

OPINION NO. 84-002**Syllabus:**

The functions of the Ohio Drug Treatment Advisory Council are not affected by the creation of the Ohio Recovery Council except insofar as the Ohio Drug Treatment Advisory Council is required to evaluate and report to the Governor on the status of public drug treatment programming in Ohio. To the extent that this duty is shared by the Ohio Recovery Council, the two organizations may agree which will assume that function until the Ohio Recovery Council's dissolution in August, 1984.

**To: Theodore P. Ziegler, Vice Chairman, Ohio Drug Treatment Advisory Council,
Columbus, Ohio**
By: Anthony J. Celebrezze, Jr., Attorney General, February 3, 1984

I have before me your request for clarification of the effect of the newly established Ohio Recovery Council (ORC) on the statutory duties and responsibilities of the Ohio Drug Treatment Advisory Council (ODTAC).

In order to evaluate your question, it is first necessary to compare the duties of ODTAC and the ORC as they are set forth in R.C. 5122.55 and Executive Order 83-30, respectively. R.C. 5122.55 reads in pertinent part:

The Ohio drug treatment advisory council:

. . .

(B) Shall study private and public drug treatment or rehabilitation programs and facilities operating within the state;

(C) Shall investigate all complaints registered with the council concerning the functioning of such programs and facilities;

(D) Shall report to and consult with the director of the department of mental health, at such times as it considers appropriate, concerning the effectiveness of any public or private drug treatment or rehabilitation program or facility operating within this state;

(E) Shall report annually to the governor and the general assembly concerning the overall effectiveness of drug treatment or rehabilitation programs and facilities operating within this state, setting forth such recommendations for executive and legislative actions as it considers appropriate.

Executive Order 83-30 sets forth the duties of the newly formed ORC. Section 2 of Executive Order 83-30 reads in part:

The Council shall possess the following powers and duties.

- A. Inventory and evaluate substance abuse programming and improve planning and coordination within State government and agencies funded through State government, with special attention to Employee Assistance Programs and underserved populations.
- B. Have authority to propose changes in substance abuse programming by submitting such proposals to the appropriate Department Director(s) or agency head(s) for implementation.
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- D. Render semiannual reports to the Governor, the Speaker of the House and the President of the Senate.
- E. Recommend the criteria for use of State dollars to be used for substance abuse education, prevention, outreach, intervention, treatment, aftercare and recovery.
- F. Recommend the most effective and efficient substance abuse supervision and delivery model for Ohio in its final report, including recommended legislation, if any.

Comparison of these two provisions suggests that the Ohio Drug Treatment Advisory Council possesses many duties under R.C. 5122.55 which are unaffected by the creation of the Ohio Recovery Council. For example, R.C. 5122.55(C) requires ODTAC to investigate complaints registered with the Council concerning the functioning of drug treatment facilities within the state. ORC possesses no analogous duty or power under Executive Order 83-30.

In fact, only two of ODTAC's duties under R.C. 5122.55 could be considered duplicative of the ORC's duties pursuant to Executive Order 83-30. First, R.C. 5122.55(B) requires ODTAC to "study private and public drug treatment or rehabilitation programs and facilities operating within the state." Similarly, Executive Order 83-30(2)(A) requires the ORC to "[i]nventory and evaluate substance abuse programming and improve planning and coordination with State government and agencies funded through State government. . . ." Second, both organizations are required to report the results of these studies to the Governor and the General Assembly. See R.C. 5122.55(E); Executive Order 83-30(2)(D).

I note, however, that even within this small area of overlap between the ORC and ODTAC, ODTAC is charged with a function which is unaffected by the creation of the ORC. Pursuant to R.C. 5122.55(B), ODTAC is required to study private and public drug treatment programs within this state. ORC, on the other hand, is only

required to evaluate public drug treatment programs. Therefore, despite Executive Order 83-30, ODTAC retains an independent statutory duty to study private drug treatment programs within Ohio and to report the results of these studies to the Governor and General Assembly.

The ORC has a duty within the area of public programs which is different from ODTAC as well. The term "substance abuse" includes both alcohol and drug abuse. Thus, the ORC's duty to evaluate and report on substance abuse programming is broader than ODTAC's duty to evaluate and report on drug treatment programming. As a result, the ORC has a separate duty to evaluate alcohol abuse programming which is not shared by ODTAC.

Consequently, it is only within the area of studying and reporting on public drug treatment programs that ODTAC and the ORC may have duplicative duties. I have found no Ohio authority on whether a board created by executive order, such as the ORC, would prevail over a board created by statute, such as ODTAC, where both organizations are charged with performing similar functions. I do note, however, that the ORC is of a limited duration. Pursuant to Executive Order 83-30, the ORC is scheduled to expire automatically on August 31, 1984. Executive Order 83-30(2)(G).

Furthermore, as I previously concluded, both organizations have an independent duty to evaluate and report on certain aspects of substance abuse programming in Ohio. Therefore, it is my recommendation that the ORC and ODTAC agree which will assume the additional duty of evaluating and reporting on public drug treatment programs until August, 1984.¹ This can be done in conjunction with the other studies and reports the organizations are required to render pursuant to statute or executive order.

Therefore, it is my opinion, and you are advised, that the functions of the Ohio Drug Treatment Advisory Council are not affected by the creation of the Ohio Recovery Council except insofar as ODTAC is required to evaluate and report to the Governor on the status of public drug treatment programming in Ohio. To the extent that this duty is shared by the Ohio Recovery Council, the two organizations may agree which will assume that function until the ORC's dissolution in August, 1984.

¹ Cf. R.C. 121.17 ("Under the direction of the governor, the directors of departments shall devise a practical and working basis for co-operation and co-ordination of work and for the elimination of duplication and overlapping functions.") I note that the directors of health, mental health, youth services and rehabilitation and corrections serve as ex officio members of the Ohio Recovery Council and are also represented on the Ohio Drug Treatment Advisory Council pursuant to R.C. 5122.54(A).