camping." Op. No. 88-046 at 2-216. In the situation described in your request, the fee is charged for the use of the property occupied by the recreational vehicles themselves, rather than for incidental use of adjacent property as was the case in Op. No. 88-046. The use described in your request is directly in keeping with the thrust of R.C. 3733.03(A). Thus, I conclude that the sponsor of the event would be required to procure a license if the sponsor receives rental fees for front-footage occupied, even though the same fee is charged regardless of whether or not the vendors have a self-contained recreational vehicle, in conjunction with the sponsored event.

It is, therefore, my opinion, and you are hereby advised that:

1. Pursuant to R.C. 3733.01(B), an area set aside for a flea market constitutes a "recreational vehicle park" if five or more self-contained recreational vehicles, as defined in R.C.

⁴ While it may share some characteristics with an independent agricultural society, such as holding an annual event, the citizen-organized non-profit corporation which sponsors the Octoberfest is not an independent agricultural society. Those societies are established pursuant to R.C. 1711.02 and report to the Department of Agriculture.

3733.01(E), are used for overnight accommodation on the flea market property.

2. A non-profit corporation which sponsors an event which includes a recreational vehicle park is not exempt from the licensing requirement of R.C. 3733.03(A) if the corporation charges vendors rental fees for front-footage occupied in conjunction with the event, even though the same fee is charged regardless of whether or not the vendor has a self-contained recreational vehicle.