

OPINION NO. 89-082**Syllabus:**

A regional planning commission that provides engineering services in conjunction with the planning duties and responsibilities that are conferred upon the commission by R.C. 713.21 and R.C. 713.23 is not required to obtain from the State Board of Registration for Professional Engineers and Surveyors a certificate of authorization pursuant to R.C. 4733.16.

To: James F. McDonough, P.E., Chairman, State Board of Registration for Professional Engineers and Surveyors
By: Anthony J. Celebrezze, Jr., Attorney General, October 16, 1989

You have requested my opinion regarding the application of the certificate of authorization provisions of R.C. 4733.16 to a regional planning commission that performs or offers to perform engineering services in conjunction with its planning services. Your letter states as follows:

The [State Board of Registration for Professional Engineers and Surveyors] is charged under the provisions of R.C. Chapter 4733. with the licensure and regulation of engineering and surveying activities in the State of Ohio. Where an organization, as defined by R.C. 4733.16, engages in engineering activities, such organization is subject to regulation by the board under the provisions set out in that section of the code. R.C. 4733.16 requires that any "firm, partnership, association, or corporation" which provides engineering or surveying services (or offers to provide such services) shall obtain a "certificate of authorization" prior to engaging in such activities.

The planning commissions of municipalities of this state are authorized under the provisions of R.C. 307.15 and R.C. 713.21 to form regional planning commissions. The Northeast Ohio Area-wide Coordinating Agency (NOACA) is a regional planning commission, and it provides planning services, including services involving engineering activities, to municipalities and other governmental bodies which are members of the agency. Its staff includes licensed Ohio engineers, but NOACA has no certificate of authorization from the state board.

Thus, you wish to know whether a regional planning commission, to the extent that it provides engineering services in the manner just described, must comply with the certificate of authorization requirements set forth in R.C. 4733.16.

In resolving your question I find it helpful to examine, *inter alia*, the general nature and character of a regional planning commission, and the specific activities and functions a regional planning commission is authorized to undertake. The General Assembly has enacted specific statutory provisions addressed to the formation and organization of regional planning commissions, and the particular activities and projects such commissions may pursue. The pertinent statutes in that regard are R.C. 713.21 and R.C. 713.23. R.C. 713.21 states that the planning commission of any municipal corporation or group of municipal corporations, any board of township trustees, and the board of county commissioners of any county in which such municipal corporation or group of municipal corporations is located or of any adjoining county may cooperate in the creation of a regional planning commission, which is to encompass any region as agreed upon by such planning commissions and boards, exclusive, however, of any territory within the limits of a municipal corporation that does not have a planning commission. *See generally* R.C. 713.01-15 (providing for the establishment and operation of city and village planning commissions). Thereafter, school districts, special districts, authorities, and any other units of local government may participate in such regional planning commission, upon such terms as may be agreed upon by the constituent planning commissions and boards. R.C. 713.21. *See* 1964 Op. Att'y Gen. No. 1207, p. 2-259, at 2-261 and 2-262 ("a regional planning commission is established as a semi-autonomous entity having an existence apart and in a sense independent of the several subdivisions which joined in its creation"); 1961 Op. Att'y Gen. No. 2383, p.

mandate of R.C. 4733.02 and administering and enforcing the remaining provisions of R.C. Chapter 4733 that pertain thereto. *See also* R.C. 4733.22 (enumerating several different prohibitions that apply to the practice of the profession of engineering or surveying); R.C. 4733.99 (whoever violates R.C. 4733.22 shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than ninety days, or both). An individual who wishes to practice engineering or surveying must first apply to the Board to be registered as an engineer or surveyor, R.C. 4733.12, and thereafter appear before the Board to take an examination that will test the applicant's knowledge of the fundamentals of engineering or surveying, R.C. 4733.13. R.C. 4733.11 describes the educational and practical experience requirements that must be satisfied by an applicant for registration as an engineer or surveyor. An individual who possesses the qualifications delineated in R.C. 4733.11, and who successfully passes the examination prescribed by R.C. 4733.13, is, upon payment of the registration fee, entitled to receive from the Board a certificate of registration permitting such person, as the case may be, to practice "professional engineering" or "professional surveying," R.C. 4733.14. *See* R.C. 4733.01(B) and (D) (describing respectively those activities that are included within "[t]he practice of engineering" and the "[p]ractice of surveying," as those terms are used in R.C. 4733.01-.23).

R.C. 4733.16, which is the focus of your request, also permits the rendition of professional engineering or professional surveying services in Ohio by or through a firm, partnership, association, or corporation that complies with the specific conditions and requirements set forth in subdivisions (A) through (F) thereof. Thus, R.C. 4733.16(B) states, in pertinent part, that no firm, partnership, association, or corporation shall engage in providing engineering or surveying services or hold itself out to the public as being engaged in providing engineering or surveying services unless the firm, partnership, association, or corporation files with the Board "all information required to be filed under [R.C. 4733.16]" and "otherwise complies with all requirements of [R.C. Chapter 4733]." The first such condition or requirement appears in R.C. 4733.16(A), which states that a firm, partnership, association, or corporation may provide professional engineering or professional surveying services in Ohio, "as long as the services are provided only through natural persons registered to provide those services in [Ohio]." R.C. 4733.16(D) and (E) also impose certain percentage ownership requirements and supervisory responsibilities with respect to such a firm, partnership, association, or corporation. Thus, R.C. 4733.16(D) states that no firm, partnership, association, or corporation shall provide or offer to provide engineering or surveying services in Ohio "unless more than fifty per cent of the partners, members, or shareholders and more than fifty per cent of the directors in the case of a corporation or professional association are professional engineers, professional surveyors, architects, or landscape architects, or a combination thereof, who are registered in this state," and "who own more than fifty per cent of the interests in the firm, partnership, association, or corporation." Each such firm, partnership, association, or corporation must also "designate one or more partners, managers, officers, or directors as being in responsible charge of the professional engineering or professional surveying activities and decisions, and those designated persons shall be registered in this state." R.C. 4733.16(E). Each such firm, partnership, association, or corporation shall also file annually with the Board the "name and address of each partner, manager, officer, director, member, or shareholder," and the "name and address of all persons designated as being in responsible charge of the professional engineering or professional surveying activities and decisions." *Id.*

Finally, a firm, partnership, association, or corporation that wishes to provide professional engineering or professional surveying services in Ohio must, pursuant to R.C. 4733.16(F), receive formal authorization therefor. R.C. 4733.16(F) first states that "[n]o corporation organized under [R.C. Chapter 1701 (general corporation law)] shall engage in providing engineering or surveying services in this state without obtaining a certificate of authorization" from the State Board of Registration for Professional Engineers and Surveyors. If all the pertinent requirements of R.C. Chapter 4733 have been satisfied, the Board "may issue a certificate of authorization to the corporation." *Id.* R.C. 4733.16(F) further states that the Board may, by rules promulgated in accordance with R.C. Chapter 119 (administrative procedure), "require any firm, partnership, or association not organized under [R.C. Chapter 1701] that provides engineering or surveying services to obtain a certificate of authorization," and if the board so requires, "no firm,

Although the word, "firm," technically and legally does not include corporations, under common usage such term is used to refer to corporations. *Here the General Assembly used the word, "firm," in conjunction with what is ordinarily considered the usual other types of business entities, that is, copartnerships and associations,* which leads to the conclusion that such word might well have been used in its broad general sense to include corporations. To what the General Assembly intended the word, "firm," to relate is both uncertain and ambiguous so far as the section itself is concerned. (Emphasis added.)

171 Ohio St. at 195, 168 N.E.2d at 401-02.

Thus, the terms, "firm," "partnership," "association," and "corporation," as used in R.C. 4733.16, are intended to refer to what are commonly and ordinarily understood as business entities. The term, "[b]usiness," in the common and ordinary sense, has been defined as any "[e]mployment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood." *Black's Law Dictionary* 179 (5th ed. 1979). Each of those four terms should, therefore, be defined in a manner that embodies the foregoing concepts as are commonly conveyed by the terms, "business," and "business entity." In that regard, a "[b]usiness corporation" and "[p]artnership" have been defined respectively as follows:

Business corporation. One formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational, and other like organizations, which are sometimes grouped in the statutory law of a state under the general designation of "corporations not for profit."

....

Partnership. A voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit. A synallagmatic and commutative contract made between two or more persons for the mutual participation in the profits which may accrue from property, credit, skill, or industry, furnished in determined proportions by the parties. (Citations omitted.)

Black's Law Dictionary at 308 and 1009. Similarly, the following entry appears for the term, "[f]irm": "Business entity or enterprise. Unincorporated business. Partnership of two or more persons." *Id.* at 571. Finally, an "[a]ssociation" has been defined as an "unincorporated society; a body of persons united and acting together without a charter, but upon the methods and forms used by incorporated bodies for the prosecution of some common enterprise," and an "[u]nincorporated association" as a "confederation of individuals organized for a specific purpose which may or may not be profit making but which is not chartered as a corporation." *Id.* at 111-12. *Cf., e.g.,* R.C. 1701.01(A) (as used in the general corporation law, "[c]orporation" or "domestic corporation" means a corporation for profit formed under the laws of Ohio); R.C. 1775.05(A) (a partnership is an association of two or more persons to carry on as co-owners a business for profit); R.C. 1783.01 (providing for the formation of a "limited partnership association" for the purpose of conducting any business or occupation within the United States or elsewhere); *Thomas-Bonner Co. v. Hooven, Owens & Rentschler Co.*, 284 F. 377, 380 (S.D. Ohio 1920) ("[t]he word 'firm' is synonymous with 'partnership'"); *McMillen v. Industrial Commission of Ohio*, 13 Ohio App. 310, 312 (Columbiana County 1920) ("[t]he word 'firm' is used in its ordinary sense as designating a partnership, or an association of persons acting together for a particular purpose and not as a person or corporation").

As is evident from the preceding discussion, the terms, "firm," "partnership," and "corporation," are ordinarily understood as designating particular types of

business enterprises or organizations that are engaged in commercial activities, and owned, operated, managed, or controlled by individual persons for the principal purpose of realizing financial gain or profit. From the context in which they appear in R.C. 4733.16, it is clear that such terms, as well as the term, "association," are intended to denote just such enterprises or undertakings. See *Myers v. Seaberger*, 45 Ohio St. 232, 236, 12 N.E. 796, 798 (1887) ("it is a settled rule of construction that, in accordance with the maxim *noscitur a sociis*, the meaning of a word may be ascertained by reference to the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense"); *State v. Tarrant*, 83 Ohio App. 199, 201, 80 N.E.2d 509, 510 (Franklin County 1948) ("[w]here a term is used in a statute it is a rule of construction that the court will give to it that meaning which is consistent with the entire context of the statute"). R.C. 4733.16(C), for example, expressly states that a corporation may be organized under R.C. Chapter 1701 or a professional association may be organized under R.C. Chapter 1785 for the purpose of providing, *inter alia*, professional engineering or surveying services. R.C. 4733.16(D) also provides that more than fifty per cent of the partners, members, or shareholders of each such firm, partnership, association, or corporation must be registered professional engineers or surveyors "who own more than fifty per cent of the interests in the firm, partnership, association, or corporation." (Emphasis added.)

In light of the foregoing, it is fairly self-evident that a regional planning commission is not, for purposes of R.C. 4733.16, a firm, partnership, association, or corporation that provides professional engineering services. Rather, a regional planning commission is, pursuant to R.C. 713.21, a governmental entity comprised of the local units of government therein specified that elect to participate in the formation and functioning of such commission. Cf., e.g., R.C. 2744.01(F) (as used in R.C. Chapter 2744 (political subdivision tort liability), "[p]olitical subdivision" includes, *inter alia*, a regional planning commission created pursuant to R.C. 713.21). The fundamental purpose of a regional planning commission is to formulate "studies, maps, plans, recommendations and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the region," and "which affect the development and welfare of the region" that is served by such commission. R.C. 713.23(A). Such purpose is, without question, public in its character and scope, see, e.g., *State ex rel. McClure v. Hagerman*, 155 Ohio St. 320, 325, 98 N.E.2d 835, 838 (1951) ("[g]enerally, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents"), and clearly is not undertaken with a view to financial gain or profit on the part of either the regional planning commission itself, or any of the commission's individual constituent members. That a regional planning commission may, through the engineers it is empowered to employ or hire, see R.C. 713.21, provide professional engineering services that, within the private sector, may be provided through a firm, partnership, association, or corporation does not thereby transform a regional planning commission into one of the latter entities.

Thus, a regional planning commission that provides engineering services in conjunction with the planning responsibilities conferred upon it by R.C. 713.21 and R.C. 713.23 is not, for purposes of R.C. 4733.16, a "firm," "partnership," "association," or "corporation." I conclude, therefore, that such a regional planning commission is not required to obtain a certificate of authorization pursuant to the terms of R.C. 4733.16.

This conclusion, furthermore, comports with, and gives effect to, the unmistakable intent of the General Assembly, as conveyed by R.C. 713.21, regarding the performance of engineering services by or on behalf of a regional planning commission. In R.C. 1.47 the General Assembly has set forth several presumptions that apply with respect to the enactment of individual statutes. R.C. 1.47 states that, in its enactment of a statute, the General Assembly is presumed to have intended the entire statute to be effective, R.C. 1.47(B), a result that is just and reasonable, R.C. 1.47(C), and a result that is feasible of execution, R.C. 1.47(D). As I have already noted, R.C. 713.21 states explicitly that a regional planning commission may employ engineers, from which one may reasonably infer that the General Assembly intends such engineers to provide engineering services on behalf of either the regional planning commission itself, or any of the individual local governmental units that are members of the commission and for whom the

commission provides planning services. *See, e.g.*, R.C. 713.21 (a regional planning commission may make agreements with other agencies, public or private, for the temporary transfer or joint use of staff employees, and may contract for professional or consultant services for or from other governmental and private agencies and persons); R.C. 713.23(B)(4) (the duties of a regional planning commission include contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils). Requiring a regional planning commission to comply with the terms of R.C. 4733.16 as a consequence of providing those engineering services, however, would inevitably frustrate that legislative intent and render that portion of R.C. 713.21 ineffective, insofar as a regional planning commission is, as a practical matter, unable to satisfy the specific conditions enumerated in R.C. 4733.16(D) and (E) for the issuance of a certificate of authorization. It follows, therefore, that R.C. 4733.16 should not be interpreted as applying to a regional planning commission when to do so would render void the power conferred upon a regional planning commission by R.C. 713.21 to hire and employ engineers and, in turn, provide engineering services in conjunction with its overall planning activities. *See generally Fifth Third Union Trust Co. v. Peck*, 161 Ohio St. 169, 174, 118 N.E.2d 398, 401 (1954) (in interpreting a statute and ascribing to it what appears to be the underlying legislative intent, the statute "should be given a fair and reasonable construction in conformity to its general object, in order to effectuate such object, and should not be given such an interpretation as would thwart such purpose," and a construction that leads to absurd consequences "will be deemed not intended, and language will be restricted accordingly").

It is, therefore, my opinion, and you are advised that a regional planning commission that provides engineering services in conjunction with the planning duties and responsibilities that are conferred upon the commission by R.C. 713.21 and R.C. 713.23 is not required to obtain from the State Board of Registration for Professional Engineers and Surveyors a certificate of authorization pursuant to R.C. 4733.16.