

August 30, 2021

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
105 Main Street, P.O. Box 490
Painesville, Ohio 44077

SYLLABUS: 2021-020

1. A board of county commissioners lacks the authority to establish a nonprofit convention and visitors' bureau under R.C. Chapter 1702.
2. The excise tax levied on hotel lodging pursuant to R.C. 5739.09(A)(1) may be given to more than one convention and visitors' bureau within the county.



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OPINION NO. 2021-020

The Honorable Charles E. Coulson
Lake County Prosecuting Attorney
105 Main Street, P.O. Box 490
Painesville, Ohio 44077

Dear Prosecutor Coulson:

You have asked for an opinion on two questions relating to convention and visitors' bureaus. I have framed them as follows:

1. May a board of county commissioners establish a nonprofit convention and visitors' bureau under R.C. Chapter 1702?
2. May the excise tax levied on hotel lodging pursuant to R.C. 5739.09(A)(1) be given to more than one convention and visitors' bureau within the county?

The answer to your first question is "no," while the answer to your second question is "yes."

I

Your office indicated that a convention and visitors' bureau ("bureau") currently operates within your county. The Lake County Board of Commissioners, however, may wish to establish an additional bureau within Lake County. Your first question is whether it may do so pursuant to R.C. Chapter 1702.

The answer to your question is "no."

“R.C. Chapter 1702 provides for the formation of non-profit corporations.” 1979 Op. Att’y Gen. No. 79-055, at 2-184. “[N]o provision within R.C. Chapter 1702 (nonprofit corporation law) authorizes a governmental entity to incorporate a nonprofit corporation.” 1996 Op. Att’y Gen. No. 96-028, at 2-102. Instead, R.C. 1702.04 provides that any “person” alone or with others may form a corporation. *See* 1702.04(A). The answer to your question turns on whether a board of county commissioners (“board”) is a “person.” For these purposes, it is not. “It is a general rule ... that unless the purpose, language, or context of a statute indicates otherwise, the term ‘person,’ when used in a statute, does not encompass governmental entities[.]” *E.g.*, 1996 Op. Att’y Gen. No. 96-028, at 2-102. “Nothing in the language of R.C. Chapter 1702 indicates that it was the General Assembly’s intention to include the state or any political subdivision, instrumentality, or agency of the state within the definition of ‘person’ set forth in R.C. 1702.01(J) [now R.C. 1702.01(I)].” *Id.* at 2-103. Had the General Assembly intended a government entity to come within the definition of “person” set forth in R.C. 1702.01(I), it could have easily said so. *See id.* Because a board does not meet the definition of “person,” R.C. Chapter 1702 does not permit the establishment of a nonprofit bureau by a board. *See* 1979 Op. Att’y Gen. No. 79-055, at 2-185; *see also* 1996 Op. Att’y Gen. No. 96-028, at 2-102; *see also* 1999 Op. Att’y Gen. No. 99-028, at 2-188 (“As a nonprofit corporation established under R.C. Chapter 1702, the HCTA has a legal identity that is separate and independent from that of the county”); *see also* 2000 Op. Att’y Gen. No. 2000-006, at 2-30 (“a nonprofit corporation formed under R.C. Chapter 1702, as a general rule, is neither established by, nor functions as, an agency of the state or local government”); *see also* 1995 Op. Att’y Gen. No. 95-018, at 2-105 (“Because the library you describe was created as a nonprofit in accordance with either R.C. Chapter 1702 or R.C. Chapter 1713 (educational corporations), it was not

created as a division of the state by authority of the state”).

II

You have also asked if the tax levied under R.C. 5739.09(A)(1) may be given to more than one bureau. Your letter notes that R.C. 5739.09(A)(1) refers to bureaus in the singular, while R.C. 307.693 refers to them in the plural. But I conclude that this makes no difference.

Consider first the relevant text. R.C. 5739.09(A)(1) states in part that “[a] board of county commissioners may, by resolution adopted by a majority of the members of the board, levy an excise tax not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests.” The subsection also states: “Except as provided in this section, the remainder of the revenue arising from the tax shall be deposited in a separate fund and shall be spent solely to make contributions to the *convention and visitors’ bureau* operating within the county, including a pledge and contribution of any portion of the remainder pursuant to an agreement authorized by section 307.678 or 307.695 of the Revised Code.” *Id.* (Emphasis added). R.C. 307.693 states: “A board of county commissioners may appropriate moneys from the general fund to make contributions to *convention and visitors’ bureaus* operating within the county.” (Emphasis added).

In general, the singular use of a word in a statute includes the plural, and vice versa. *See* R.C. 1.43(A); *see also* 2013 Op. Att’y Gen. No. 2013-013, at 2-119 (“the use of the singular form of the word ‘program’ in R.C. 124.391 indicates that a board of county commissioners may establish multiple leave donation programs for the employees of multiple county agencies”). That general rule can be overcome with “clear language ... to the contrary” or by some other indication that the General Assembly intended its use

of the plural or non-plural form to make a difference. *State ex rel. Republic Steel Corp. v. Quinn*, 12 Ohio St.3d 57, 59, 465 N.E.2d 413 (1984), quoting *Wingate v. Hordge*, 60 Ohio St.2d 55, 58, 396 N.E.2d 770 (1979). But there is no such language or indication here. So, I conclude that R.C. 5739.09(A)(1) permits the tax revenue in question to be distributed to more than one bureau.

My conclusion is bolstered by the plural use of “convention and visitors’ bureaus” in R.C. 5739.08(B). The code section states in part that: “The legislative authority of the municipal corporation or the board of trustees of the township shall deposit at least fifty per cent of the revenue from the tax levied pursuant to this division into a separate fund, which shall be spent solely to make contributions to *convention and visitors’ bureaus* operating within the county in which the municipal corporation or township is wholly or partly located, and the balance of that revenue shall be deposited in the general fund.” R.C. 5739.08(B) (Emphasis added). This plural use of bureau coupled with the plural use found in R.C. 307.693 indicates that the General Assembly was aware that multiple bureaus may operate within a geographical area. Given the General Assembly’s apparent acknowledgement, it would be strange to read R.C. 5739.09(A)(1) as permitting the funding of only a single bureau. *See* R.C. 1.49(E) (when determining legislative intent for an ambiguous statute, a court, among other things, may consider the consequences of a particular construction).

In sum, I find that the singular use of bureau in R.C. 5739.09(A)(1) is not dispositive. Instead, and in accordance with R.C. 1.43(A) and R.C. 1.49(E), I find that R.C. 5739.09(A)(1) may apply to more than one bureau within the county.

Accordingly, it is my opinion, and you are hereby advised that:

1. A board of county commissioners lacks the authority to establish a nonprofit convention and visitors' bureau under R.C. Chapter 1702.
2. The excise tax levied on hotel lodging pursuant to R.C. 5739.09(A)(1) may be given to more than one convention and visitors' bureau within the county.

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style.

DAVE YOST
Ohio Attorney General