

OPINION NO. 99-051**Syllabus:**

As a part of their partnership agreement under R.C. 5101.21(B), the Department of Human Services and a board of county commissioners may agree that, prior to conducting an adjudication hearing in accordance with R.C. Chapter 119, they will attempt to resolve by means of negotiation or mediation a dispute that leads to an action being proposed by the Department against a county social service agency under R.C. 5101.24(B).

**To: Jacqueline Romer-Sensky, Director, Department of Human Services, Columbus, Ohio
43266-0423**

By: Betty D. Montgomery, Attorney General, September 21, 1999

Your predecessor requested an opinion concerning the resolution of disputes that arise under written partnership agreements between the Department of Human Services

(DHS) and boards of county commissioners. By way of background, your predecessor explained that, pursuant to R.C. 5101.21(B), DHS is required to enter into a written partnership agreement with each board of county commissioners to facilitate the provision of social services to the citizens of Ohio.¹ Every partnership agreement entered into pursuant to R.C. 5101.21(B) must establish, specify, or provide for dispute resolution procedures for anticipated and unanticipated disputes. R.C. 5101.21(B)(11). R.C. 5101.21(B)(11) further provides that a partnership agreement may establish different dispute resolution procedures for different types of disputes and that “[d]ispute resolution procedures may include negotiation, mediation, arbitration, adjudication conducted by a hearing officer or fact-finding panel, and other procedures.”

In accordance with R.C. 5101.21(B)(11)'s mandate to establish, specify, or provide for dispute resolution procedures for anticipated and unanticipated disputes, DHS has compiled an Administrative Procedures Manual (APM) that sets forth internal management procedures adopted through partnership agreements with boards of county commissioners. Included within the APM are procedures for resolving disputes between DHS and county social service agencies.

In particular, the APM sets forth dispute resolution procedures for resolving disputes that occur when the dispute involves an action being proposed by DHS against a county social service agency under R.C. 5101.24(B).² Under the APM, after the dispute resolution process is initiated, the parties to these types of disputes are initially encouraged to resolve the dispute by way of negotiation.³ If the dispute is not resolved through negotiation, the dispute is referred to a mediator for mediation. If the dispute is not resolved by

¹ R.C. 5101.21(B) requires the Department of Human Services (DHS) to enter into a written partnership agreement with each board of county commissioners regarding the administration and design of the Ohio works first program established under R.C. Chapter 5107, the prevention, retention, and contingency program established under R.C. Chapter 5108, duties assumed by a county department of human services pursuant to an agreement entered into under R.C. 329.05, and other county department of human services' duties that the director of DHS and the board mutually agree to include in the agreement. *Accord* R.C. 307.98. Any partnership agreement entered into pursuant to R.C. 5101.21 may also include “provisions regarding the administration and design of the duties of child support enforcement agencies and public children services agencies included in a plan of cooperation entered into under section 307.983 of the Revised Code that the director [of DHS] and board mutually agree to include in the agreement.” R.C. 5101.21(B).

² R.C. 5101.24(B) authorizes DHS to take one or more of the following actions against a county social service agency: (1) require the agency to submit to and comply with a corrective action plan, (2) impose a financial or administrative sanction against the agency, (3) perform a social service duty for the agency until DHS is satisfied that the agency will perform the duty satisfactorily, or (4) request the Attorney General to bring mandamus proceedings against the agency.

³ According to the Administrative Procedures Manual (APM), efforts to resolve an issue in dispute are coordinated by DHS's account manager. If the parties are able to agree upon a solution, the account manager must assure that a written agreement is drafted and signed by the appropriate representatives of both parties. Any written agreement is then submitted to DHS's Office of Legal Services for finalization.

mediation,⁴ the dispute is resolved by way of an adjudication hearing conducted pursuant to R.C. Chapter 119.⁵ DHS and the boards of county commissioners have thus agreed, pursuant to partnership agreements entered into under R.C. 5101.21(B), to resolve disputes that lead to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B) through negotiation, mediation, and adjudication hearings conducted in accordance with R.C. Chapter 119.

Your predecessor has stated further that R.C. 5101.24 currently provides for the resolution of disputes that occur when DHS proposes an action against a county social service agency under R.C. 5101.24(B). Pursuant to R.C. 5101.24(A), DHS may take action against a county social service agency under R.C. 5101.24(B) if DHS determines that the agency (1) has failed to meet a performance standard specified in a partnership agreement entered into under R.C. 5101.21 or established under R.C. 5101.22; (2) has failed to comply with a requirement established by federal statute or regulations, state statute, or a department rule; or (3) is solely or partially responsible for, or contributes to, an adverse audit or quality control finding, final disallowance of federal financial participation, or other sanction or penalty.

If DHS decides to take action against a county social service agency under R.C. 5101.24(B), DHS must notify the agency, the board of county commissioners, and the county auditor. R.C. 5101.24(C). After receiving notification, a county social service agency may request an administrative review of the proposed action. *Id.* After an administrative review is requested, R.C. 5101.24(C) further provides:

If an administrative review is requested, the department and agency may enter into a written agreement setting forth the dispute resolution procedures to be used to resolve the dispute and any other procedural matters the department and agency agree will assist in reaching a prompt, fair, and equitable resolution. If the department and agency fail to enter into such an agreement not later than sixty days after the agency requests the administrative review, the department shall conduct a hearing in accordance with Chapter 119. of the Revised Code, except that the department, notwithstanding section 119.07 of the Revised Code, is not required to schedule the hearing within fifteen days of the agency's request.

R.C. 5101.24(C) thus sets forth procedures for resolving disputes that occur when DHS proposes an action against a county social service agency under R.C. 5101.24(B).

In light of the language of R.C. 5101.24(C), DHS is concerned about the appropriate manner to resolve disputes arising under a partnership agreement entered into between DHS and a board of county commissioners that lead to an action being proposed by DHS

⁴ The APM provides that, if the parties are able to resolve the dispute through mediation, the parties prepare and sign a written agreement that is forwarded to DHS's Office of Legal Services for finalization.

⁵ Under the APM, the adjudication hearing is assigned to a hearing examiner who issues findings of fact, conclusions of law, and recommendations of actions to be taken to resolve the dispute. The recommendations of the hearing examiner are submitted to the Director of DHS for approval, disapproval, or modification. The decision of the Director is then incorporated into a final adjudication order. If a county entity is adversely affected by a final adjudication order issued by the Director of DHS, the county entity may appeal to the court of common pleas in accordance with R.C. 119.12.

against a county social service agency under R.C. 5101.24(B). Specifically, DHS wishes to know whether DHS and a board of county commissioners may agree, as part of their partnership agreement under R.C. 5101.21(B), that prior to conducting an adjudication hearing in accordance with R.C. Chapter 119, they will attempt to resolve by means of negotiation or mediation a dispute that leads to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B).

R.C. 5101.21(B)(11) and R.C. 5101.24(C) were enacted at the same time. *See* Sub. H.B. 408, 122nd Gen. A. (1996) (eff. Oct. 1, 1997). The purpose of both of these provisions is to set forth procedures for resolving disputes that arise between DHS and county social service agencies. R.C. 5101.21(B)(11) permits DHS and a board of county commissioners to agree to resolve any dispute arising under a partnership agreement through negotiation, mediation, arbitration, hearings, or other procedures. R.C. 5101.24(C) requires that a dispute that leads to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B) be resolved through an adjudication hearing conducted pursuant to R.C. Chapter 119 unless DHS and the agency have entered into an agreement that sets forth the dispute resolution procedures to be used to resolve the dispute. Both R.C. 5101.21(B)(11) and R.C. 5101.24(C) thus address the resolution of disputes arising under written partnership agreements that lead to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B).

It is a well-established principle of statutory interpretation that statutes enacted at the same time that relate to the same subject matter are to be construed together to give effect to each statute unless there is an irreconcilable conflict. *State ex rel. Myers v. Industrial Comm.*, 105 Ohio St. 103, 136 N.E. 896 (1922) (syllabus, paragraph one); *Graul v. State Personnel Bd. of Review*, 117 Ohio App. 108, 110, 191 N.E.2d 188, 190 (Franklin County 1962); *see also* R.C. 1.51 (except where the conflict between special and general provisions is irreconcilable, the provisions must be construed, if possible, so that effect is given to both provisions). An examination of R.C. 5101.21(B)(11) and R.C. 5101.24(C) discloses that these two statutes may be reconciled.

As explained previously, R.C. 5101.21(B)(11) requires a partnership agreement between DHS and a board of county commissioners to establish, specify, or provide for dispute resolution procedures for anticipated and unanticipated disputes. The power conferred upon DHS and a board of county commissioners to determine which dispute resolution procedures are to be used to resolve a particular type of dispute is not absolute, however. As creatures of statute, both DHS and boards of county commissioners have only such authority as is expressly conferred by statute, or as may be necessarily implied in order to effect the exercise of an express power. *See Burger Brewing Co. v. Thomas*, 42 Ohio St. 2d 377, 379, 329 N.E.2d 693, 695 (1975) (state agencies); *State ex rel. Shriver v. Board of Comm'rs*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (board of county commissioners). Accordingly, DHS and a board of county commissioners may not agree in a partnership agreement to resolve a dispute in a manner that is inconsistent with the authority conferred upon them.

With respect to the resolution of disputes that arise when DHS proposes an action against a county social service agency under R.C. 5101.24(B), DHS and boards of county commissioners must comply with the language of R.C. 5101.24(C). R.C. 5101.24(C) states that, if DHS and a county social service agency fail to enter into an agreement setting forth dispute resolution procedures to be used to resolve a dispute, DHS, not later than sixty days after the agency requests an administrative review, must conduct a hearing in accordance with R.C. Chapter 119 to resolve the dispute. R.C. 5101.24(C) thus requires disputes to be resolved through an adjudication hearing conducted pursuant to R.C. Chapter 119 when

DHS and a county social service agency are unable to enter into an agreement setting forth the dispute resolution procedures to be used to resolve the dispute.

Nothing in R.C. 5101.24(C), however, prohibits DHS and a board of county commissioners from agreeing in a partnership agreement to resolve a dispute that leads to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B) through negotiation or mediation prior to conducting an adjudication hearing pursuant to R.C. Chapter 119. In fact, the language of R.C. 5101.24(C) indicates that it is appropriate to resolve these types of disputes through negotiation or mediation, in addition to adjudication hearings. R.C. 5101.24(C) states that DHS and a county social service agency may enter into an agreement setting forth dispute resolution procedures to be used to resolve these particular types of disputes. DHS and a county social service agency thus may enter into an agreement that provides for the resolution of these disputes by way of negotiation or mediation. In light of the language of R.C. 5101.24(C), it is reasonable for one to infer that the General Assembly did not intend to prohibit the resolution of these types of disputes through negotiation or mediation prior to conducting an adjudication hearing in accordance with R.C. Chapter 119 for that purpose.

This inference is further supported by the principle of statutory construction that statutory provisions that address the same subject matter "are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent." *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two). The purpose of both R.C. 5101.21(B)(11) and R.C. 5101.24(C) is to resolve disputes that arise between DHS and county social service agencies. Accordingly, R.C. 5101.24(C) must be read and construed *in pari materia* with R.C. 5101.21(B)(11), and it therefore follows that DHS and a board of county commissioners may agree in a partnership agreement to resolve a dispute that leads to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B) through negotiation or mediation prior to conducting an adjudication hearing pursuant to R.C. Chapter 119.

Finally, it may be more economical and efficient for DHS and county social service agencies to attempt to resolve their disputes through negotiation or mediation before proceeding with adjudication hearings under R.C. Chapter 119. By resolving disputes through negotiation or mediation, DHS and county social service agencies may save time and money in the implementation and administration of social service programs. This result would appear to be desirable as a matter of sound public policy, and thus also argues in favor of finding that DHS and a board of county commissioners may agree that, prior to conducting an adjudication hearing in accordance with R.C. Chapter 119, they will attempt to resolve by means of negotiation or mediation a dispute that leads to an action being proposed by DHS against a county social service agency under R.C. 5101.24(B).

Based on the foregoing, it is my opinion, and you are hereby advised that, as a part of their partnership agreement under R.C. 5101.21(B), the Department of Human Services and a board of county commissioners may agree that, prior to conducting an adjudication hearing in accordance with R.C. Chapter 119, they will attempt to resolve by means of negotiation or mediation a dispute that leads to an action being proposed by the Department against a county social service agency under R.C. 5101.24(B).