

**OPINION NO. 90-008****Syllabus:**

1. A state agency is entitled under R.C. 123.02 to be provided by the Department of Administrative Services with suitable office space if an office is required to carry on the business and activities of the agency, conditioned, however, upon a sufficient appropriation for such office space.
2. The Commission on Spanish-speaking Affairs may establish and maintain a branch office if such office is necessary and reasonably calculated to facilitate the statutorily mandated duties of the commission and if sufficient funds are properly appropriated for such a branch office.
3. Funds in the form of grants and gifts received by the Office of Spanish-speaking Affairs may be used to establish and maintain a branch office of the Commission on Spanish-speaking Affairs if the commission determines that a branch office is necessary and sufficient funds are properly appropriated for such purposes.

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**To: Teodosio Feliciano, Chairman, Commission on Spanish-speaking Affairs,  
Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990**

I have before me your request for my opinion regarding the operation of the Commission on Spanish-speaking Affairs. You have requested that I address whether the commission may establish a branch office and whether the commission may use gifts and grants to operate such an office.

R.C. 121.31 authorizes the Commission on Spanish-speaking Affairs. Its primary duties include the gathering and dissemination of information on the problems and programs concerning Spanish-speaking people. R.C. 121.32. The commission also assists in the development and implementation of comprehensive and coordinated policies, programs and procedures focusing on the special problems and needs of Spanish-speaking persons. *Id.* To assist the commission in carrying out its duties, the Office of Spanish-speaking Affairs is required to compile and

provide information to the commission about, and advise it on, solutions to the problems of Spanish-speaking people. R.C. 121.33.

To determine whether the Commission on Spanish-speaking Affairs has the power to establish an additional office, it must first be determined that the commission has the power to maintain an office. The commission, as a state agency, *see* R.C. 1.60,<sup>1</sup> created by statute, has only those powers expressly granted by statute or necessarily implied therefrom. *See Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975).

While the statutes authorizing the Commission on Spanish-speaking Affairs, R.C. 121.30 through R.C. 121.34, do not mandate the providing of office space to the commission, R.C. 123.02 expressly authorizes such provision by stating, in pertinent part, that:

[t]he department of administrative services shall have the supervision and control of...the fixing and placing of all *departments and offices of the state* [in the statehouse]...and full control and supervision of fixing and placing all *departments and offices* in offices, buildings, and rooms outside of the statehouse when they cannot be placed therein. (Emphasis added.)<sup>2</sup>

R.C. 123.02 generally requires the provision of suitable quarters for the carrying on of the business and activities of state agencies. *See State v. Barhorst*, 106 Ohio App. 335, 153 N.E.2d 514 (Franklin County 1958); 1927 Op. Att'y Gen. No. 591, p. 1002.

Not every state agency, however, is inherently entitled to an office. An agency requires an office so that it may have "the facilities for performing the duties and fulfilling the responsibilities incident to [the] office." 1958 Op. Att'y Gen. No. 3051, p. 695, at 696; *see also* 1989 Op. Att'y Gen. No. 89-038 (quarters provided enable an agency to discharge the duties mandated by Ohio law). Implicit in this rationale is the corollary that an agency with insufficient duties and responsibilities does not warrant an office. Whether an office is necessary is,

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<sup>1</sup> R.C. 1.60 provides: "[a]s used in Title I of the Revised Code, '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."

<sup>2</sup> R.C. 123.02 refers to "departments and offices of the state." As used therein, "departments" contemplates the inclusion of the various departments of state administration. *See* R.C. 121.01(A). The term "department" in a similar context has also been liberally construed to include "departments and offices of all elective and appointive state offices, boards and commissions of the state." 1952 Op. Att'y Gen. No. 1676, p. 538 (syllabus, paragraph three). "Offices of the state," however, lacks an applicable statutory definition. The term "office," moreover, is used in an inconsistent manner throughout the Revised Code. *See, e.g.*, R.C. 121.04 (used in the sense of administrative divisions of state administrative departments); R.C. 3505.34 (used in the sense of elected state officers). Given the broad interpretation of "departments," and, the coupling of that term with the vague phrase "offices of the state," it appears that the General Assembly intended R.C. 123.02 to be expansively inclusive. It is reasonable to conclude, therefore, that "departments and offices of the state" brings within its ambit state boards, commissions and other entities of state government, not just state administrative departments and divisions and the elected state officers and their respective staffs. *See generally* 1927 Op. Att'y Gen. No. 591, p. 1002; *State v. Barhorst*, 106 Ohio App. 335, 153 N.E.2d 514 (Franklin County 1958). The Commission on Spanish-speaking Affairs, thus, falls within the term "departments and offices of the state" as used in R.C. 123.02.

however, a factual determination not properly made by the Attorney General. See 1988 Op. Att'y Gen. No. 88-008.

Once a state agency determines that office space is needed, additional authority to secure the office is required. The provision of office space is contingent upon a sufficient appropriation to the agency for office space. See R.C. 131.33 ("[n]o state agency shall incur an obligation which exceeds the agency's current appropriation authority"); R.C. 131.331 ("[n]o state agency shall receive financial benefit from an appropriation made or fund created for the support of another"). Appropriation of funds for office space by the General Assembly, thus, serves as an approval of an agency's determination that it requires office space. The commission's current appropriation contains a line item for office space. Am. Sub. H.B. 111, §102, 118th Gen. A. (1989) (GRF 148-200 Maintenance). Therefore, the Commission on Spanish-speaking Affairs is entitled, under R.C. 123.02, to suitable office space provided by the Department of Administrative Services.

Turning now to your first question, whether the Commission on Spanish-speaking Affairs may establish a branch office, it must be determined whether a statutory provision expressly or impliedly grants such power. Neither the statutes that directly mention the commission nor any statute regarding state agencies in general authorizes a branch office for the Commission on Spanish-speaking Affairs.<sup>3</sup> A power may be properly implied, however, if it reasonably relates to the execution of an express power. *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981). The power, based on sufficient duties of the agency, to establish and maintain an office implies the power to operate an additional office if such office is necessary to perform the duties imposed upon the agency to which sufficient funds are properly appropriated for such branch office.

Inasmuch as necessity of a branch office hinges upon the performance of the duties of an agency, a branch office may be necessary if it is conducive to the expeditious and economical administration of that agency. See generally 1985 Op. Att'y Gen. No. 85-004. In a recent opinion, I concluded that, provided that the books purchased by a county law library association are accessible free of charge to all public officials who are entitled to free use of the county law library, such books may be purchased for a branch of the county law library. 1989 Op. Att'y Gen. No. 89-070. Similarly, a branch office for the county prosecuting attorney may be authorized by the board of county commissioners if deemed necessary. 1965 Op. Att'y Gen. No. 65-91. Another of my predecessors concluded that the clerk of common pleas court was entitled to a branch office if approved by the board of county commissioners "guided primarily by considerations of operating efficiency." 1968 Op. Att'y Gen. No. 68-099, at 2-142. Factors considered sufficient to enable the commissioner to find an additional office necessary included an increase in public convenience and a demonstrated lack of space in the primary office. Op. 68-099, at 2-142.

Despite the existence of an implied power to maintain a branch office, a state agency may expend public funds only if it has reasonably determined that the expenditure is necessary to the performance of a function or duty or to the exercise

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<sup>3</sup> I note, however, that R.C. 121.15 expressly empowers the director of each state department "with the approval of the governor, [to] establish and maintain, at places other than the seat of government, branch offices for the conduct of any one or more functions of his department." Particular public offices also are expressly authorized to maintain branch offices. See, e.g., R.C. 1901.311 (municipal courts); R.C. 1907.20 (county courts); R.C. 3501.10 (county board of elections); R.C. 4121.40 (Bureau of Workers' Compensation); R.C. 4141.02 (Bureau of Employment Services); R.C. 4503.03 (Bureau of Motor Vehicles); R.C. 4582.31 (port authorities); R.C. 5703.10 (Department of Taxation). The authority for branch offices may also be inferred from R.C. 123.01(A)(13), which empowers the Department of Administrative Services to "assign and group together state offices in any city in the state."

of an express or implied power. 1982 Op. Att'y Gen. No. 82-006; see also 1986 Op. Att'y Gen. No. 86-086; 1975 Op. Att'y Gen. No. 75-008. Such determination must not be an abuse of discretion and must not be manifestly arbitrary or unreasonable. Op. No. 86-086. The ability of a state agency to establish a branch office is further dependent on a proper appropriation for that purpose. A state agency's determination that a branch office is necessary thus, is, subject to review by the General Assembly through the appropriation process.

Provided that sufficient funds are properly appropriated, and if a branch office is necessary to perform the duties of a state agency, the state agency may establish and maintain a branch office. I conclude, therefore, that, as a state agency, the Commission on Spanish-speaking Affairs may establish and maintain a branch office subject to this general rule.

Your second question inquires whether the Commission on Spanish-speaking Affairs may use grants and gifts to operate a branch office. R.C. 121.33(B) expressly authorizes the Office of Spanish-speaking Affairs to "[a]pply for and accept grants and gifts from governmental and private sources." Such funds must "be administered by the office or subcontracted to local agencies." R.C. 121.33. No express limitation on how gifts and grants to the commission may be spent appears in the statutes referring to the Commission on Spanish-speaking Affairs. When the precise method of performing a statutory power is not prescribed, the presumption is that the legislature intended such power to be exercised in a reasonable manner. *Jewett v. Valley Railway Co.*, 34 Ohio St. 601 (1878). Inasmuch as the commission, through the Office of Spanish-speaking Affairs, is required to administer gifts and grants received, the commission may authorize the expenditure of such funds to accomplish the stated duties of R.C. 121.32 and R.C. 121.33. As I have concluded that the commission may establish and maintain a branch office to facilitate the mandated duties of the commission, donated funds may be administered to operate a branch office, if the branch office is necessary and sufficient funds are properly appropriated for such purpose.

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

1. A state agency is entitled under R.C. 123.02 to be provided by the Department of Administrative Services with suitable office space if an office is required to carry on the business and activities of the agency, conditioned, however, upon a sufficient appropriation for such office space.
2. The Commission on Spanish-speaking Affairs may establish and maintain a branch office if such office is necessary and reasonably calculated to facilitate the statutorily mandated duties of the commission and if sufficient funds are properly appropriated for such a branch office.
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