

March 17, 2014

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 South Lynn Street
Bryan, Ohio 43506

SYLLABUS:

2014-010

The Ohio Housing Finance Agency is a “state agency” for purposes of R.C. 317.114.



MIKE DEWINE

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OPINION NO. 2014-010

The Honorable Kirk E. Yosick
Williams County Prosecuting Attorney
216 South Lynn Street
Bryan, Ohio 43506

Dear Prosecutor Yosick:

You have requested an opinion whether the Ohio Housing Finance Agency (OHFA) is considered a “state agency” for the purposes of R.C. 317.114. We begin with a general overview of the relevant laws.

R.C. 317.114 establishes formatting requirements for documents to be recorded by a county recorder. R.C. 317.114(A). The requirements include restrictions on font size, paper size, ink color, and margins, among other things. *See* R.C. 317.114(A)(1)-(9). R.C. 317.114(C) provides, in pertinent part, that R.C. 317.114 does not apply to “[a]ny document authorized to be recorded that originates from any state or federal agency.” R.C. 317.114(C)(4) (emphasis added). You wish to know whether, for purposes of the exception in R.C. 317.114(C)(4), OHFA is a “state agency.”

The Attorney General previously examined the meaning of “state agency” for purposes of R.C. 317.114(C)(4) (formerly R.C. 317.114(B)(4)):

As used in R.C. 317.114(B)(4), the term “state” means, “when applied to a part of the United States, ... any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legislative authority of the United States of America.” R.C. 1.59(G). The term “state,” as used in R.C. 317.114(B)(4), thus includes the state of Ohio.

There is no definition of “agency” in the Revised Code for purposes of R.C. 317.114(B)(4). As stated earlier, “[w]here the General Assembly has not provided or attached a specific meaning to a term, the common or plain meaning of the term is used.” 1989 Op. Att’y Gen. No. 89-091 at 2-434; *accord* R.C. 1.42.

The term “agency” is defined by *Merriam-Webster’s Collegiate Dictionary* 24 (11th ed. 2005) to mean, *inter alia*, “a person or thing through which power is exerted or an end is achieved : INSTRUMENTALITY ...: an administrative division (as of a government).”

Construing the common meanings of the words “state” and “agency” together discloses that any instrumentality through which the state of Ohio exercises a function of government is a “state agency” for purposes of R.C. 317.114(B)(4). See *Black’s Law Dictionary* 870 (9th ed. 2009) (defining an “instrumentality” as “[a] means or agency through which a function of another entity is accomplished, such as a branch of a governing body”); *cf.* R.C. 1.60 (“[a]s used in [R.C. Title I], ‘state agency,’ except as otherwise provided in the title, means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government”).

2009 Op. Att’y Gen. No. 2009-047, at 2-348 to 2-349.

In revisiting R.C. Chapter 317, our research has not uncovered changes to the law that serve to define “state agency” as used in R.C. 317.114. Thus, our logic here follows that in 2009 Op. Att’y Gen. No. 2009-047, at 2-348 to 2-349, and we will apply the definition of “state agency” we established there. Accordingly, the term “state,” as used in R.C. 317.114(C)(4) and defined by R.C. 1.59(G), includes the state of Ohio. Further, the term “agency” is defined commonly to mean a “thing through which power is exerted or an end is achieved,” an instrumentality, or an administrative division of a government. *Merriam-Webster’s Collegiate Dictionary* 24 (11th ed. 2007); 2009 Op. Att’y Gen. No. 2009-047, at 2-348. The history and mission of OHFA describe an entity that clearly satisfies this definition of “agency.” For the reasons that follow, we conclude that OHFA is “state agency” for purposes of R.C. 317.114.

R.C. 175.02 creates OHFA and sets forth its mission and purpose. The language of the statute is clear and supports the idea that OHFA is an entity created to fulfill a specific purpose of state government. See R.C. 175.02 (“[t]here is hereby created the Ohio housing finance agency, a body corporate and politic, performing essential governmental functions of the state” and “[i]t is hereby declared to be the public purpose of this state to improve and promote the public health, safety, convenience, welfare, and prosperity of the people of the state by the production and preservation of housing in accordance with applicable state and federal laws”); R.C. 175.05(B)(20) (OHFA may “[d]o anything necessary or appropriate to exercise the powers of [R.C. Chapter 175] and carry out the purposes of [R.C. Chapter 175] and Section 14, Article VIII and Section 16, Article VIII, Ohio Constitution”); see also 1987 Op. Att’y Gen. No. 87-095, at 2-620 (“Article VIII, § 14 has two stated purposes: ‘[t]o create or preserve opportunities for safe and sanitary housing and to improve the economic welfare of the people of the state”). Thus, OHFA satisfies the common definition of “agency,” and OHFA is a “state agency” for purposes of R.C. 317.114. See generally 1987 Op. Att’y Gen. No. 87-095, at 2-619 (addressing a different question, the Attorney General implicitly considered OHFA a state agency: “[a]s a

state agency created by statute, *see* R.C. 175.02(A), OHFA may exercise only those powers and responsibilities expressly conferred upon it by statute or necessarily implied therefrom”).

You also ask how the term “state agency” should be defined when used throughout R.C. Title 3. We have applied the definition set forth above in the absence of a particular definition furnished by the legislature or otherwise for the purposes of R.C. Chapter 317. *See* R.C. 1.42. For each statute, it first must be determined whether a particular definition has been established by the General Assembly or otherwise for the purpose of that statute. In the absence of a particular definition, a word or phrase shall be construed according to its common usage. *See* R.C. 1.42.

It is not possible, therefore, to craft a single, all-inclusive definition of “state agency” for application in each of the many statutory provisions in which the term appears, either in R.C. Title 3 or in the other 32 Titles of the Revised Code. The definition of “state agency” we have provided here may apply to statutes other than R.C. 317.114. In each instance, however, the definition selected for this term may also have to be informed by the context, history, and purpose of the statute in question. *See generally* R.C. 1.49 (considerations in construing ambiguous statutes); *Symmes Twp. Bd. of Trs. v. Smyth*, 87 Ohio St. 3d 549, 554, 556, 721 N.E.2d 1057 (2000) (“[t]he General Assembly directs courts to read statutory words and phrases in context and construe them according to the rules of grammar and common usage. R.C. 1.42” and “[i]n R.C. 1.49, the General Assembly provides additional specific guideposts for courts to follow when interpreting ambiguous statutes. These include an examination of the object sought to be attained by the statute, laws upon the same or similar subjects, and the consequences of a particular construction”).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the Ohio Housing Finance Agency is a “state agency” for purposes of R.C. 317.114.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is fluid and cursive, with the first name being the most prominent.

MICHAEL DEWINE
Ohio Attorney General