

OPINION NO. 92-019**Syllabus:**

The Department of Rehabilitation and Correction and its employees are not subject to the provisions of R.C. 3303.51-.62 that address the licensing of persons that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

To: Reginald A. Wilkinson, Director, Department of Rehabilitation and Correction, Columbus, Ohio

By: Lee Fisher, Attorney General, May 14, 1992

You have asked for an opinion on the provisions of R.C. 3303.51-.62 that concern the licensing of persons that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. According to information provided in conjunction with your opinion request, several penal institutions under the control of the Department of Rehabilitation and Correction operate ambulances owned by the State of Ohio for the purpose of transporting prisoners and staff members to hospitals in emergency situations. Because the Department is thereby furnishing transportation to individuals who are seriously ill, injured, or otherwise incapacitated, the Department wishes to know whether it is subject to those provisions of R.C. 3303.51-.62 that address the licensing of persons that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

Licensure Under R.C. 3303.51-.62

R.C. 3303.54 sets forth the initial requirements and procedures a person must satisfy in order to obtain a license to engage in the business or service of

transporting individuals who are seriously ill, injured, or otherwise incapacitated. Upon the satisfaction of these requirements and the issuance of a license under R.C. 3303.54, a licensee is subject to continuing operational requirements. The licensee must provide adequate evidence of liability insurance coverage, and bodily injury and property damage insurance coverage, R.C. 3303.56, and must possess a valid permit for each ambulance and nontransport vehicle it owns or leases that is or will be used to perform the services permitted by the license, R.C. 3303.57. A licensee under R.C. 3303.51-.62 is also required to "maintain accurate records of all service responses conducted," R.C. 3303.54(G), and to submit annually for inspection, to the State Highway Patrol and the Ohio Ambulance Licensing Board, each vehicle for which a permit has been issued, R.C. 3303.57(C).

A review of the provisions of R.C. 3303.51-.62 discloses that only persons licensed under R.C. 3303.54 may engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. Moreover, the continuing operational requirements of R.C. 3303.51-.62 are applicable only to persons licensed under R.C. 3303.54 to engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. It is necessary, therefore, to examine R.C. 3303.54 to determine whether this section requires the Department to be licensed.

Analysis Of R.C. 3303.54

R.C. 3303.54 provides, in part:

(A) Except as otherwise provided in sections 3303.51 to 3303.62 of the Revised Code, no *person* shall furnish, operate, conduct, maintain, advertise, engage in, or propose or profess to engage in the business or service of transporting persons who are seriously ill, injured, or otherwise incapacitated in this state unless he is licensed pursuant to this section.

(B) To qualify for a license as a basic life-support, intermediate life-support, or advanced life-support service, a *person* shall do all of the following:

(1) Apply for a permit for each ambulance and nontransport vehicle owned or leased as provided in section 3303.57 of the Revised Code;

(2) Meet all requirements of the rules of the Ohio ambulance licensing board regarding ambulances, equipment, nontransport vehicles, personnel, communications systems, and medical treatments the particular service is permitted to render;

(3) Maintain the appropriate type and amount of insurance or self-insurance as specified in section 3303.56 of the Revised Code;

(4) Meet all other requirements set by the board, by rule, for the particular service license.

(C) To apply for a license as a basic life-support, intermediate life-support, or advanced life-support service, a *person* shall submit a completed application to the board, on a form provided by the board for each particular license, together with the appropriate fees established under section 3303.55 of the Revised Code. (Emphasis added.)

A "person" not licensed under R.C. 3303.54, thus, may not engage in the business or service¹ of transporting individuals who are seriously ill, injured, or otherwise incapacitated. See generally R.C. 3303.99 ("[w]hoever violates [R.C. 3303.54]

¹ The term "service" is not defined for purposes of R.C. 3303.54. In the absence of statutory definition, terms should be accorded their natural, literal, common or plain meaning. R.C. 1.42. The dictionary defines "service" as "a system or method of providing people with the use of something, as electric power, water, transportation, mail delivery, ect." *Webster's New World Dictionary* 1301 (2d college ed. 1986). The use of the term "service" in R.C. 3303.54, thus, is reasonably construed to require the licensure, under R.C. 3303.51-.62, of any system or method of transporting individuals who are seriously ill, injured, or otherwise incapacitated. Because the Department of Rehabilitation and Correction is

... is guilty of a minor misdemeanor on a first offense; on each subsequent offense, such person is guilty of a misdemeanor of the fourth degree").

The term "person" is not defined in R.C. 3303.54 or elsewhere in R.C. 3303.51-.62. Pursuant to R.C. 1.59, "[a]s used in any statute, unless another definition is provided in such statute or a related statute: ... 'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association." The definition of "person" in R.C. 1.59, thus, does not expressly exclude or include the State of Ohio or its agencies, departments, or instrumentalities. 1990 Op. Att'y Gen. No. 90-045 at 2-192 n.4; 1979 Op. Att'y Gen. No. 79-062 at 2-209.

It is a general rule, however, that the term "person," when used in a statute, does not include the State of Ohio. *See Troutman v. Eichar*, 64 Ohio App. 415, 421, 28 N.E.2d 953, 956 (Wayne County 1940); *In re McLaughlin*, 16 Ohio Op. 2d 191, 191, 174 N.E.2d 644, 645 (P. Ct. Noble County 1960), *aff'd*, 17 Ohio Op. 2d 498, 179 N.E.2d 106 (Ct. App. Noble County 1961); Op. No. 90-045 at 2-192; Op. No. 79-062 at 2-209; 1962 Op. Att'y Gen. No. 2781, p. 70 at 73-74; *see also United States v. Cooper Co.*, 312 U.S. 600, 604 (1941) ("[s]ince, in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it"). *See generally State ex rel. Nixon v. Merrell*, 126 Ohio St. 239, 185 N.E. 56 (1933) (syllabus, paragraph one) ("[t]he state is not bound by the terms of a general statute, unless it be so expressly enacted"). Only "where the purpose, language, or context of a statute demonstrates that a broad interpretation of the word 'person' is intended, will [the State of Ohio] come within the purview of the statute." Op. No. 79-062 at 2-209; *accord* Op. No. 90-045 at 2-192; *see, e.g., Springfield v. Walker*, 42 Ohio St. 543, 547-48 (1885); *City of Dayton v. McPherson*, 29 Ohio Misc. 190, 202-03, 280 N.E.2d 106, 108 (C.P. Montgomery County 1969).

There is nothing in the language of R.C. 3303.54 from which one may infer that it was the General Assembly's intention to include the State of Ohio within the term "person." Moreover, no other provision within R.C. 3303.51-.62 evidences such a legislative intention. *See generally State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two) ("[s]tatutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent"). On the contrary, an examination of related provisions throughout R.C. 3303.51-.62 seems to indicate that it was the intention of the General Assembly to require licensure under R.C. 3303.54 of private individuals or entities that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

Initial support for the foregoing conclusion appears in the language used by the General Assembly to define the terms "ambulance" and "emergency medical service" for purposes of R.C. 3303.51-.62. The term "ambulance" is defined as "any *privately* owned or leased motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used for the transportation upon the streets or highways of this state of persons who are seriously ill, injured, wounded, or otherwise incapacitated or helpless." R.C. 3303.51(B) (emphasis added). Similarly, the term "emergency medical service" is defined as "a *private* organization that uses EMT-A's [emergency medical technician-ambulance], ADV EMT-A's [advanced emergency medical technician-ambulance], or paramedics [emergency medical technician-paramedic], or a combination thereof, to provide medical care to victims of illness or injury." R.C. 3303.51(E) (emphasis added). The use of the word "privately" to modify the terms "owned or leased" in R.C. 3303.51(B)'s definition of "ambulance," and the word "private" to modify the term "organization" in R.C. 3303.51(E)'s definition of "emergency medical service" suggests that the General Assembly intended R.C. 3303.54's licensure requirement to apply to private individuals or entities that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. *See generally*

furnishing a system of transportation to individuals who are seriously ill, injured, or otherwise incapacitated, the Department would, therefore, be engaged in the "service" of transporting individuals who are seriously ill, injured, or otherwise incapacitated within the meaning of R.C. 3303.54.

Carter v. Division of Water, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph one) (when determining legislative intent from statutory language, it is imperative "that none of the language employed therein should be disregarded, and that all of the terms used should be given their usual and ordinary meaning and signification except where the lawmaking body has indicated that the language is not so used").

Moreover, where the General Assembly has intended that publicly owned and operated motor vehicles be included within the definition of "ambulance," and that public organizations be included within the definition of "emergency medical service," it has used express language to communicate that intention. Specifically, R.C. 3303.08(D) provides that, for purposes of R.C. 307.05, R.C. 505.44, R.C. 505.72, R.C. 3303.08-.24, R.C. 4151.25-.26, R.C. 4155.15, and R.C. 4157.61,

"[a]mbulance" means *any motor vehicle* that is used, or is intended to be used, for the purpose of responding to emergency life-threatening situations, providing emergency medical care, and transporting emergency patients and administering emergency care procedures to such patients before, during, or after such transportation, and includes both basic and intensive care ambulances as defined and classified by the emergency medical services board pursuant to [R.C. 3303.24]. (Emphasis added.)

R.C. 3303.08(G) defines "emergency medical service" as "a *public or private organization* using EMT-A's, ADV EMT-A's, or paramedics, or a combination of EMT-A's, ADV EMT-A's, and paramedics, to provide emergency medical care to victims of serious illness or injury prior to the victims receiving professional medical care or hospitalization." (Emphasis added.) Thus, the definitions of "ambulance" and "emergency medical service" applicable to R.C. 3303.54 are limited in R.C. 3303.51 to privately owned and operated ambulances and to private organizations. On the other hand, the definitions of these same terms in R.C. 3303.08 is not so limited, which again supports the conclusion that the General Assembly intended R.C. 3303.54's licensure requirement to apply to private individuals or entities that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

This conclusion is further supported by R.C. 3303.59, which excludes many publicly owned ambulances and emergency vehicles from the provisions of R.C. 3303.51-.62. R.C. 3303.59 provides:

Sections 3303.51 to 3303.62 of the Revised Code do not apply to any of the following:

(A) A person rendering services with an ambulance in the event of a disaster situation when licensees' vehicles based in the locality of the disaster situation are incapacitated or insufficient in number to render the services needed;

(B) Any person operating an ambulance outside this state except that any person receiving a person within this state for transport to a location within this state must comply with sections 3303.51 to 3303.62 of the Revised Code;

(C) Any ambulance owned and operated by the federal government;

(D) A publicly owned and operated fire department vehicle;

(E) Emergency vehicles owned by a corporation and operating only on the corporation's premises, for the sole use by that corporation;

(F) Any ambulance, emergency medical service vehicle, or nontransport vehicle owned and operated by a municipal corporation.

R.C. 3303.59 thus expressly provides that ambulances owned and operated by the federal government, R.C. 3303.59(C), publicly owned and operated fire department vehicles, R.C. 3303.59(D), and ambulances and emergency medical service vehicles owned and operated by a municipal corporation, R.C. 3303.59(F), are not subject to the provisions of R.C. 3303.51-.62. The evident intent of the statutory scheme is to exclude governmentally owned and operated emergency vehicles from the coverage of R.C. 3303.51-.62. While it might be argued that the absence of the State of Ohio from the exemptions set forth in R.C. 3303.59 evidences a legislative intention that the State of Ohio be subject to the licensure provisions of R.C. 3303.54, the better

argument, in light of the nature of the entities excluded by R.C. 3303.59, appears to be that the State of Ohio was not listed among the exclusions because it was not considered to be a "person" subject to the licensing provisions of R.C. 3303.54.

Finally, if the General Assembly had intended for the State of Ohio to be a "person" for purposes of R.C. 3303.54, it could easily have communicated that intention expressly, having so included the State of Ohio as a "person" in other statutory schemes. *See, e.g.,* R.C. 1518.20(E) (as used in R.C. 1518.20-.27 (ginseng management program), "[p]erson' includes any legal entity defined as a person under [R.C. 1.59] and any political subdivision, instrumentality, or agency of this state"); R.C. 5739.01(A) (as used in R.C. Chapter 5739 (sales tax), the word "person" includes the state); *cf.* R.C. 4981.01(A) (as used in R.C. 4981.01-.11 (high speed rail authority), "person" means, in addition to the meaning in R.C. 1.59(C), any unit of local government). *See generally Lake Shore Electric Ry. Co. v. PUCO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the General Assembly intended a term to have a particular meaning, it could easily have found language to express that purpose, having used such language in other connections). Because the term "person," as used in R.C. 3303.54, does not include the State of Ohio, R.C. 3303.54 does not require the Department of Rehabilitation and Correction to be licensed to engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. *Cf.* 1962 Op. No. 2781 (syllabus, paragraph one) ("[t]he state department of health and the various general and city health districts do not fall within the definition of 'person' as set forth in [R.C. 4729.50(A)],² and thus not being made specifically subject to the provisions of [R.C. 4729.50-.66], are not required to comply with such sections" (footnote added)).

Application Of The Provisions Of R.C. 3303.51-.62 To Individuals Employed By The Department Of Rehabilitation And Correction

As a final matter, the Department asks, if the Department itself is not required to comply with the provisions of R.C. 3303.51-.62, whether the employees of the Department who operate the ambulances are required to comply with the provisions of R.C. 3303.51-.62. As indicated above, the provisions of R.C. 3303.51-.62 apply to "persons" engaged in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated. In the situation described in your letter, the ambulances are owned by the State of Ohio, and the employees operate the ambulances under the supervision and control of the Department. Thus, but for the Department furnishing the ambulances and directing employees of the Department to operate such ambulances, the employees of the Department would not be engaged in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

As indicated in footnote one, *supra*, the person who furnishes a system of transportation to individuals who are seriously ill, injured, or otherwise incapacitated is engaged in the "service" of transporting individuals who are seriously ill, injured, or otherwise incapacitated. Accordingly, since the Department furnishes the ambulances and directs the employees of the Department to operate the ambulances, it is the Department — rather than the several employees of the Department — that is furnishing a system of transportation to individuals who are seriously ill, injured, or otherwise incapacitated. Therefore, the employees of the Department are not subject to the provisions of R.C. 3303.51-.62.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the Department of Rehabilitation and Correction and its employees are not subject to the provisions of R.C. 3303.51-.62 that address the licensing of persons that engage in the business or service of transporting individuals who are seriously ill, injured, or otherwise incapacitated.

² When 1962 Op. Att'y Gen. No. 2781, p. 70 was issued, R.C. 4729.50(A) read as follows: "As used in sections 4729.50 to 4729.66, inclusive, of the Revised Code: ... 'Person' includes any corporation, association, or partnership of one or more individuals." 1961 Ohio Laws 1376 (Am. Sub. H.B. 416, eff. Jan. 1, 1962).