

OPINION NO. 91-013**Syllabus:**

1. For purposes of R.C. 3719.141(G), a peace officer, as defined by R.C. 3719.141(H), may be considered operating under the management and direction of the United States Department of Justice in a particular case, even though he has not been formally sworn in or commissioned as a federal agent or federal officer to investigate that particular case.
2. The exemption set forth in R.C. 3719.141(G) may apply to a peace officer, as defined by R.C. 3719.141(H), operating under the joint management and direction of the United States Department of Justice and his local law enforcement agency, provided such peace officer sells controlled substances in accordance with federal statutes and regulations.

To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio
By: Lee Fisher, Attorney General, March 12, 1991

I have before me your request for an opinion from my predecessor concerning the sale of controlled substances by peace officers of this state. Particularly, you have asked that the following be addressed:¹

1. For purposes of R.C. 3719.141(G), can a peace officer of this state be considered "operating under the management and direction of the United States Department of Justice" in a particular case if he or she has not been formally sworn in or commissioned as a federal agent or federal officer to investigate that particular case?
2. Can joint federal-state investigations fall within the R.C. 3719.141(G) exception? If a peace officer of this state is operating under the joint management and direction of the United States Department of Justice and his state law enforcement agency, in the sale of a controlled substance, does the R.C. 3719.141(G) exemption apply?

¹ Pursuant to telephone conversations between members of our respective staffs, I have rephrased your specific questions for ease of analysis.

I note initially that R.C. 3719.141(A)-(F) set forth specific requirements applicable to the sale of controlled substances by peace officers.² The provisions of R.C. 3719.141(A)-(F), however, do not apply to all peace officers. Specifically, R.C. 3719.141(G) provides:

Divisions (A) to (F) of this section do not apply to any peace officer, or to any officer, agent, or employee of the United States, who is operating under the management and direction of the United States department of justice. Any peace officer, or any officer, agent, or employee of the United States, who is operating under the management and direction of the United States department of justice may sell a controlled substance in the performance of his official duties if the sale is made in accordance with federal statutes and regulations.

The provisions of R.C. 3719.141(A)-(F), thus, do not apply to any peace officer operating under the management and direction of the United States Department of Justice. Your questions generally seek to clarify when this exception applies. It is apparent, therefore, that a resolution of your specific questions entails an interpretation of the phrase "operating under the management and direction of the United States Department of Justice."

It is a well-established maxim in Ohio that the primary purpose in the interpretation of a statute is to determine and give effect to the intention of the General Assembly. *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two); *Humphrys v. Winous Co.*, 165 Ohio St. 45, 49, 133 N.E.2d 780, 782-83 (1956). Moreover, where statutory language clearly and unambiguously expresses the legislative intent, further recourse to any intrinsic aids of statutory interpretation is unnecessary. *Herrick v. Lindley*, 59 Ohio St. 2d 22, 27, 391 N.E.2d 729, 733 (1979); *Katz v. Department of Liquor Control*, 166 Ohio St. 229, 231, 141 N.E.2d 294, 295-96 (1957). Additionally, when ascertaining 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." *Carter v. Division of Water*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, paragraph one); see *Ohio Ass'n of Public School Emp. v. Twin Valley Local School Dist. Bd. of Educ.*, 6 Ohio

² For purposes of R.C. 3719.141, "'peace officer' has the same meaning as in section 2935.01 of the Revised Code, except that it also includes any special agent of the bureau of criminal identification and investigation." R.C. 3719.141(H). "Peace officer," as defined by R.C. 2935.01(B),

includes a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under a contract pursuant to section 737.04 of the Revised Code, member of a police force employed by a metropolitan housing authority under division (D) of section 3735.31 of the Revised Code, state university law enforcement officer appointed under section 3345.04 of the Revised Code, an Ohio veterans' home policeman appointed under section 5907.02 of the Revised Code, a police constable of any township, and, for the purpose of arrests within those areas, and for the purposes of Chapter 5503. of the Revised Code, and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the superintendent and patrolmen of the state highway patrol.

In accordance with the foregoing, I shall use the term "peace officer" throughout this opinion to refer to those positions set forth in R.C. 2935.01(B) and R.C. 3719.141(H).

St. 3d 178, 181, 451 N.E.2d 1211, 1213-14 (1983) (per curiam); *see also* R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983) ("any term left undefined by statute is to be accorded its common, everyday meaning").

Since the terms "management" and "direction" are not statutorily defined for purposes of R.C. 3719.141, I look first to the common or plain meaning of these terms. The term "management," as defined in *Webster's Third New International Dictionary* 1372 (3rd ed. 1971), means "the act or art of managing; as...the conducting or supervising of something (as a business); [especially]: the executive function of planning, organizing, coordinating, directing, controlling, and supervising any industrial or business project or activity with responsibility for results." *Accord Black's Law Dictionary* 960 (6th ed. 1990); *Webster's New World Dictionary* 820 (3d college ed. 1988). Similarly, the term "direction" means "guidance or supervision of action, conduct, or operation." *Webster's Third New International Dictionary* at 640; *accord Black's Law Dictionary* at 460; *Webster's New World Dictionary* at 389. The terms "management" and "direction," thus, commonly embrace the concept of superintendence. The General Assembly's use of these terms in R.C. 3719.141(G), accordingly, evidences a legislative intent to exempt peace officers operating under the supervision and guidance of the United States Department of Justice from the provisions set forth in R.C. 3719.141(A)-(F). *See generally Wachendorf v. Shaver*, 149 Ohio St. 231, 236-37, 78 N.E.2d 370, 374 (1948) ("it has been declared that the Legislature must be assumed or presumed to know the meaning of words, to have used the words of a statute advisedly and to have expressed legislative intent by the use of the words found in the statute"); *Watson v. Doolittle*, 10 Ohio App. 2d 143, 147, 226 N.E.2d 771, 774 (Williams County 1967) ("[i]t is presumed that the Legislature uses words and language in statutes that advisedly and intelligently express the intent of the Legislature").

Your first question addresses whether a peace officer may be considered operating under the management and direction of the United States Department of Justice in a particular case without being formally sworn in or commissioned as a federal agent or federal officer to investigate that particular case. It is apparent that the language of R.C. 3719.141(G) does not require explicitly that a peace officer be formally sworn in or commissioned as a federal agent or federal officer in order to be exempt from the provisions of R.C. 3719.141(A)-(F). Further, it does not appear from the phrase, "operating under the management and direction of the United States Department of Justice," that such a requirement was intended by the General Assembly. Rather, as determined above, that phrase was intended by the General Assembly to exempt peace officers operating under the supervision and guidance of the United States Department of Justice.

I note that it is factually possible for a peace officer to be operating under the supervision and guidance of the United States Department of Justice without being formally sworn in or commissioned as a federal agent or federal officer. *Compare* 21 U.S.C. §873(a)(6)(C) (United States Attorney General may "assist State and local governments in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels by...establishing cooperative investigative efforts to control diversion") *and* 21 U.S.C. §873(a)(7) (United States Attorney General may "enter into contractual agreements with State and local law enforcement agencies to provide for cooperative enforcement and regulatory activities under this Act") *with* 21 U.S.C. §878(a) (United States Attorney General may designate any officer or employee of any State or local law enforcement agency to perform various law enforcement functions). For example, under an agreement entered into pursuant to 21 U.S.C. §873(a)(7), a situation could arise where the United States Department of Justice organizes, coordinates, and controls an investigation which utilizes the services of peace officers from a local law enforcement agency. Since the United States Department of Justice is coordinating and controlling that particular investigation, the peace officers of the local law enforcement agency would be under the superintendence of the United States Department of Justice, regardless of whether they had been formally sworn in or commissioned as federal agents or federal officers. It, thus, is evident from this example that the concept of superintendence encompasses a myriad of investigations not requiring a peace officer to be formally sworn in or commissioned as a federal agent or federal officer.

In light of the aforementioned, it is apparent that an interpretation of R.C. 3719.141(G) requiring a peace officer to be formally sworn in or commissioned as a federal agent or federal officer limits the application of the exemption through the imposition of a requirement which does not appear to have been intended by the General Assembly. Since the insertion of a requirement necessitating the formal swearing in or commissioning as a federal agent or federal officer limits the scope of the exemption intended by the General Assembly, I am of the opinion that the insertion of such a requirement into R.C. 3719.141(G) is inappropriate and, therefore, unwarranted. *See generally Columbus-Suburban Coach Lines v. Public Util. Comm.*, 20 Ohio St. 2d 125, 127, 254 N.E.2d 8, 9 (1969) (per curiam) ("[i]n determining legislative intent it is the duty of this court to give effect to the words used [in the statute], not to delete words used or to insert words not used"); *Wachendorf v. Shaver*, 149 Ohio St. at 237, 78 N.E.2d at 374 ("nothing may be read into a statute which is not within the manifest intention of the Legislature as gathered from the act itself"). I find, accordingly, that an interpretation of R.C. 3719.141(G) requiring a peace officer to be formally sworn in or commissioned as a federal agent or federal officer does not comport with the intent of the General Assembly as expressed through the language of R.C. 3719.141(G).

I note that this conclusion is supported by the syntactical structure of R.C. 3719.141(G). The phrase "of the United States" appears to modify only the terms "officers, agent, or employee" and does not modify the term "peace officer." Since the act of formally swearing in or commissioning a peace officer as a federal agent or federal officer brings the peace officer within the terms of the second phrase, "officer, agent, or employee of the United States," the unmodified term "peace officer" becomes redundant unless it also includes "peace officers" who have not been given the formal status of federal officers, agents, or employees. *See generally* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"); *East Ohio Gas Co. v. Public Util. Comm.*, 39 Ohio St. 3d 295, 299, 530 N.E.2d 875, 879 (1988) (it is a basic rule of statutory construction "that words in statutes should not be construed to be redundant, nor should any words be ignored"); *State ex rel. Avon Convalescent Center, Inc. v. Bates*, 45 Ohio St. 2d 53, 55-56, 341 N.E.2d 296, 298 (1976) (per curiam) (words are to be interpreted according to the proper grammatical effect of their arrangement within the statute). I find, therefore, that a peace officer may be considered operating under the management and direction of the United States Department of Justice in a particular case, even though he has not been formally sworn in or commissioned as a federal agent or federal officer to investigate that particular case.

I turn now to your second question which concerns the application of the exemption set out in R.C. 3719.141(G) to peace officers operating under the joint management and direction of the United States Department of Justice and their local law enforcement agency. As stated previously, pursuant to R.C. 3719.141(G), the provisions concerning the sale of controlled substances by peace officers in R.C. 3719.141(A)-(F) do not apply to any peace officer operating under the management and direction of the United States Department of Justice. The exemption set out in division (G) of R.C. 3719.141, however, is silent with respect to whether a peace officer must be operating under the *exclusive* management and direction of the United States Department of Justice in order to come within the exemption. Consequently, ambiguity or uncertainty exists as to whether the General Assembly intended the exemption of R.C. 3719.141(G) to apply to those peace officers operating under the joint management and direction of the United States Department of Justice and their local law enforcement agencies. *See generally Caldwell v. State*, 115 Ohio St. 458, 460, 154 N.E. 792, 792 (1926) ("[a]n ambiguity is defined as doubtfulness or uncertainty; language which is open to various interpretations or having a double meaning; language which is obscure or equivocal").

Pursuant to R.C. 1.49, it is legislatively recognized that certain basic considerations may be examined in determining the intention of the General Assembly when the language of a statute appears on its face to be ambiguous. These considerations include, *inter alia*, "[t]he object sought to be attained; [t]he circumstances under which the statute was enacted;...[t]he common law or former statutory provisions, including laws upon the same or similar subjects." R.C. 1.49. A resolution of your second question, therefore, requires an application of these

considerations to R.C. 3719.141 to determine whether the General Assembly intended to extend the exemption set forth in division (G) of R.C. 3719.141 to peace officers operating under the joint management and direction of the United States Department of Justice and their local law enforcement agencies.

In recent years there has been a recognizable increase in the illegal sale and use of controlled substances in the United States. See generally J. Macdonald & J. Kennedy, *Criminal Investigation of Drug Offenses*, 3-4 (1983); M. Seng & T. Frost, *Crime in the 1990's: A Federal Perspective*, 53 Fed. Probation 36 (Dec. 1989); *Drug Convictions Up Between 1980-86*, 24 Trial 100 (Sept. 1988); Comment, *Criminal Forfeiture: Attacking the Economic Dimension of Organized Narcotics Trafficking*, 32 Am. U.L. Rev. 227 (1982). The General Assembly, apparently cognizant of this increase, amended and enacted various sections of the Revised Code in an attempt to curb this increase in Ohio. See, e.g., Am. Sub. S.B. 258, 118th Gen. A. (1990) (eff. Aug. 22, 1990) (establishing the state coordinating council for the purpose of developing and administering a pilot alcohol and drug abuse grant program); Am. Sub. H.B. 215, 118th Gen. A. (1990) (eff. April 11, 1990) (expanding the definition of "organized criminal activity," set forth in R.C. 177.01(E)(1), to include any violation, combination of violations, or conspiracy to commit one or more violations of R.C. 2925.03, the drug trafficking law, so as to allow an organized crime task force to investigate such activity); 1985-1986 Ohio Laws, Part I, 164 (Am. S.B. 67, eff. Aug. 29, 1986) (requiring the imposition of a mandatory fine for felony drug trafficking offenses under R.C. 2925.03).

Included within the General Assembly's endeavor was the enactment of R.C. 3719.141. See Am. Sub. H.B. 215. As enacted,³ this section permits, under certain statutorily prescribed conditions, peace officers to sell controlled substances in the performance of their official duties. See R.C. 3719.14(B) ("[a] peace officer...may sell a controlled substance in the performance of his official duties only as provided in Section 3719.141 of the Revised Code" (emphasis added)). By expressly allowing such conduct on the part of peace officers, it is apparent that the General Assembly has determined that such conduct is beneficial to the citizens of Ohio in that "the purpose of such conduct is to ferret out the illegal drug trade, and bring to justice those engaged in it." *State v. Rowan*, 32 Ohio App. 2d 142, 144, 288 N.E.2d 829, 831 (Summit County 1972). In view of the foregoing, it appears that the circumstances of the enactment of R.C. 3719.141 included a perceived increase in the illegal sale and use of controlled substances; its enactment sought to curtail such illegal sales and use by granting to peace officers the authority to sell controlled substances.

However, while recognizing the need for this activity in law enforcement, it is apparent that the General Assembly also recognized that the limits of such authority must be carefully defined. See generally D. Carter, *Drug-Related Corruption of Police Officers: A Contemporary Typology*, 18 J. Crim. Justice 85 (1990) (indicating that inadequate organizational controls could lead to drug-related corruption by police officers). The provisions of R.C. 3719.141 set forth specific requirements which must exist before a peace officer may sell a controlled substance, thereby insuring that peace officers are acting in their official capacity when engaged in the sale of controlled substances. Prior to the enactment of R.C. 3719.141, there was no statute which specifically conferred upon peace officers the authority to sell controlled substances. Such authority was impliedly recognized, however, through the language of R.C. 3719.14, which sets forth those persons who are authorized to control and possess controlled substances. See *State v. Rowan*, 32 Ohio App. 2d at 143-44, 288 N.E.2d at 831; see also *State v. Hsie*, 36 Ohio App. 2d 99, 104, 303 N.E.2d 89, 94 (Union County 1973); Note, *Criminal Law-Entrapment-An End*, 6 Akron L. Rev. 255 (1973). Thus, the authority to

³ I note that subsequent to the enactment of R.C. 3719.141 in Am. Sub. H.B. 215, 118th Gen. A. (1990) (eff. April 11, 1990), the General Assembly amended it in Am. Sub. H.B. 588, 118th Gen. A. (1990) (eff. Oct. 31, 1990) and Am. Sub. S.B. 258, 118th Gen. A. (1990) (eff. Nov. 20, 1990). These amendments, however, do not affect the purpose of R.C. 3719.141 as enacted in Am. Sub. H.B. 215.

conduct such sales existed without any legislatively prescribed provisions governing its exercise. Hence, the enactment of R.C. 3719.141 indicates that the General Assembly sought to establish explicit statutory provisions governing the sale of controlled substances by peace officers.

I also note that the illegal sale of controlled substances is not restricted to the State of Ohio. See The National Governor's Ass'n & The National Criminal Justice Ass'n, *State Laws and Procedures Affecting Drug Trafficking Control: A National Overview*, 217 (1985) ("[d]rug trafficking...may be carried out across regional, national, and international boundaries"); cf. *State v. Dotson*, 35 Ohio App. 3d 135, 136, 520 N.E.2d 240, 243 (Hancock County 1987) ("drug traffic does not stop at town boundaries"). Therefore, the United States Department of Justice also has enhanced its efforts to eradicate the illegal trafficking of controlled substances. See generally 21 U.S.C. §873(a); 21 U.S.C. §878; The National Governor's Ass'n & The National Criminal Justice Ass'n, *State Laws and Procedures Affecting Drug Trafficking Control: A National Overview* at 217-43. As a result, there is an increased effort on the part of the United States Department of Justice and the local law enforcement agencies of Ohio to work together to suppress the illegal sale of controlled substances. Apparently, recognizing this increased participation on the part of the United States Department of Justice in the enforcement of the controlled substances law, the General Assembly has, through R.C. 3719.141(G), specifically exempted federal officers, agents, and employees and those peace officers operating under the management and direction of the United States Department of Justice from the requirements which must be met before a peace officer may sell a controlled substance in Ohio. Since the General Assembly, however, was concerned with ensuring some administrative control over the sale of controlled substances by these peace officers, it required compliance with the federal statutes and regulations by such peace officers. R.C. 3719.141(G).

It, thus, is clear from a review of the objective sought to be attained, the circumstances under which the statute was enacted, and the former statutory provisions, that the General Assembly intended to set forth specific statutory requirements governing the sale of controlled substances by peace officers, and to exempt those peace officers operating under the management and direction of the United States Department of Justice, so long as their sales are made in accordance with federal statutes and regulations. Consequently, it does not appear the General Assembly intended to extend the exception set forth in R.C. 3719.141(G) only to peace officers operating under the exclusive management and direction of the United States Department of Justice. Rather, considering the scope of the illegal trafficking of controlled substances and the increased cooperation among federal and state law enforcement agencies, it reasonably can be concluded that the General Assembly intended the exemption to apply to those peace officers operating under the joint management and direction of the United States Department of Justice and their local law enforcement agency, provided such peace officers sell controlled substances in accordance with federal statutes and regulations.

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

1. For purposes of R.C. 3719.141(G), a peace officer, as defined by R.C. 3719.141(H), may be considered operating under the management and direction of the United States Department of Justice in a particular case, even though he has not been formally sworn in or commissioned as a federal agent or federal officer to investigate that particular case.
2. The exemption set forth in R.C. 3719.141(G) may apply to a peace officer, as defined by R.C. 3719.141(F), operating under the joint management and direction of the United States Department of Justice and his local law enforcement agency, provided such peace officer sells controlled substances in accordance with federal statutes and regulations.