

OPINION NO. 80-021**Syllabus:**

A private corporation which provides examinations of sexual assault victims at the emergency room center of a county hospital for the purpose of gathering evidence for possible prosecution, and which does not charge the hospital for such services, constitutes a "private facility" as that term is used in R.C. 2907.28(C). Pursuant to R.C. 2907.28(C), the costs incurred by this private facility are to be charged to the municipality wherein the alleged assault occurred, or to the county if the alleged assault was committed within an unincorporated area.

To: John E. Shoop, Lake County Pros. Atty., Painesville, Ohio
By: William J. Brown, Attorney General, May 7, 1980

I have before me your request for my opinion, which reads in part:

Recently, a dispute has developed in Lake County concerning the application of the provisions of section 2907.28 of the Revised Code to the costs of physical examinations of sexual assault victims at the Emergency Centers at two Lake County Memorial Hospitals which are owned and operated by Lake County.

. . .[A] non-profit, private corporation, has contracted with these Hospitals to provide physician services at their Emergency Room Centers. As part of this service, the physicians conduct examinations of rape and sexual assault victims for purposes of gathering physical evidence for possible prosecution.

You have advised me that the non-profit corporation pays its physicians a salary, and that under the contract there is no charge to the hospital for the physician services provided by the non-profit corporation. Rather, the patient is billed directly for the physician services by the corporation, with the result that no costs for physician services are incurred by the hospital. You have also advised me that the non-profit corporation bills the patient an amount equal to the cost incurred by the non-profit corporation in providing the examination, a result consistent with the fact that the corporation is operated not-for-profit. You ask whether costs incurred for physical examinations under such an arrangement should be charged to the municipality where the alleged assault occurred under R.C. 2907.28(C), or to the county under R.C. 2907.28(A).

R.C. 2907.28 states, in pertinent part:

Any cost incurred by a hospital or other emergency medical facility in conducting a medical examination of a victim of an offense under sections 2907.02 to 2907.06 or section 2907.12 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution shall be charged to and paid by the appropriate local government as follows. . . . (Emphasis added.)

Hence, it is clear that any cost in conducting such medical examinations are to be borne by the appropriate local government, provided that the costs are incurred by a hospital or other emergency medical facility.

R.C. 2907.28 then goes on to delineate which local government pays the costs:

(A) Cost incurred by a county facility shall be charged to and paid by the county;

(B) Cost incurred by a municipal facility shall be charged to and paid by the municipality;

(C) Cost incurred by a private facility shall be charged to and paid by the municipality in which the alleged offense was committed, or charged to and paid by the county, if committed within an unincorporated area. (Emphasis added.)

Under R.C. 2907.28(A), costs incurred by the county hospital for the examinations are properly charged to the county in which the hospital is located. 1976 Op. Att'y Gen. No. 76-072. In the situation you have described, the county hospital is not responsible for emergency room physician fees. The hospital is, however, responsible for all other emergency room costs. These non-physician costs, such as nursing services and medication, fall squarely within R.C. 2907.28(A) as costs incurred by the county hospital, and are, therefore, chargeable to the county.

The physician services, on the other hand, are billed by the non-profit corporation directly to the patients. Therefore, it must be concluded that R.C. 2907.28(A), which pertains only to situations in which costs are actually incurred by the county hospital, is inapplicable to the physician services provided by the private non-profit corporation. It is obvious that R.C. 2907.28(B) is also inapplicable, since in no way can this arrangement be considered a municipal facility. Therefore, if the physician costs incurred by the non-profit corporation and billed to the patient under the arrangement you describe are to be borne other than by the victim, it must be because these costs fall within R.C. 2907.28(C), as costs incurred by a private emergency medical facility.

The first question is whether the non-profit corporation is providing emergency medical services. Since, by contract, the corporation provides physician services at the emergency room center of a county hospital, it is clear that the corporation provides emergency medical services. The only question remaining is whether the corporation may be classified as a "facility" within the meaning of R.C. 2907.28.

I am unaware of any Ohio cases construing the term "facility" as used in this context. Although "facility" is sometimes defined to mean a physical structure, see, e.g., R.C. 339.50; 16 Words and Phrases Facilities 13 (1959 & Supp. 1979), the common meaning of "facility" includes anything "that permits the easier performance of an action, cause of conduct, etc." Random House Dictionary of the English Language 509 (unabridged ed. 1973); accord, 35 C.J.S. Facility 488 (1960 & Supp. 1979). Some jurisdictions have specifically construed the term to include animate objects, including persons or groups of persons. Extendicare, Inc. v. State Coord. Council for Health Planning, 216 Kan. 527, 532 P. 2d 1119 (1975); Cheney v. Tolliver, 234 Ark. 973, 356 S.W. 2d 636 (1962); State ex rel. Knight v. Cave, 20 Mont. 495, 52 P. 200 (1898). Hence, it appears that "facility" can have a broad meaning that would include the private corporation you have described, since the corporation "facilitates" providing emergency medical services in the hospital emergency room.

In construing the meaning of "private emergency medical facility" for purposes of R.C. 2907.28, it must be remembered that there is a clear legislative intent that sexual assault victims be spared from paying the cost of a medical examination performed for the purpose of gathering evidence for prosecution, and that such cost be borne, instead, by either the county or municipality in accordance with R.C. 2907.28. It would appear that this legislative intent is promoted by construing "facility" broadly. Moreover, under applicable rules of statutory construction R.C. 2907.28 must be liberally construed.

Remedial statutes are those which, *inter alia*, promote justice or rectify past shortcomings in the law. See generally State ex rel. National Mut. Ins. Co. v. Conn., 115 Ohio St. 607, 155 N.E. 138 (1927); Winfree v. Northern Pac. Ry. Co., 173 F. 55 (9th Cir. 1909), *aff'd*, 227 U.S. 296 (1913). R.C. 2907.28 is remedial in two senses. First, the statute alleviates part of the financial burden on the victim of a sexual

assault. Second, it serves to aid the state in its prosecution of sex offenders by reimbursing doctors for services rendered. Remedial laws should be liberally construed in order to promote their object and to achieve justice. Delassandro v. Industrial Commission, 110 Ohio St. 506, 144 N.E. 138 (1924). R.C. 1.11 restates this common law rule. A liberal construction of R.C. 2907.28, which includes the non-profit corporation you have described as a "private emergency medical facility," will serve to promote the clear legislative intent of the General Assembly.

If the term "private facility" in R.C. 2907.28(C) were strictly construed to limit its application to privately-owned physical plants, the victims themselves would be required to pay the costs of physical examinations in the situation you have described. This would serve to negate the obvious intent of the General Assembly in adopting R.C. 2907.28. R.C. 2907.28 could not have been intended to apply only to certain victims of sexual assaults, with its application dependent on the precise manner of operation of the treating facility. By its language, R.C. 2907.28 takes into account municipal, county and private facilities. I am not persuaded that physician services provided under the arrangement you have described, which has the attributes of both private and county facilities, should be excluded from the operation of the statute.

In light of the foregoing, it is my opinion, and you are advised, that a private corporation which provides examinations of sexual assault victims at the emergency room center of a county hospital for the purpose of gathering evidence for possible prosecution, and which does not charge the hospital for such services, constitutes a "private facility" as that term is used in R.C. 2907.28(C). Pursuant to R.C. 2907.28(C), the costs incurred by this private facility are to be charged to the municipality wherein the alleged assault occurred, or to the county if the alleged assault was committed within an unincorporated area.