

OPINION NO. 92-042**Syllabus:**

The adoption by the Department of Aging of 1 Ohio Admin. Code 173:1-3-05(D), part of which requires that a facility "have adequate insurance, or be self-insured for its staff, including volunteers" prior to designation by the Department as a community multipurpose senior center, satisfies the Department's obligation under R.C. 173.12 to provide for personal liability insurance for volunteers serving at community multipurpose senior centers.

To: Judith Y. Brachman, Director, Ohio Department of Aging, Columbus, Ohio

By: Lee Fisher, Attorney General, September 22, 1992

You ask whether the Department of Aging has complied with its duty under R.C. 173.12 to "provide for" the necessary insurance coverage to protect all volunteers from personal liability while assigned to community multipurpose senior centers.

Establishment of Community Multipurpose Senior Centers

R.C. 173.11 requires the Department of Aging to develop a system of community multipurpose senior centers, "as appropriate and feasible and to the extent federal, state, and local funding is available." R.C. 173.11 sets forth the role of the Department of Aging in the development of this system, as follows: "The department shall plan, coordinate, and monitor, and, to the extent feasible, provide funds for services for older adults under this section and [R.C. 173.12]." Further, "[t]he department shall, in accordance with [R.C. Chapter 119], adopt rules under which counties, townships, municipal corporations, or local nonprofit organizations may make application to the department to operate a multipurpose senior center or to participate in a multipurpose senior center program." R.C. 173.11.

The application process is governed, in part, by 1 Ohio Admin. Code 173:1-3-01, stating:

No county, municipal corporation or local non-profit organization shall develop or create a multipurpose senior center for older persons using funds provided by the Ohio commission on aging¹

¹ In 1983-1984 Ohio Laws, Part II, 4373 (Am. H.B. 660, eff. July 26, 1984), the General Assembly abolished the Ohio Commission on Aging and transferred the Commission's powers, duties, personnel, equipment, and

or the appropriate area agency on aging without following the rules for application established by the Ohio commission on aging. Applications to operate multipurpose senior centers utilizing funds from the Ohio commission on aging or the appropriate area agency on aging shall include plans of operation which meet the specifications and requirements delineated by [1 Ohio Admin. Code 173:1-3-02 to 173:1-3-15]. (Footnote added.)

Thus, while the Department of Aging is responsible for establishing a system of multipurpose senior centers throughout the state, such centers are actually operated by local entities approved by the Department under R.C. 173.11.

Insurance for Senior Center Volunteers

R.C. 173.12 states in pertinent part: "The department shall *provide for* the necessary insurance coverage to protect all volunteers from the normal risks of personal liability while they are acting within the scope of their volunteer assignments for the provision of services under this section." (Emphasis added.) Accordingly, the Department of Aging has adopted 1 Ohio Admin. Code 173:1-3-05(D), which requires each multipurpose senior center to "have adequate insurance, or be self-insured for its staff, *including volunteers*, as well as its participants" (emphasis added). The rule further states that: "This insurance shall meet all legal requirements." Thus, prior to designating a facility as a multipurpose senior center, the Department of Aging requires each applicant to have adequate insurance or to be self-insured for all staff, including volunteers. According to your letter, however, a question has arisen as to whether R.C. 173.12 may require the Department of Aging itself to procure and pay for insurance coverage for all senior center volunteers.

The term "provide for," as used in R.C. 173.12, is not defined by statute. It is, therefore, necessary to examine the common meaning of that term. *See* R.C. 1.42. *Webster's New World Dictionary* 1144 (2d college ed. 1978), defines "provide" as meaning, in part: "to prepare (*for* or *against*) some probable or possible situation, occurrence, condition, etc. 2. to make a condition; stipulate 3. to furnish the means of support (usually with *for*)" (emphasis in original). The portion of R.C. 173.12 concerning liability insurance for volunteers is, therefore, susceptible of either of the two readings you mention.

It is a fundamental rule of statutory construction that the terms within a statute be read in the context of the statutory scheme of which they are part. *See Black-Clawson Co. v. Evatt*, 139 Ohio St. 100, 38 N.E.2d 403 (1941). Pursuant to R.C. 173.11, the Department has only a limited role in the establishment of the system of multipurpose senior centers, acting primarily in a planning capacity and providing funds for services only "to the extent feasible." In carrying out this duty, the Department has established certain minimum operating requirements for each center. *See* 1 Ohio Admin. Code Chapter 173:1-3. Rule 173:1-3-05(D) is one such requirement. Through the adoption of this rule, the Department has "provided for" senior center volunteers to receive personal liability insurance coverage. Rule 173:1-3-05(D) fulfills the object of the portion of R.C. 173.12 about which you ask by ensuring that all persons who volunteer their services at multipurpose senior centers are protected from personal liability for their activities in the program. Further, it is well settled that: "[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner." *Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878). Since the effect of the Department's

appropriations to the newly created Department of Aging. I assume the Department of Aging, however, continues to operate under the rules adopted by its predecessor.

rule 173:1-3-05(D) is that all volunteers are, in fact, provided personal liability insurance, albeit by the centers they serve rather than by the Department of Aging, I defer to the Department's interpretation of its obligation under R.C. 173.12 to "provide for" such insurance for volunteers at multipurpose senior centers.

Conclusion

It is my opinion, and you are hereby advised, that the adoption by the Department of Aging of 1 Ohio Admin. Code 173:1-3-05(D), part of which requires that a facility "have adequate insurance, or be self-insured for its staff, including volunteers" prior to designation by the Department as a community multipurpose senior center, satisfies the Department's obligation under R.C. 173.12 to provide for personal liability insurance for volunteers serving at community multipurpose senior centers.