

Note from the Attorney General's Office:

1946 Op. Att'y Gen. No. 46-931 was overruled by 1987 Op. Att'y Gen. No. 1987-005.

931

PRIVILEGED COMMUNICATIONS—NO LEGAL AUTHORITY TO TREAT INFORMATION RECEIVED BY STATE BOARD OF VOCATIONAL EDUCATION, BUREAU OF VOCATIONAL REHABILITATION, IN ADMINISTRATION OF STATE PROGRAM AS PRIVILEGED COMMUNICATIONS.

SYLLABUS:

There is no authority in the law of Ohio for the treatment of information received by the State Board for Vocational Education, Bureau of Vocational Rehabilitation in the course of the administration of the state program for vocational rehabilitation, as privileged communications.

Columbus, Ohio, May 9, 1946

Hon. Clyde Hissong, Executive Officer, State Board for Vocational Education, Bureau of Vocational Rehabilitation
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Public Law 113, 78th Congress, 1st Session, entitled 'Vocational Rehabilitation Act Amendments of 1943' Sec. 1, provides that 'Money made available for the purpose pursuant to this Act shall be used for making payments to State (and Alaska, Hawaii, and Puerto Rico, herein referred to as "States") which have submitted, and had approved by the Federal Security Administrator (herein referred to as the "Administrator"), State plans for vocational rehabilitation of disabled individuals.'

Further, Sec. 7 (c) of this Act provides that, 'The Administrator is hereby authorized to make rules and regulations governing the administration of this Act, and to delegate to any officer or employee of the United States such of his powers and duties, except the making of rules and regulations, as he finds necessary in carrying out the purposes of this Act.'

'Regulations Governing the Plans and Program of Vocational Rehabilitation Pursuant to Public Law 113, 78th Congress, 1st Session, Approved July 6, 1943' issued by the Federal Security Administrator provide (Sec. 600.13) that "All information as to personal facts and circumstances given or made available to the State Board or Blind Agency and obtained by it in the course of administration shall constitute privileged communications and shall be held confidential. The Plan should provide suitable regulations and safeguards which restrict the use or disclosure thereof to purposes directly connected with the administration of vocational rehabilitation under the Plan."

Pursuant to the provisions of Public Law 113 and the Regulations, the Ohio Board for Vocational Education prepared a Plan and submitted it to the U. S. Office of Vocational Rehabilitation. A part of this Plan provided for the protection of confidential information. This part was not approved since it did not appear to be sufficiently comprehensive. On June 29, 1945, an attempt was made to satisfy the federal requirements. Under date of August 20, 1945 the Director of the U. S. Office of Vocational Rehabilitation advised that the statement submitted together with the statement contained in the original Ohio Plan was inadequate to meet the requirements of the Manual issued

by the federal office. An Amendment was then prepared and submitted for approval. (See attached.)

Under date of March 14, 1946, the Federal Office of Vocational Rehabilitation has informed us that a further revision is now necessary before approval can be given because 'The legal basis for the Amendment within the State law is not presented.'

We now respectfully request your opinion with respect to the following: Are there provisions of the Laws of Ohio which would authorize the State Board for Vocational Education to declare all information as to personal facts and circumstances given or made available to it to be privileged communications and to hold such matter confidential?"

With your request you transmit for my information a copy of Public Law 113, 78th Congress, a pamphlet entitled, "Regulations Governing the Plans and Program of Vocational Rehabilitation Pursuant to Public Law 113, 78th Congress 1st Session Approved July 6, 1943", a manual of policies of the Federal Security Agency, Office of Vocational Rehabilitation, the amendment to the Ohio plan for vocational rehabilitation relative to protection of confidential information, and a copy of a letter to F. Richard Stilwell, Vocational Rehabilitation, Chicago, Illinois.

Public Law 113, 78th Congress, is an amendment to the Act of June 2, 1920 entitled "An Act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment."

Section 7(c) of the amendment which was enacted July 6, 1943, quoted in your request, vests in the Federal Security Administrator the authority to make rules and regulations governing the administration of the Act, and while I express no opinion on the constitutionality of the delegation by Congress to the Administrator of such power, it is clear that under the terms of the Act, power to rule that information as to personal facts and circumstances which come into the possession of the State Board or Blind Agency constitutes a privileged communication is given to the Administrator, in the event he concludes that the protection of such information as confidential is necessary to the proper administration of the Act.

Your request raises the question of whether under present Ohio Law the State Board for Vocational Education, Bureau of Vocational Rehabili-

tation can carry out a plan and program of vocational rehabilitation which will comply with Section 600.13 of the Regulations issued by the Federal Security Administrator.

The General Assembly of Ohio, in order to secure for the Ohio program of vocational rehabilitation the available federal funds appropriated therefor, has enacted Section 154-49f of the General Code, which is as follows:

“The state of Ohio does hereby, through its legislative authority, accept the provisions and benefits of the act of congress, entitled ‘An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment,’ approved June 2, 1920, and will observe and comply with all requirements of such act.”

The above section was enacted as House Bill 217 of the 95th General Assembly, passed May 28, 1943, and approved June 15, 1943 (120 O. L., 475, 486), to become effective October 16, 1943. Public Law 113, 78th Congress, which amended the Act of June 2, 1920 (Title 29, Sec. 31 et seq., U. S. C.) was approved July 6, 1943, subsequent to the passage and approval of Section 154-49f of the General Code of Ohio. If the General Assembly could be held to have intended to incorporate by reference not only the Act of June 2, 1920 but subsequent amendments thereto as well, the question of the constitutionality of such incorporation by reference would become important. See *Hutchins v. Mayo*, 143 Fla., 707, 197 So., 495, 133 A. L. R., 394, Annot. 133 A. L. R., 401 et seq.

However, it is well established that where a legislative body adopts by reference an existing statute, and in such reference specifically sets forth the statute which is adopted, subsequent amendments of the adopted statute are not so adopted unless specific intention on the part of the legislature to effect such adoption is apparent from the language of the adopting statute. See *Hassett v. Welch*, 303 U. S., 303, 82 L. Ed., 858, in which the court states, (303 U. S., 314, 82 L. Ed., 866) quoting 2 Lewis's *Sutherland*, *Statutory Construction*, 2nd Ed., pages 787, 788:

“Where one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted, the effect is the same as though the statute or provisions adopted had been incorporated bodily into the adopting statute * * * Such adoption takes the statute as it

exists at the time of adoption and does not include subsequent additions or modifications of the statute so taken unless it does so by express intent."

See further, to the same effect 50 Am. Juris., page 58, Statutes, Section 39.

It is noted that Section 154-49f of the General Code refers specifically to the Act of June 2, 1920, describing it by its title, and makes no reference to any amendments thereto, subsequent or otherwise. I can only conclude, therefore that Public Law 113, 78th Congress, which amended the Act of June 2, 1920, was not included in the incorporation of said Act provided for in Section 154-49f, General Code, and therefore, that the rule making power vested in the Federal Security Administrator by Section 7a of Public Law 113 is not a part of the Ohio Law on the subject of vocational rehabilitation. Examination of the Act of June 2, 1920, as it existed prior to the enactment of Public Law 113, 78th Congress discloses no rule making power on the part of the Federal Security Administrator. Section 5 of the Act as it existed prior to July 6, 1943 (Title 29, Sec. 35, U. S. C.) provides in part:

"The Federal Security Agency shall have power to cooperate with state boards in carrying out the purposes and provisions of Sections 31-44 of this title, and is hereby authorized to make and establish such rules and regulations as may be necessary or appropriate to carry into effect the provisions of Sections 31-44 of this title in order to provide for the vocational rehabilitation of disabled persons and their placement in employment; and to cooperate, for the purpose of carrying out the provisions of Sections 31-44 of this title, with such public and private agencies as it may deem advisable."

It is clear that the rules promulgated by the Federal Security Administrator entitled: "Regulations governing the plans and program of vocational rehabilitation pursuant to Public Law 113, 78th Congress, 1st Session, approved July 6, 1943" are not issued pursuant to the Act of June 2, 1920, as it existed at the time it was adopted by the General Assembly of Ohio. Therefore, it can not be said that the regulations, even if formulated under a valid delegation of rule making power provided by Public Law 113, 78th Congress constitute a part of the law of Ohio, since the Act which enabled the issuance of such regulations is not a part of the Federal statute adopted by the General Assembly of Ohio

in the enactment of General Code Section 154-49f. We must conclude therefore, that Section 154-49f, together with the statute therein incorporated does not enable the State Board for Vocational Education, Bureau of Vocational Rehabilitation to treat as privileged communications information obtained by it in the course of administration of the plan and program of vocational rehabilitation.

The remaining question is whether under any other provision of Ohio law, such information can be treated as privileged communications. The only section of the Ohio General Code dealing with the general subject of privileged communications is Section 11494, which provides confidential treatment for communications under stated circumstances between (1) attorney and client, (2) clergyman or priest and one making confession to such clergyman or priest in his professional capacity, (3) husband and wife. Said section further provides circumstances in which certain persons may not be permitted to testify in a court proceeding. Nowhere in said section does it appear that communications of the type which are contemplated to be received in the course of the administration of the vocational rehabilitation program are to be treated as privileged.

Therefore, in specific answer to your question, I am of the opinion that there is no authority in the law of Ohio for the treatment of information received by the State Board for Vocational Education, Bureau of Vocational Rehabilitation in the course of the administration of the state program for vocational rehabilitation, as privileged communications.

Respectfully,

HUGH S. JENKINS,
Attorney General