

OPINION NO. 80-045**Syllabus:**

The words "department or agency" as used in R.C. 3702.54(J) do not refer to counties but, rather, refer to divisions of state government; hence, a county is not exempt from the application fee imposed by R.C. 3702.54(J) for a certificate of need from the State Health Planning and Development Agency.

To: Keith A. Shearer, Wayne County Pros. Atty., Wooster, Ohio

By: William J. Brown, Attorney General, September 5, 1980

I am in receipt of your letter of February 6, 1980, in which you request my opinion with regard to whether a county is required to pay an application fee under R.C. 3702.54 in applying for a certificate of need from the State Health Planning and Development Agency in connection with replacement of a county home, or whether the county is a "state department or agency" within the meaning of R.C. 3702.54(J) and thereby exempt from the application fee requirement.

It is my understanding that your question arises from the following facts. In 1979 the Board of Commissioners of Wayne County found it necessary to replace

the Wayne County Home with a new facility. In accordance with R.C. Chapter 3702, the county commissioners began the process of preparing an application for a certificate of need from the State Health Planning and Development Agency. At that time the commissioners were informed that, in order to have the application considered for approval, the county would be required to pay an application fee of \$4,000. The county commissioners have refused to submit the \$4,000 fee, claiming that they are exempted from this charge by R.C. 3702.54(J). It is the position of the county commissioners that a county is a "state department or agency" within the meaning of R.C. 3702.54(J).

The portion of R.C. 3702.54(J) which is relevant to your question reads as follows: "No state department or agency shall be required to pay the application fee."

The phrase "department or agency" is subject to two possible interpretations. The first, a broad interpretation, would be to read "department or agency" so as to include those political subdivisions which have been deemed to be departments or agencies of the state, as well as the various branches of state government. Counties have been recognized as agencies of the states in a number of court opinions. See, e.g., *State ex rel. Ranz v. Youngstown*, 140 Ohio St. 477, 45 N.E. 2d 767 (1942); *Board of Commissioners v. Mighels*, 7 Ohio St. 110 (1857). It would, therefore, be possible, under this interpretation, to argue that a county is exempt from paying a certificate of need application fee.

The second interpretation takes a more narrow view of the category of entities exempted by R.C. 3702.54(J). Under this interpretation only branches of state government, such as the Department of Transportation or the Environmental Protection Agency, would be exempt.

R.C. Chapter 3702 contains numerous definitional sections which are useful in determining which interpretation conforms with the intent of the General Assembly. The fee requirement of R.C. 3702.54 applies to applicants for a certificate of need. R.C. 3702.51(A) defines an "[a]pplicant" as "any person that submits an application for a certificate of need." "Person" is defined by R.C. 3702.51(B) as including government units. A "[g]overnment unit" is "the state and any county, municipal corporation, township, or other political subdivision thereof, or any department, division, board or other agency of any of the foregoing." R.C. 3702.51(O). It is apparent that, had the legislature meant to exempt the state and its political subdivisions from the application fee requirement, it could have used the term "government units," which is defined for purposes of R.C. 3702.51-.67 to include those entities.

Furthermore, the words "department" and "agency" are used in R.C. 3702.51(O) as examples of branches of state, county or municipal government which constitute government units. Given the fact that the General Assembly specifically created the phrase "government unit" (which could have been used in the provision in question had the intent been to exempt entities such as counties) and the fact that the words "department" and "agency" are used in R.C. Chapter 3702 as examples of branches of state government, it is reasonable to conclude that "department or agency" should be interpreted to refer to branches of state government rather than to political subdivisions. To conclude otherwise would be to ignore the definitions provided by the General Assembly for use in interpreting R.C. Chapter 3702 in favor of court opinions not dealing with the certificate of need program which refer generally to counties as agencies of the state.

The conclusion that "state department or agency" does not include a county is supported by the apparent legislative intent behind R.C. Chapter 3702. The certificate of need program relies, for the most part, on application fees paid pursuant to R.C. 3702.54 for its funding. This program was designed by the General Assembly to operate without the need for state funding. To exempt all entities which might, under some very broad construction of the term, be deemed agencies of the state would result in the loss, by the certificate of need program, of substantial revenue, and would create the potential need for state funding. To so interpret R.C. 3702.54(J) would be to thwart the obvious intent of the legislature.

For the reasons discussed above, I am of the opinion, and you are, therefore, advised, that the words "department or agency" as used in R.C. 3702.54(J) do not refer to counties but, rather refer to divisions of state government; hence, a county is not exempt from the application fee imposed by R.C. 3702.54(J) for a certificate of need from the State Health Planning and Development Agency.