

**OPINION NO. 86-076****Syllabus:**

In administering R.C. 3781.10(E)(6), relative to the revocation or suspension of certification of a local building department, the Board of Building Standards may reasonably construe the phrase "person affected by such enforcement or approval of plans" as relating only to a person who is a recipient of enforcement action, or an applicant for plan approval, by a certified local building department, or who is, in some other manner, directly affected by the enforcement of laws or approval of plans by the department. The Board of Building Standards may reasonably decide that the Board of Building Appeals does not constitute such a person.

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**To:** Gerald O. Holland, Chairman, Board of Building Standards, Department of Industrial Relations, Columbus, Ohio  
**By:** Anthony J. Celebrezze, Jr., Attorney General, November 13, 1986

I have before me your request for an opinion concerning the revocation of certification of local building departments. R.C. 3781.10(E) authorizes the Board of Building Standards to "[c]ertify municipal, township, and county building departments to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections, pursuant to sections 3781.03 and 3791.04 of the Revised Code." R.C. 3781.10(E)(6) states:

Such certification may be revoked or suspended with respect to any or all of the building occupancies to which it relates on petition to the board of building standards by any person affected by such enforcement or approval of plans, or by the board on its own motion. Hearings shall be held and appeals permitted on any such proceedings for certification or for revocation or suspension of certification in the same manner as provided in section 3781.101 of the Revised Code for other proceedings of the board of building standards. (Emphasis added.)

See R.C. 3781.03 (certified local building departments shall enforce the provisions of R.C. Chapters 3781 and 3791 and regulations adopted pursuant thereto "relating to construction, arrangement, and the erection of all buildings or parts thereof"); R.C. 3791.04 (with certain exceptions, see R.C. 3781.06, a person must, prior to entering into a contract for, or beginning the construction, erection, or manufacture of, a building, submit the plans or drawings, specifications, and other data prepared therefor to the certified local building department for approval). Pursuant to R.C. 3781.10(E)(6), the certification of a local building department may be revoked or suspended "on petition to the board of building standards by any person affected by such enforcement or approval of plans, or by the board on its own motion." You have asked whether, in several particular factual situations, certain individuals or entities are "person[s] affected by such enforcement or approval of plans" who must be permitted to submit such petitions. Your specific questions are as follows:

1. Does the Ohio Board of Building Appeals constitute "a person affected by such enforcement or approval of plans" and have status to request revocation of a building department's certification pursuant to Section 3781.10(E)(6) of the Revised Code?
2. Does a person who has no direct involvement with a certified building department's enforcement or approval of plans have status to request revocation of a building department's certification pursuant to Section 3781.10(E)(6) of the Revised Code[?]

It is important to note, as an initial matter, that the submission of a petition to the Board of Building Standards pursuant to R.C. 3781.10(E)(6) does not, in itself, bring about the revocation or suspension of certification of a local building department. Rather, R.C. 3781.10(E)(6) requires: "Hearings shall be held...on any such proceedings...for revocation or suspension of certification in the same manner as provided in section 3781.101 of the Revised Code for other proceedings of the board of building standards." Suspension or revocation of a certification will, thus, not occur except pursuant to an adjudicatory hearing, with opportunity for appeal, as set forth in R.C. 3781.101. See In re Decertification of Eastlake, 66 Ohio St. 2d 363, 422 N.E.2d 598, cert. denied, 454 U.S. 1032 (1981); In re Cincinnati Certified Building Department, 10 Ohio App. 3d 178, 461 N.E.2d

11 (Franklin County 1983). See generally 5 Ohio Admin. Code 4101:2-1-51 and -52.<sup>1</sup>

<sup>1</sup> I note that 5 Ohio Admin. Code 4101:2-1-83 sets forth the following procedure for investigating written complaints submitted by persons affected by enforcement or approval of plans:

(A) The board, upon its own motion or upon written complaint of any person affected by enforcement or approval of plans, shall investigate the actions of the holder of a certificate if there is an allegation implying:

(1) The practice of fraud or deceit in obtaining the certificate; or

(2) A felony or crime involving moral turpitude; or

(3) Gross negligence, incompetency, or misconduct in performance of his duties;

(4) Failure to complete the continuing education requirements prior to expiration date of the certificate.

(B) When a complaint against a certificate holder has been investigated and substantiated by evidence:

(1) He shall be notified of the charges by certified mail, return receipt requested. He shall be informed that he has thirty days from the date of the mailing to request a hearing before the board and may be represented by counsel;

(2) The board shall schedule a hearing seven to fifteen days after receipt of the request, unless another date is mutually agreed upon by both parties. The board may continue or postpone the hearing upon application by the party or upon its own motion;

(3) An adjudication hearing shall be conducted pursuant to the provisions of sections 3781.10, 3781.101, and 119.09 of the Revised Code;

(4) Following the hearing, the board may either dismiss the complaint or issue an order revoking or suspending certification. Failure to request a hearing shall cause the board to issue an order revoking or suspending certification; and

(5) The party affected shall be sent a certified copy of the order and informed by certified mail, return receipt requested, that he may appeal the order within thirty days to the court of common pleas in Franklin county pursuant to sections 3781.10 and 3781.101 of the Revised Code. (Emphasis added.)

It is my understanding that the terms "holder of a certificate" and "certificate holder," as used in this rule, mean a person who is certified under R.C. 3781.10(E) as competent to exercise enforcement authority, to accept and approve plans and specifications, and to make inspections, and that this rule is not applicable to petitions requesting the revocation or suspension of certification of a building department. This interpretation is supported by the use of "he" and "his"

The Board of Building Standards is a creature of statute with such authority, express or implied, as it is granted by statute. See, e.g., 1982 Op. Att'y Gen. No. 82-048. See generally Incorporated Village of New Bremen v. Public Utilities Commission, 103 Ohio St. 23, 132 N.E. 162 (1921). Where the Board is given the authority to carry out a particular function but no statutory direction is given as to the manner in which the function is to be performed, the Board may perform the function in any reasonable manner. See, e.g., Op. No. 82-048. See generally Jewett v. Valley Ry. Co., 34 Ohio St. 601 (1878). The phrase "person affected by such enforcement or approval of plans" is not defined by statute for purposes of R.C. 3781.10.<sup>2</sup> The Board of Building Standards is, therefore, free to exercise its discretion in adopting any reasonable interpretation of that phrase. See generally R.C. 1.42; Wahle v. Department of Industrial Relations, 14 Ohio App. 3d 101, 470 N.E.2d 200 (Franklin County 1983).

I am not authorized to exercise on behalf of another officer or entity of the government discretion that has been bestowed by statute on that officer or entity. See generally 1985 Op. Att'y Gen. No. 85-007; 1984 Op. Att'y Gen. No. 84-098; 1984 Op. Att'y Gen. No. 84-067. Further, it is inappropriate for me to use the opinion-rendering function to make findings of fact or determinations as to the rights of particular individuals. See generally 1986 Op. Att'y Gen. No. 86-039; 1983 Op. Att'y Gen. No. 83-087; 1983 Op. Att'y Gen. No. 83-057. In light of those limitations upon my authority, I interpret your request as asking whether the Board of Building Standards may, in carrying out its duties under R.C. 3781.10(E)(6), construe the phrase "person affected by such enforcement or approval of plans" as relating only to persons who are directly involved with the enforcement of laws or approval of plans by a particular local building department. In addressing this question, I am considering whether the statutory interpretation proposed by the Board of Building Standards is reasonable. I am not considering whether other interpretations of the statutory language might also be

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throughout the rule, and by the reference in division (A)(4) to continuing education requirements. See R.C. 3781.10(E). See also note 2, infra.

<sup>2</sup> I note that the words "person affected" also appear in R.C. 3781.20(E), which provides that the certification of a municipal or county board of building appeals "may be revoked on petition to the board of building standards by any person affected by the local board of building appeals, or by the board of building standards on its own motion." Again, no statutory definition is provided. 5 Ohio Admin. Code 4101:2-1-77 sets forth a procedure to be followed when a petition is submitted under R.C. 3781.20(E), providing for investigation of various possible grounds for decertification and for a hearing "[w]hen a complaint against a local board has been investigated and found justified." See also note 1, supra.

reasonable.<sup>3</sup> See generally State ex rel. Atha v. Ganson, 18 Ohio L. Abs. 338, 342 (App. Champaign County 1934) ("any tribunal constituted by law to hear causes and make determination thereof has inherent power to determine its own jurisdiction").

The ordinary meaning of the word "affect," in a legal context, is: "[t]o act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things." Black's Law Dictionary 53 (5th ed. 1979). See generally R.C. 1.42. As used in R.C. 3781.10(E)(6) the word "affected" is part of the phrase "affected by such enforcement or approval of plans." It thus refers to a person who is acted upon or influenced by the enforcement authority or plan approval activities of a certified local building department. A person who is the subject of an enforcement order issued by a particular certified local building department, see R.C. 3781.031, or who submits plans for approval by such a department, is clearly a person who is affected by such enforcement or approval of plans. See In re Decertification of Eastlake (an entity that was denied a building permit has standing as a "person affected" under R.C. 3781.10(E)(6) to petition the Ohio Board of Building Standards to revoke the certification of the local building department). See generally Clermont National Bank v. Edwards, 27 Ohio App. 2d 91, 99, 273 N.E.2d 783, 788 (Franklin County 1970) (standing is acquired "by legislative enactment"). Other persons may be affected to varying degrees. See generally, e.g., Clermont National Bank v. Edwards, 27 Ohio App. 2d at 98, 273 N.E.2d at 787 (discussing an instance in which an individual was found not to have standing to bring an appeal under R.C. 119.12 and stating: "he was not in fact adversely affected. Only his feelings were offended").

I am aware of no authority discussing the kind or degree of effect that must be present to bring R.C. 3781.10(E)(6) into play, or requiring that the language of R.C. 3781.10(E)(6) be construed as permitting the submission of a petition by a person who is not directly involved with the building department whose actions are questioned. I conclude, therefore, that, in administering R.C. 3781.10(E)(6), the Board

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<sup>3</sup> See generally, e.g., Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 154 (1970) ("the trend is toward enlargement of the class of people who may protest administrative action. The whole drive for enlarging the category of aggrieved 'persons' is symptomatic of that trend"); Genoa Banking Company v. Mills, 67 Ohio St. 2d 106, 423 N.E.2d 161 (1981) (finding that any bank receiving notice of a branch bank application under R.C. Chapter 1111 is a "party adversely affected" under R.C. 119.12 for purposes of bringing an appeal of the approval of the application); General Motors Corp. v. McAvoy, 63 Ohio St. 2d 232, 238, 407 N.E.2d 527, 531 (1980) (considering R.C. 3745.07, which authorizes an appeal to the Environmental Board of Review by "any person who would be aggrieved or adversely affected" by certain types of actions by the Director of Environmental Protection, and stating that R.C. 3745.07 "allows an appeal by indirectly affected parties, such as governmental representatives, and public interest and environmental groups"); Clermont National Bank v. Edwards, 27 Ohio App. 2d 91, 273 N.E.2d 783 (Franklin County 1970).

of Building Standards may reasonably decide that the phrase "person affected by such enforcement or approval of plans" relates only to a person who is directly involved with a particular certified local building department. I note, however, that the apparent intent of R.C. 3781.10(E)(6) is that one who is affected as a result of action by a particular local building department should be able to bring to the attention of state officials respects in which the local building department is failing to adequately enforce and properly apply R.C. Chapters 3781 and 3791 and rules adopted thereunder. See generally In re Decertification of Eastlake. I conclude, therefore, that, in light of the language of R.C. 3781.10(E)(6), the concept of direct involvement that is mentioned in your request should be applied in terms of the effects of actions of the building department upon petitioners--that is, as including persons who are, in any manner, directly affected by actions of the department. See generally, e.g., Anderson v. Brown, 13 Ohio St. 2d 53, 233 N.E.2d 584 (1968) (syllabus, paragraph one) ("[a] person has no standing to attack the constitutionality of an ordinance unless he has a direct interest in the ordinance of such a nature that his rights will be adversely affected by its enforcement"); State ex rel. Lynch v. Rhodes, 176 Ohio St. 251, 199 N.E.2d 393 (1964). Under this interpretation, a person is directly involved with a certified local building department if the person is a recipient of enforcement action or an applicant for plan approval by the local building department, or if the person is, in some other manner, directly affected by the enforcement of laws or approval of plans by the department. See generally Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 153 (1970) ("[the question of standing] concerns...the question whether the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute...in question").

You have mentioned specifically a situation in which a resident of one city has requested decertification of the building department of a different city, arguing that the department improperly approved materials used in construction in that other city by an unrelated person. It appears reasonable for the Board to conclude that such an individual is not a "person affected by [the] enforcement or approval of plans" by the building department of the other city, where no allegation is made that there is any direct relationship between the petitioner and the department. I note, however, that the individual in question may be a "person affected by [the] enforcement or approval of plans" by the building department of his home city under R.C. 3781.10(E)(6), for purposes of submitting a petition thereunder, if he is dissatisfied with the manner in which that department enforces and applies the law, or administers a request for plan approval, with regard to a particular building he will be inhabiting or otherwise occupying. I note, further, that particular actions of a local building department that apply to such individual may be appealed under R.C. 119.09-.13, R.C. 3781.031, and R.C. 3781.19.

You have also mentioned a situation in which a former building official has complained that the building department for which he formerly worked is not properly staffed. It appears that the Board may reasonably conclude the individual in question is not a "person affected by [the] enforcement or approval of plans" by the building department, since there is no indication of direct involvement between the two. While the

individual appears to have a personal interest in operations of the building department which exceeds that of the ordinary citizen, it may be concluded such interest does not, in itself, result in his being affected by actions of the board within the meaning of R.C. 3781.10(E)(6), and that he is, therefore, not entitled to submit a petition under R.C. 3781.10(E)(6).

You have asked, in addition, whether the Ohio Board of Building Appeals constitutes a "person affected by such enforcement or approval of plans" for purposes of R.C. 3781.10(E)(6). Under the interpretation discussed above, it is reasonable to conclude that the Board of Building Appeals does not constitute such a "person affected." Pursuant to R.C. 3781.031 and R.C. 3781.19, the Ohio Board of Building Appeals, in certain circumstances, conducts hearings on orders issued by certified local building departments. It is, therefore, in some sense affected by actions of such a department. The Ohio Board of Building Appeals is not, however, directly involved with, or affected by, actions of such a department in the sense of being subject to enforcement activity or being the recipient of plan approval. I find, therefore, that it is reasonable to conclude that the Ohio Board of Building Appeals is not a "person affected by [the] enforcement or approval of plans" by such a department for purposes of R.C. 3781.10(E)(6). See generally In re Job Abolishment, 120 Ohio App. 385, 202 N.E.2d 634 (Franklin County 1963). There may, further, be some question as to whether a governmental agency such as the Ohio Board of Building Appeals is a "person" for purposes of R.C. 3781.10(E)(6). See generally, e.g., State ex rel. Williams v. Glander, 148 Ohio St. 188, 74 N.E.2d 82 (1947) (syllabus, paragraphs five and six) ("[u]nless the state is expressly named or referred to therein, it is not bound by the terms of a general statute"; "[n]either the word 'person,' 'taxpayer' nor 'corporation,' as used in [a particular statute] is meant to include the state of Ohio"); 1981 Op. Att'y Gen. No. 81-055 at 2-220 ("[t]he well-established rule in Ohio is that a public body is not a 'person' in the absence of a statutory definition to the contrary...unless the language, purpose, or context of a statute demonstrates that a broad interpretation of the word is intended").

While I have concluded that R.C. 3781.10(E)(6) may reasonably be read as including among persons who are statutorily authorized to submit petitions only persons who are directly involved with, or affected by, a particular building department, I note that R.C. 3781.10(E)(6) also states expressly that "certification may be revoked or suspended with respect to any or all of the building occupancies to which it relates...by the board on its own motion." If the Board of Building Standards should, by any means, become aware of a situation warranting a hearing on the revocation or suspension of certification under R.C. 3781.10(E)(6), the Board may institute such a hearing upon its own motion. See In re Cincinnati Certified Building Department.

It is, therefore, my opinion, and you are hereby advised, that, in administering R.C. 3781.10(E)(6), relative to the revocation or suspension of certification of a local building department, the Board of Building Standards may reasonably construe the phrase "person affected by such enforcement or approval of plans" as relating only to a person who is a

recipient of enforcement action, or an applicant for plan approval, by a certified local building department, or who is, in some other manner, directly affected by the enforcement of laws or approval of plans by the department. The Board of Building Standards may reasonably decide that the Board of Building Appeals does not constitute such a person.