

OPINION NO. 87-072**Syllabus:**

1. Pursuant to R.C. 311.37(B), a transient vendor is required to refile a bond with the county sheriff each time he re-enters a county to conduct business. (1987 Op. Att'y Gen. No. 87-036, overruled in part.)
2. Pursuant to R.C. 311.37(D), a transient vendor is required to file an additional bond in each county in which he subsequently intends to do business. (1987 Op. Att'y Gen. No. 87-036, overruled in part.)

To: Craig S. Albert, Geauga County Prosecuting Attorney, Chardon, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 15, 1987

I have before me your request for my opinion regarding the following matter:

Do the amendments to R.C. 311.37, contained in Am. Sub. H.B. No. 153, change the conclusions reached in 1987 Op. Att'y Gen. No. 87-036 with regard to bonds required of transient vendors?

As I discussed in 1987 Op. Att'y Gen. No. 87-036, R.C. 311.37 provides for the registration and bonding of transient vendors. See R.C. 311.37(A) and R.C. 5739.17 (defining the term "transient vendor").¹ R.C. 311.37(A) requires that each transient vendor file a registration form and surety bond which is equal in value to one half of the goods or services which he intends to provide. The amount of the bond need not exceed ten thousand dollars. The bond must be filed with the county sheriff within ten days before the transient vendor commences business in the county.

¹ R.C. 311.37(A) adopts the definition of the term "transient vendor" as provided for by R.C. 5739.17. Pursuant to R.C. 5739.17, a transient vendor is defined as:

[A]ny person who, in the usual course of his business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business in a county in which he has no fixed place of business, for the purpose of making retail sales of such property. A "temporary place of business" means any public or quasi-public place including, but not limited to, a hotel, rooming house, storeroom, building, part of a building, tent, vacant lot, railroad car, or motor vehicle that is temporarily occupied for the purpose of making retail sales of goods to the public. A place of business is not temporary if the same person conducted business at the place continuously for more than six months or occupied the premises as his permanent residence for more than six months.

As you note in your letter of request, the General Assembly recently amended the provisions of R.C. 311.37. See Am. Sub. H.B. 153 (eff. Oct. 20, 1987). While Am. Sub. H.B. 153 modified the language of R.C. 311.37 only slightly, the modifications do affect two of the conclusions which I reached in 1987 Op. No. 87-036.

In 1987 Op. No. 87-036, I addressed the issue whether a transient vendor who has previously filed a bond in a given county must furnish an additional bond at a later date if he intends to return to that county to do business. I noted that while R.C. 311.37 was silent as to this issue, R.C. 311.37(B) provided that "[t]he bond shall remain in effect for two years after the transient vendor last does business in this state." (Emphasis added.) Thus, I concluded that, as a general rule, the transient vendor need not refile a bond with the county sheriff each time he re-enters a county to conduct business because, pursuant to R.C. 311.37(B), the bond remained in effect for two years after the transient vendor ceased to do business anywhere within the state.

It is a well-established rule of statutory construction that every statutory amendment is presumed to have a substantive effect, Dennison v. Dennison, 165 Ohio St. 146, 134 N.E.2d 574 (1956); Lytle v. Baldinger, 84 Ohio St. 1, 95 N.E. 389 (1912), and such amendments may be properly considered in construing a statute, State v. Schmuck, 77 Ohio St. 438, 83 N.E. 797 (1908); Heck v. State, 44 Ohio St. 536, 9 N.E. 305 (1886). The language upon which I based my determination in 1987 Op. No. 87-036 was amended by Am. Sub. H.B. 153. The final sentence of R.C. 311.37(B), as amended, provides that "[t]he bond shall remain in effect for two years after the transient vendor last does business in that county." The amendment of this particular language demonstrates that the General Assembly intended to change the result reached in 1987 Op. No. 87-036. Such a change would be consistent with the requirement in R.C. 311.37(C) that the bond must be filed "within ten days before doing business as a transient vendor anywhere in that county." Thus, I must conclude that a transient vendor is required to refile a bond with the county sheriff each time he re-enters a county to conduct business.

1987 Op. No. 87-036 also addressed a similar issue: whether a transient vendor who has furnished a bond in one county must file another bond in each county in which he intends to commence doing business. While again I noted that R.C. 311.37 did not expressly provide for the resolution of this issue, R.C. 311.37(D) at that time provided that "the amount [of the bond] may be used to compensate "any person who suffers loss or damage...as a result of the negligent or intentionally tortious acts of the transient vendor in the conduct of business in this state." (Emphasis added.) Thus, I concluded that the legislature did not intend that a transient vendor should be required to file a new bond in each county in which he intends to commence doing business so long as he had previously furnished a bond in a county of this state. Again, however, the language of R.C. 311.37(D) upon which I based my conclusion in 1987 Op. No. 87-036 was amended by Am. Sub. H.B. 153. The relevant portion of R.C. 311.37(D), as amended, provides:

The bond filed by any transient vendor pursuant to this section shall be given to the attorney general by the county sheriff within ten working days after a

transient vendor ceases to do business in that county, and shall be in favor of the state for the benefit of any person who suffers loss or damage as a result of the purchase of goods from the transient vendor or as the result of the negligent or intentionally tortious acts of the transient vendor in the conduct of business in the county. (Emphasis added.)

Thus, in light of the presumption that every amendment of a statute is made to effect a substantive purpose, I must conclude that pursuant to R.C. 311.37(D), a transient vendor is required to file a new bond in each county in which he intends to commence doing business even though he has previously furnished a bond in another county of this state.

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

1. Pursuant to R.C. 311.37(B), a transient vendor is required to refile a bond with the county sheriff each time he re-enters a county to conduct business. (1987 Op. Att'y Gen. No. 87-036, overruled in part.)
2. Pursuant to R.C. 311.37(D), a transient vendor is required to file an additional bond in each county in which he subsequently intends to do business. (1987 Op. Att'y Gen. No. 87-036, overruled in part.)