

OPINION NO. 91-055**Syllabus:**

1. Pursuant to R.C. 125.31, the Department of Administrative Services shall supervise printing performed for the Legal Rights Service, notwithstanding that the entire cost of that printing is paid for with federal moneys allotted to the State of Ohio under 42 U.S.C.A. §§6042 (Supp. pamphlet 1991) and 10803 (Pamphlet 1991).
2. Pursuant to R.C. 125.42, the Administrator of the Legal Rights Service shall not print or cause to be printed at the public expense any report, bulletin, document, or pamphlet unless the item to be printed is first submitted to, and the printing thereof approved by, the Department of Administrative Services, notwithstanding that the entire cost of that printing is paid for with federal moneys allotted to the State of Ohio under 42 U.S.C.A. §§6042 (Supp. pamphlet 1991) and 10803 (Pamphlet 1991).

To: Carolyn S. Knight, Executive Director, Ohio Legal Rights Service, Columbus, Ohio

By: Lee Fisher, Attorney General, December 31, 1991

You have requested my opinion whether R.C. 125.31 and 125.42 apply to the Legal Rights Service in connection with printing services that are paid for with funds allotted to the State of Ohio by the United States Department of Health and Human Services. R.C. 125.31-.76 address the awarding of contracts by the Department of Administrative Services (DAS) for most public printing. R.C. 125.31 states in that regard that, except for printing for the General Assembly and state-supported institutions of higher education, DAS "shall have supervision of all public printing." R.C. 125.31 further provides that, except as otherwise specifically provided by law, DAS shall determine the "number of copies which shall be printed of each publication or document, the source of reproduction, the manner of binding, quality of paper, the general kind, size, and spacing of type to be used in all reports, publications, bulletins, documents, or pamphlets printed at public expense."

In order that DAS may properly fulfill its responsibilities under the foregoing provision, R.C. 125.42, the second statute to which your letter refers, requires every officer, board, commission, or department of state government to receive the approval of DAS prior to undertaking any printing at public expense. R.C. 125.42 reads as follows:

No officer, board, or commission, except the clerk of the senate and the executive secretary of the house of representatives as to first and second class printing, shall print or cause to be printed at the public expense, any report, bulletin, document, or pamphlet, unless such report, bulletin, document, or pamphlet is first submitted to, and

the printing thereof approved by, the department of administrative services. If such department approves the printing, it shall determine the form of such printing and the number of copies.

If such approval is given, the department shall cause the same to be printed and bound as provided by sections 125.47 to 125.56 of the Revised Code, except as otherwise provided by section 125.45 of the Revised Code; and when printed, such publications or forms shall be delivered to the ordering officer, board, commission, or department, or sold at a price not to exceed the total cost.

Pursuant to R.C. 125.42, therefore, no officer, board, or commission within state government, subject to the two exceptions therein noted, shall print or cause to be printed at the public expense any report, bulletin, document, or pamphlet unless such item is first submitted to and its printing is approved by DAS.

You wish to know whether R.C. 125.31 and R.C. 125.42 apply to printing performed for the Legal Rights Service when that printing is paid for with moneys that have been allotted to the State of Ohio by the federal government and thereafter included within the Service's operating budget by the Ohio General Assembly. Created in 1974, *see* 1974 Ohio Laws, Part II 248, 269 (Am. Sub. S.B. 336, eff., in part, Sept. 30, 1974), the primary mission of the Legal Rights Service is to protect and advocate the rights of mentally ill and mentally retarded or developmentally disabled persons. *See* R.C. 5123.60(A); 1986 Op. Att'y Gen. No. 86-091 at 2-515. As pertains herein, R.C. 5123.60(F)(6) authorizes the Administrator of the Legal Rights Service to "[e]nter into contracts and make such expenditures as are necessary for the efficient operation of the legal rights service." Reasonably implicit in the general contracting authority thus conferred by R.C. 5123.60(F)(6) upon the Administrator is the power to contract and pay for printing services, provided such services are necessary for the efficient operation of the Legal Rights Service. For the purpose of this opinion I shall presume that the printing services in question are so necessary, and that you are, accordingly, acting within the scope of your statutory authority in securing and paying for those services.

Federal Funding of the Legal Rights Service

According to your letter, the Legal Rights Service pays for all services rendered with moneys allotted to the State of Ohio pursuant to 42 U.S.C.A. §§6041-6043 (Supp. pamphlet 1991) and §§10803-10805 (Pamphlet 1991). Those sections of Title 42 (public health and welfare) appear within the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, 77 Stat. 282 (1963), 42 U.S.C.A. §§6000-6083 (Supp. pamphlet 1991), as amended, and the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 100 Stat. 478 (1986), 42 U.S.C.A. §§10801-10851 (Pamphlet 1991), as amended, respectively. Among other things, those Acts provide for allotments of federal moneys to support a system in each state to protect and advocate the various legal rights of persons who are developmentally disabled, 42 U.S.C.A. §6041, or mentally ill, 42 U.S.C.A. §§10801(b); 10803. A state becomes eligible for those moneys once it has established protection and advocacy systems that conform to the requirements set forth in 42 U.S.C.A. §§6042(a) and 10805. The Secretary of Health and Human Services allots and distributes those moneys to the individual states in accordance with the formulae set forth in 42 U.S.C.A. §§6042(b) and 10822. *See also* 42 U.S.C.A. §6043 (authorizing the specific amounts of money to be appropriated by Congress for allotments under §6042); §10827 (authorizing the specific amounts of money to be appropriated by Congress for allotments under §10803).

The Legal Rights Service functions as the protection and advocacy system to which Ohio's share of the moneys allotted under 42 U.S.C.A. §§6042 and 10803 is channeled. You further explain that those moneys are "deposited with the state treasurer," and that "[s]eparate account funds are set up with the state accounting system and separate line items are established in the state budget" for those moneys. Thus, for the biennium just concluded, the General Assembly appropriated a total of \$2,261,648 from those funds to Legal Rights Service. *See* Am. Sub. H.B. 111, 118th Gen. A. (1989) (eff., in part, July 1, 1989) (section 67, uncodified).

Exceptions to R.C. 125.31 and R.C. 125.42

R.C. 125.31 and R.C. 125.42 do, in fact, make certain express exceptions to the application and coverage of their specific provisions. R.C. 125.31 directs the Department of Administrative Services to supervise all public printing, except printing for the General Assembly and state-supported institutions of higher education. R.C. 125.31 directs the clerk of the Senate and the executive secretary of the House of Representatives to supervise printing for the General Assembly. Supervision of printing for state-supported institutions of higher education is the responsibility of the department of purchasing of each such institution, or the department or officer within the institution that performs the functions of a department of purchasing. *Id.* R.C. 125.42 provides that no officer, board, or commission shall print or cause to be printed at the public expense any report, bulletin, document, or pamphlet unless such item is submitted to, and its printing is approved by, DAS. R.C. 125.42 excepts from that submission and approval requirement the clerk of the Senate and the executive secretary of the House of Representatives as to first and second class printing.¹

With respect to the application of R.C. 125.31 and R.C. 125.42, and the duties and responsibilities thereby imposed, no exceptions other than those just described are expressly mentioned in either of those statutes. In particular, neither section makes an exception to its application or requirements when the cost of the public printing in question is paid for with federal funds. Moreover, absent a clear and unequivocal expression on the part of the General Assembly recognizing such an exception in R.C. 125.31 or R.C. 125.42, it may not otherwise be implied. See generally *Scheu v. State of Ohio*, 83 Ohio St. 146, 157-58, 93 N.E. 969, 972 (1910) ("we must observe the rule that an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience"); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) (same); *Siegfried v. Everhart*, 55 Ohio App. 351, 353, 9 N.E.2d 891, 892 (Summit County 1936) ("[t]he general rule is that where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and in such case it is not the province of a court to introduce an exception by construction"); 1935 Op. Att'y Gen. No. 3989, vol. I, p. 209, at 214.

It follows, therefore, that, pursuant to R.C. 125.31, the Department of Administrative Services shall supervise printing performed for the Legal Rights Service, notwithstanding that the entire cost of that printing is paid for with federal moneys allotted to the State of Ohio under 42 U.S.C.A. §§6042 and 10803. Pursuant to R.C. 125.42, the Administrator of the Legal Rights Service shall not print or cause to be printed at the public expense any report, bulletin, document, or pamphlet unless the item to be printed is first submitted to, and the printing thereof approved by, the Department of Administrative Services, notwithstanding that the entire cost of that printing is paid for with federal moneys allotted to the State of Ohio under 42 U.S.C.A. §§6042 and 10803.² *Accord*, 1988 Op. Att'y Gen. No. 88-007 (the Bureau of Disability Determination is required to comply with the terms of R.C.

¹ First class printing comprises bills for the two houses of the General Assembly, resolutions and other matters ordered by either of them to be printed in bill form, general and local laws, and joint resolutions. R.C. 125.47(A). Second class printing comprises journals and bulletins of the Senate and House of Representatives, and reports, communications, and other documents which form part of the journals. R.C. 125.47(B).

² This conclusion is also compatible with 1916 Op. Att'y Gen. No. 1418, vol. I, p. 556, to which you have referred in your letter. That opinion addressed the question whether G.C. 173-2, the statutory predecessor of R.C. 125.42, required the secretary of a county conservancy district to submit the proposed printing of reports by the district's engineers to the commissioners of public printing (now the Department of Administrative Services) for their approval. Answering that question in the negative, 1916 Op. No. 1418 concluded in its syllabus that "[o]nly such reports as are to be paid for by funds out of the state treasury are required to be submitted to

126.30, the prompt payment law, with respect to all purchases, leases, or acquisitions of equipment, materials, goods, supplies, or services, notwithstanding that the Bureau's budget is funded by the federal government).

Based upon the foregoing, it is my opinion, and you are advised that:

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the commissioners of public printing for approval before publication under [G.C. 173-2]." In this instance the federal moneys that the Legal Rights Service uses to cover the costs of its printing are initially deposited in the state treasury, following their allotment to the State of Ohio by the Secretary of the Department of Health and Human Services. Thereafter, the General Assembly makes an appropriation from those moneys to the Legal Rights Service, which is authorized to expend those funds in a reasonable manner in accordance with its statutory mission. It follows, therefore, that the federal moneys here used by the Service to pay for the printing in question are paid out of the state treasury.