

**OPINION NO. 70-172****Syllabus:**

1. A cooperative kindergarten in which all the instruction is provided by the parent-members of the cooperative is not subject to licensing under Chapter 5104 of the Ohio Revised Code.

2. The parent-members of a cooperative kindergarten may employ persons to assist them in working with the children, provided that said employees work under the supervision of a parent-member.

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**To: Robert B. Canary, Director, Dept. of Public Welfare, Columbus, Ohio**  
**By: Paul W. Brown, Attorney General, December 29, 1970**

Your request for my opinion reads as follows:

"A group of parents in one county are operating a cooperative kindergarten. All of the children attending the program are children whose parents as a group own and operate the center. It is the contention of group that a license is not required under Chapter 5104. of the Revised Code since a day care center is defined as a place in which child care is provided for children other than children of the owner or administrator. We would appreciate your interpretation of the law as it applies to cooperatives.

"1. Is a cooperativr center subject to licensing if all of the instruction is provided by members of the cooperative? That is, by parents of the children who attend the kindergarten.

"2. If the members of the cooperative employed one or more persons to assist in working with the children, would licensing be required?"

The questions as posed refer to the licensing requirements for the establishment of child day-care centers which are laid out in Chapter 5104 of the Ohio Revised Code. In resolving the issues presented we must have particular reference to Subsections (A), (B) and (G) of Section 5104.01, Revised Code, which read as follows:

"As used in Chapter 5104. of the Revised Code:

"(A) 'Child day-care' means administering to the needs of infants, pre-school children, and school-age children outside of school hours by persons other

than their parents for any part of the twenty-four hour day, for part or all of at least two consecutive weeks, but does not include the care of children in places of worship during religious services.

"(B) 'Child day-care center' means any place in which child day-care is provided for five or more infants, pre-school children, or school-age children outside of school hours in average daily attendance, other than the children of the owner or administrator of the center, with or without compensation.

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"(G) 'Owner' includes a person, firm, organization, corporation, or agency."

Section 5104.01 (G), supra, includes corporations and organizations among its listed categories. A cooperative of the kind in question here which involves joint ownership and control on the part of the organizers would fall into one of these two categories. Cooperatives often assume the corporate form. See United Grocers Limited v. U.S., 186 F. Supp. 724, 733.

The request letter makes no mention of the hours in which care is provided. However, a cooperative kindergarten of the kind described in the request letter clearly falls within the ambit of Section 5104.01 (A), supra, if we assume that the children involved are cared for outside of school hours. The issue which must be herein resolved is whether or not language in Section 5104.01 (B), supra, which excludes children of the owner or administrator from coverage under the act is dispositive as to the queries posed.

Here, we must determine whether or not the cooperative nature of the enterprise, necessitating as it does that the children involved will not always directly be under the control of their own parents is consistent with the exclusion provided for in Section 5104.01 (B), supra. Relevant to this determination is Opinion No. 70-116, Opinions of the Attorney General for 1970, which, in the fourth paragraph of the syllabus provides as follows:

"4. Baby-sitting services provided by some recreational centers such as bowling alleys and YWCA's for children while their parent or parents are present and using the facilities of the center, do not require licensing."

In regards to this syllabus, the following language is found in the body of the Opinion:

"In the case of baby-sitting services provided by recreational centers such as bowling alleys and YWCA's if it were established as fact that at least one of the parents was present at the facility at all times while the child was being cared for in the baby-sitting service at the same facility, I do not feel that the element of parental control would be sufficiently removed to constitute a care of the child by persons other than the parents to bring such services within the definition of 'child day-care' as provided in Section 5104.01, supra."

Clearly, a key point in resolving the question posed there, as well as the first question posed here, is the degree of parental control which the child or children in question are under. The stress made on at least one of the parents being present in the baby-sitting service being questioned in Opinion No. 70-116, supra, is equally pertinent here. In the request letter submitted to this office the following appears as explanatory information: "All of the children attending the program are children whose parents as a group own and operate the center." Implicit therein is the understanding that at all times the kindergarten is open, at least one of the cooperative parents who, in fact, are serving as joint administrators, is on the premises in a supervisory capacity. If indeed this presence of one of the parents is fact, we believe that the degree or sufficiency of parental control is not so diluted as to necessitate licensing of the kindergarten. This conclusion does not conflict with the first paragraph of the syllabus of Opinion No. 70-116, supra:

"1. A facility which is primarily intended to provide recreational opportunities, such as a pre-school program operated by a municipality falls within the scope of Chapter 5104 of the Revised Code."

The element of parental control and guidance present here was not part of the factual pattern of the situation in Opinion No. 70-116, supra. Additionally, there is no inconsistency with legislative intent evidenced by the conclusion reached here, in so much as the parental-control factor is included in the definitional prerequisites for inclusion within the ambit of the licensing scheme.

The answer to the second question has been suggested by the foregoing discussion. The mere presence of non-member employees employed by the cooperative would not necessitate licensing. However, if such employees are placed on a supervisory capacity and in fact are not working under the authority of a parent-member, the cooperative, the parental-control factor might become so diminished as to necessitate licensing of the cooperative. Clearly, then, the parent-members of the cooperative must remain the dominant figures in conducting the kindergarten and can utilize employees only to the extent that such utilization does not serve as an abnegation of their own primary responsibility.

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

1. A cooperative kindergarten in which all the instruction is provided by the parent-members of the cooperative is not subject to licensing under Chapter 5104 of the Ohio Revised Code.

2. The parent-members of a cooperative kindergarten may employ persons to assist them in working with the children, provided that said employees work under the supervision of a parent-member.