

November 19, 2010

Marsha P. Ryan, Administrator
Bureau of Workers' Compensation
30 W. Spring Street, L-29
Columbus, Ohio 43215-2256

SYLLABUS:

2010-029

The Ohio Department of Job and Family Services, in support of civil or criminal prosecutions arising out of investigations by the Bureau of Workers' Compensation, may provide certified copies of employer payroll records to the Bureau or the appropriate prosecuting authority and may allow a Department representative to testify regarding those records at trial.



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

November 19, 2010

OPINION NO. 2010-029

Marsha P. Ryan, Administrator
Bureau of Workers' Compensation
30 W. Spring Street, L-29
Columbus, Ohio 43215-2256

Dear Administrator Ryan:

This opinion discusses the ability of the Ohio Department of Job and Family Services (ODJFS) to cooperate in civil or criminal prosecutions arising out of investigations by the Bureau of Workers' Compensation (BWC). Specifically, you ask whether ODJFS records may be used as evidence in these prosecutions, either through ODJFS providing certified copies of its records to BWC or the appropriate prosecuting authority or by allowing an ODJFS official to testify regarding its records at trial. For the reasons that follow, I conclude this is permitted.

BWC investigates allegations of fraud and other illegalities relating to the workers' compensation system. R.C. 4121.13(F) states that the Administrator of BWC shall "[i]nvestigate all cases of fraud or other illegalities pertaining to the operation of the workers' compensation system and its several insurance funds." R.C. 4121.131 designates BWC's "special investigation department" as a "criminal justice agency," capable of "investigating reported violations of law relating to workers' compensation." R.C. 4121.14 authorizes the appointment of investigating agents. R.C. 4123.08 also authorizes BWC to conduct investigations, which may include taking depositions and issuing subpoenas. You indicate that if BWC suspects that fraud has been committed, it will refer the matter to the Ohio Attorney General's Office, a county prosecuting attorney, or another prosecuting authority with appropriate jurisdiction.

Among its many responsibilities, ODJFS oversees and administers Ohio's unemployment compensation system. *See* R.C. 4141.01-.99. Prior to 2000, these functions were performed by the Ohio Bureau of Employment Services (OBES). Pursuant to 1999-2000 Ohio Laws, Part II,

4045 (Am. Sub. H.B. 470, eff. July 1, 2000), the Ohio Department of Human Services was renamed ODJFS, OBES was abolished, and OBES's unemployment law responsibilities under R.C. Chapter 4141 were transferred to ODJFS. *See* Ohio Legislative Service Comm'n, Final Analysis, Am. Sub. H.B. 470, at pp. 1, 14-15 (as enacted by the General Assembly).

In order to facilitate the administration of Ohio's unemployment compensation system, R.C. Chapter 4141 imposes numerous obligations on employers. Among them, R.C. 4141.20(D) requires "every contributory employer" to "file a quarterly contribution and wage report" with ODJFS, with such report containing

the total and taxable remuneration paid to all employees during the quarter, the name and social security number of each individual employed during the calendar quarter, the total remuneration paid the individual, the number of weeks during the quarter for which the individual was paid remuneration, and any other information as required by section 1137 of the "Social Security Act."

See also R.C. 4141.20(E) (imposing similar requirements on "every employer liable for payments in lieu of contributions").

While ODJFS currently provides copies of these employer payroll records to BWC for investigative purposes, ODJFS will not certify these records for use at trial or allow an ODJFS representative to testify regarding these records. You have represented that ODJFS believes its current practice is mandated by R.C. 4141.21.

It is axiomatic that the "confidentiality of information kept by a public office is a matter of specific statute." 1990 Op. Att'y Gen. No. 90-007, at 2-30. The statutory baseline, Ohio's public records law, provides that most records maintained by a "public office" are available to the general public and are not confidential. *See* R.C. 149.43(A)(1), (B)(1). There are, however, "narrow classes" of information maintained by public offices that remain confidential and whose release and use are restricted or prohibited. 1990 Op. Att'y Gen. No. 90-102, at 2-452; *see also* R.C. 149.43(A)(1)(v) (containing the catch-all exclusion that a "public record" does not include "[r]ecords the release of which is prohibited by state or federal law").

Restrictions on the release of records by a public agency vary. Some statutes "specifically limit access [to records] by designating the persons entitled to access, thereby barring access to all other persons," while others may specify that use of certain information "is restricted to specific purposes." 1990 Op. Att'y Gen. No. 90-007, at 2-30 (citations omitted). Thus, the degree of confidentiality will vary "depending on ... the controlling statute." *Id.*; *see also id.* (syllabus, paragraph 1) (stating that when a "provision of state or federal law prohibits the release of information in a [government] record ... , the terms of that provision control to whom and under what circumstances the record may be released"). Similarly, "[t]he relationship of one public administrative agency with another public agency, including the balancing of the information needs of one such agency against the privacy requirements of another, is primarily a matter of legislative rather than judicial concern." *Ohio Civil Rights Comm'n v. Campbell*, 46 Ohio App. 2d 110, 113, 345 N.E.2d 438 (Franklin County 1975).

R.C. 4141.21 limits the use and disclosure of payroll information provided by employers to ODJFS. R.C. 4141.21 states, in relevant part:

Except as provided in section 4141.162 of the Revised Code, and *subject to section 4141.43 of the Revised Code*, the information maintained by the director of job and family services or furnished to the director by employers or employees pursuant to this chapter *is for the exclusive use and information of the department of job and family services in the discharge of its duties and shall not be open to the public or be used in any court in any action or proceeding pending therein, or be admissible in evidence in any action*, other than one arising under this chapter or section 5733.42 of the Revised Code. (Emphasis added.)

R.C. 4141.22(A) further states that “[n]o person shall disclose any information that was maintained by the director of job and family services or furnished to the director by employers or employees pursuant to this chapter, unless such disclosure is permitted under section 4141.21 of the Revised Code.”¹

By its terms, the confidentiality mandate in R.C. 4141.21 is subject to three carve-outs—R.C. 4141.162, R.C. 5733.42, and R.C. 4141.43. Of these, R.C. 4141.162 (dealing with section 1137 of the Social Security Act) and R.C. 5733.42 (tax credits for employee training costs) do not apply to the present discussion. This leaves only R.C. 4141.43. For our purposes, therefore, R.C. 4141.21 can be read as follows: “[S]ubject to section 4141.43 of the Revised Code, the information ... furnished to the director [of ODJFS] by employers ... pursuant to this chapter is for the exclusive use and information of [ODJFS] in the discharge of its duties *and shall not ... be used in any court in any action or proceeding pending therein, or be admissible in evidence in any action.*” (Emphasis added.)

When interpreting a statute, “[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42; *see also State ex rel. Pontillo v. Pub. Employees Ret. Sys. Bd.*, 98 Ohio St. 3d 500, 2003-Ohio-2120, 787 N.E.2d 643, at ¶41. Thus, the “subject to section 4141.43” language in R.C. 4141.21 applies not only to the

¹ R.C. 4141.21 is intended to “preserve the right of privacy of the individuals, be they employers or employees, who are required to furnish information” to ODJFS. *Ohio Civil Rights Comm’n v. Campbell*, 46 Ohio App. 2d 110, 113, 345 N.E.2d 438 (Franklin County 1975); *see also* 1990 Op. Att’y Gen. No. 90-007, at 2-30 (“Ohio statutes which make public assistance information confidential serve to protect the right of privacy possessed by the person who is the subject of the information”); David Hazelkorn, *In re Barzak: Access to Children Services Board Files*, 19 Akron L. Rev. 237, 239 (Fall 1985) (same). Confidentiality may also serve a secondary purpose by encouraging employers and employees to cooperate with ODJFS. *See* 1990 Op. Att’y Gen. No. 90-007, at 2-30, n.6; *Klaus v. Hilb, Rogal & Hamilton Co. of Ohio*, 437 F. Supp. 2d 706, 720 (S.D. Ohio 2006).

“exclusive use and information” clause but also to the “shall not ... be used in any court ... or be admissible in evidence in any action” clause. Further, “[i]t is a fundamental rule of statutory construction that statutes relating to the same subject matter should be construed together” and “in construing such statutes *in pari materia*, they should be harmonized so as to give full application to the statutes.” *State ex rel. Comm. for the Proposed Ordinance to Repeal Ordinance No. 146-02, West End Blight Designation v. Lakewood*, 100 Ohio St. 3d 252, 2003-Ohio-5771, 798 N.E.2d 362, at ¶20 (quoting *State ex rel. Thurn v. Cuyahoga County Bd. of Elections*, 72 Ohio St. 3d 289, 294, 649 N.E.2d 1205 (1995)). R.C. 4141.21 states its confidentiality mandate is “subject to” R.C. 4141.43. Thus, R.C. 4141.43 should be read not as an exception to R.C. 4141.21, but as an independent rule for the treatment of ODJFS records that, if applicable, takes precedence over R.C. 4141.21.

In turn, R.C. 4141.43(A) states, in relevant part:

The director of job and family services *may cooperate* with the industrial commission, *the bureau of workers’ compensation*, the United States internal revenue service, the United States employment service, and other similar departments and agencies, as determined by the director, *in the exchange or disclosure of information as to wages, employment, payrolls, unemployment, and other information*. (Emphasis added.)

R.C. 4141.43(A) authorizes the Director of ODJFS to “cooperate” with BWC “in the exchange or disclosure of information.” One of the common, everyday meanings of the term “disclose” is “to make known or public.” *Merriam-Webster’s Collegiate Dictionary* 356 (11th ed. 2005); *see also Black’s Law Dictionary* 477 (7th ed. 1999) (defining “disclosure” as the “act or process of making known something that was previously unknown”). R.C. 4141.43(A) also goes beyond simply permitting disclosure to BWC; it states that ODJFS may cooperate with BWC in the disclosure of information maintained by ODJFS. The distinction is important. The term “cooperate” is defined as “**1** : to act or work with another or others ... **2** : to associate with another or others for mutual benefit.” *Merriam-Webster’s Collegiate Dictionary* 275 (11th ed. 2005). Thus, R.C. 4141.43(A) recognizes that ODJFS not only may provide information to BWC for its internal use but also may, when appropriate and in the Director’s discretion, cooperate with BWC to facilitate the use of this information in BWC-related functions.² And in the absence of any qualifications or restrictions as to the type of cooperation ODJFS may

² By contrast, R.C. 4141.43(B) states that the Director of ODJFS may make records “available to the railroad retirement board and may furnish the board at the board’s expense such copies thereof as the board deems necessary for its purposes.” Without expressing any ultimate opinion regarding R.C. 4141.43(B), the “may make ... available” and “may furnish ... copies” language is more restrictive than the “may cooperate” in the “disclosure of information” language in R.C. 4141.43(A).

provide, the statute is broad enough to encompass both supplying certified copies of ODJFS records and permitting an ODJFS official to testify regarding those records at trial.

This interpretation of R.C. 4141.43 is bolstered by the administrative rules enacted by ODJFS. 10 Ohio Admin. Code 4141-43-02 states, in relevant part:

(A) *Confidential wage, claim, employer and/or employment and training information furnished to or maintained by the director of the department of job and family services* pursuant to Chapter 4141. of the Revised Code may be disclosed or exchanged with county departments of job and family services, state and county child support enforcement agencies, and governmental agencies administering employment and training and public assistance programs [for various purposes].

....

(B) Information referenced in paragraph (A) of this rule may also be disclosed or exchanged with *civil and criminal prosecuting authorities* for use in the discharge of their official public duties. (Emphasis added.)

The term “prosecuting authorities” includes the Attorney General and prosecuting attorneys at the county and local level. 10 Ohio Admin. Code 4141-43-02(C)(1)-(3).³

When analyzing the reach and effect of administrative rules, we are guided by a number of well-established principles.

“An Ohio Administrative Code section is a further arm, extension, or explanation of statutory intent implementing a statute passed by the General Assembly.” Thus, when reasonably possible, courts must harmonize, reconcile, and construe statutes and administrative regulations together. Moreover, a rule implemented as an extension of a statute has the full force and effect of a statute, unless it is unreasonable or conflicts with a statute covering the same subject matter.

³ Rule 4141-43-02(G) states that the terms “wage information” and “employer information” have the same meaning as provided in 10 Ohio Admin. Code 4141-43-01. In turn, “wage information” is defined as “the name, social security number, quarterly wages paid, and weeks worked by individual employees and the state employer identification number that is provided to the department of job and family services by employers and individuals and maintained in the wage record system,” and “[e]mployer information” is defined as “information concerning total and taxable wages, contribution rates, number of individuals in covered employment, and wages, addresses, employer identification numbers and other information on employers that is maintained in systems supporting administration of the unemployment compensation program under Chapter 4141. of the Revised Code.” 10 Ohio Admin. Code 4141-43-01(C)(1), (3).

“[W]here a potential conflict exists between an administrative rule and a statute, an administrative rule is not inconsistent with a statute unless the rule contravenes or is in derogation of some express provision of the statute.”

Washington County Home v. Ohio Dep’t of Health, 178 Ohio App. 3d 78, 2008-Ohio-4342, 896 N.E.2d 1011, at ¶37 (Washington County) (citations omitted). Administrative rules are also subject to the normal canons of statutory interpretation. *See, e.g., State ex rel. R. Bauer & Sons Roofing & Siding v. Industrial Comm’n of Ohio*, 84 Ohio St. 3d 62, 66, 701 N.E.2d 995 (1998).

Turning to the language of rule 4141-43-02, division (B) specifically authorizes the disclosure of confidential information to prosecuting authorities “for use in the discharge of their official public duties.” One of the common, everyday meanings of the term “prosecute” is “**3a** : to bring legal action against for redress or punishment of a crime or violation of law <prosecuted them for fraud> **b** : ... to institute and carry on a legal suit or prosecution.” *Merriam-Webster’s Collegiate Dictionary* 998 (11th ed. 2005); *see also id.* (defining “prosecuting attorney” as “an attorney who conducts proceedings in a court on behalf of the government”); *Black’s Law Dictionary* 1237 (7th ed. 1999) (the verb “prosecute” means, in part, “[t]o commence and carry out a legal action”). Thus, the “public duties” referenced in rule 4141-43-02(B) include conducting civil and criminal trials, and the phrase “for use in the discharge of their official public duties” would encompass introducing ODJFS records into evidence at trial. On its face, therefore, rule 4141-43-02(B) authorizes ODJFS records to be used in prosecutions arising from investigations initiated and conducted by BWC.

Of course, division (B) of rule 4141-43-02 must be read in conjunction with division (D)(1) of the rule, which states that confidential ODJFS records “shall not be used for any purpose not specifically authorized or permitted by state and federal law.” *See, e.g., State v. Dickerson*, 45 Ohio St. 3d 206, 209, 543 N.E.2d 1250 (1989) (“when asked to interpret a statute, a court should consider the statute in its entirety”). But this prohibition does not present an obstacle here. As discussed above, R.C. 4141.43(A) permits ODJFS to cooperate with BWC in the disclosure of employer information. “If reasonably possible, the statutes and administrative regulations of Ohio must be harmonized, reconciled, and construed together. They must be read as an interrelated body of law.” *State ex rel. Cuyahoga County Hosp. v. Bureau of Workers’ Compensation*, 27 Ohio St. 3d 25, 27, 500 N.E.2d 1370 (1986) (citations omitted); *see also Washington County Home*, 178 Ohio App. 3d 78, at ¶37 (“when reasonably possible, courts must harmonize, reconcile, and construe statutes and administrative regulations together” (citations omitted)). The interpretation that harmonizes R.C. 4141.43 and rule 4141-43-02, as opposed to creating a potential conflict, is that R.C. 4141.43(A) satisfies the “specifically authorized” requirement in division (D)(1) of rule 4141-43-02, thereby triggering division (B)’s provision

that confidential information may be “exchanged with civil and criminal prosecuting authorities for use” at trial.⁴

In addition to the plain language of both R.C. 4141.43(A) and rule 4141-43-02, my conclusion is supported by several other considerations. First, R.C. 4141.43(A) places no conditions on the exchange or disclosure of information, and there are no express limitations on BWC’s subsequent use of information initially provided to ODJFS. If the General Assembly had wanted to impose conditions or limitations, it easily could have included language that would have conveyed this intent. For example, R.C. 4141.162, which requires the Director of ODJFS to create an income and eligibility verification system, specifically states that the “[r]equirements in section 4141.21 of the Revised Code with respect to confidentiality of information ... shall apply to the redisclosure of information disclosed under this section.” R.C. 4141.162(E). Similarly, R.C. 1121.18 and R.C. 1315.122, which make confidential and privileged information obtained by the Superintendent of Financial Institutions through statutory examinations, contain the following provision: “No person, *including any person to whom the information is disclosed under the authority of this section*, shall disclose information leading to, arising from, or obtained in the course of an examination, except as specifically provided in this section.” R.C. 1121.18(A); R.C. 1315.122(A) (emphasis added); *see also* R.C. 4905.82(D) (the Public Utilities Commission cannot disclose confidential information to other government agencies unless (1) that agency enters into a confidentiality agreement promising not to disclose the information

⁴ Division (D)(1) does not specify whether the required authorization must come from a source other than rule 4141-43-02. One interpretation, therefore, is that division (B) of rule 4141-43-02—authorizing disclosure to “civil and criminal prosecuting authorities for use in the discharge of their official public duties”—satisfies the requirement in division (D)(1) that ODJFS records can only be used for a “purpose specifically authorized or permitted by state and federal law.” *See Lynch v. Gallia County Bd. of Comm’rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) (“a reviewing court must not construe a statute so as to supply words that are omitted”). Given the language of division (B), such an interpretation arguably would mean that ODJFS may provide certified records for or testify in *any* case brought by a prosecuting authority. This outcome, however, could be problematic. An “administrative rule may not add to or subtract from a legislative enactment. If it does, the rule clearly conflicts with the statute, and the rule is invalid.” *State ex rel. Am. Legion Post 25 v. Ohio Civil Rights Comm’n*, 117 Ohio St. 3d 441, 2008-Ohio-1261, 884 N.E.2d 589, at ¶14 (citations omitted). The conclusion that division (B) allows ODJFS records to be used in any case brought by a prosecuting authority arguably would conflict with R.C. 4141.21 and impermissibly expand the scope R.C. 4141.43. Obviously, an interpretation that renders 4141-43-02(B) unenforceable should be avoided.

Because R.C. 4141.43(A) satisfies the requirement in division (D)(1), we need not resolve the issue now. As such, this opinion does not address the use of ODJFS records in non-BWC-related prosecutions.

to any third party unless the third party also agrees to execute a confidentiality agreement and (2) the agency certifies that it is not required under any law to disclose the information).

It is a well-established principle of statutory construction that one should not recognize an unexpressed purpose in a statute when “it would not have been difficult to find language which would express that purpose.” *Lake Shore Elec. Ry. Co. v. Pub. Util. Comm’n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926); *see also Lynch v. Gallia County Bd. of Comm’rs*, 79 Ohio St. 3d 251, 254, 680 N.E.2d 1222 (1997) (“a reviewing court must not construe a statute so as to supply words that are omitted”). Accordingly, the fact that the General Assembly has not seen fit to limit the ways in which ODJFS may “cooperate” with BWC, or to limit how BWC may use information shared with it by ODJFS, supports the conclusion that, pursuant to R.C. 4141.43, such information may be used at trial in BWC-related prosecutions and ODJFS may facilitate such use either by providing certified copies of records containing that information or permitting an ODJFS official to testify at trial about that information.

This conclusion is also supported by the limited case law discussing the relationship between R.C. 4141.21 and R.C. 4141.43. The issue in *Ohio Civil Rights Comm’n v. Campbell*, *supra*, was the obligation of OBES (now ODJFS) to comply with a subpoena issued by the Ohio Civil Rights Commission. Concluding that certain information sought by the subpoena could not be disclosed pursuant to R.C. 4141.21, the court of appeals upheld the trial court’s decision quashing the subpoena. *Campbell*, 46 Ohio App. 2d at 114. Important to the present inquiry, the court noted as part of its analysis: “R.C. 4141.43 provides that certain information may be furnished to certain agencies of the federal government and other states, but it makes no provision for the furnishing of any such information to the Ohio civil rights commission.” *Id.* at 112. A reasonable inference is that *Campbell* might have reached the opposite conclusion were the Ohio Civil Rights Commission referenced in R.C. 4141.43 in the same way as BWC.

In *Findlay v. Coy*, 76 Ohio App. 3d 189, 601 N.E.2d 186 (Hancock County 1991), appellant challenged his criminal conviction under a municipal ordinance, arguing the trial court erroneously permitted the City of Findlay and OBES (now ODJFS) to use information supplied by appellant to OBES and erroneously allowed an OBES representative to testify at the criminal trial. The court of appeals concluded this information could be used in appellant’s criminal trial and upheld the conviction. The court ultimately based its ruling on the “discharge of its duties” language in R.C. 4141.21 and the fact that the prosecution was for falsification of an unemployment benefits application, not any statutory exception to R.C. 4141.21. *Id.* at 192-93. However, the court stated in dicta:

We also note in passing that our holding would appear to be consistent with the excepted sections of R.C. Chapter 4141 set forth at the beginning of R.C. 4141.21 which clearly provide for the furnishing of OBES information to numerous other governmental agencies for a variety of unrelated “enforcement” actions.

Id. at 193 n.2. Prosecutions arising from BWC investigations qualify as enforcement actions unrelated to the core activities of ODJFS.

Finally, any doubts as to the scope of R.C. 4141.43(A) should be resolved in favor of allowing ODJFS records to be used in BWC-related prosecutions. First, it is well established that broad access to governmental records is favored; as such, provisions limiting access to government records should be interpreted strictly, with any doubt being resolved in favor of disclosure. *See, e.g.*, 1990 Op. Att’y Gen. No. 90-102, at 2-453; 1990 Op. Att’y Gen. No. 90-007, at 2-28. An expansive, rather than narrow, interpretation of R.C. 4141.43(A) is consistent with the treatment of governmental records in general.

In addition, courts have characterized R.C. 4141.21 as an “evidence exclusion provision.” *Daff v. Associated Bldg. Suppliers, Inc.*, No. 23396, 2007-Ohio-3238, at ¶66 (Summit County June 27, 2007); *Bruce v. Pavlik*, No. 70852, 1997 Ohio App. LEXIS 1510, at *7 (Cuyahoga County Apr. 17, 1997); *Pasanovic v. Amer. Gen. Fin., Inc.*, No. 92AP-651, 1992 Ohio App. LEXIS 4773, at *5 (Franklin County Sept. 17, 1992). Without foreclosing the possibility that there could be a distinction between an evidentiary privilege and an evidence exclusion provision, the two operate similarly in most instances. *Compare Springfield Local Sch. Dist. Bd. of Educ. v. Ohio Ass’n of Pub. Sch. Employees, Local 530*, 106 Ohio App. 3d 855, 868, 667 N.E.2d 458 (Summit County 1995) (a privilege is “the right to preserve the confidentiality of certain private communications” (citation omitted)), and *Black’s Law Dictionary* 1215 (7th ed. 1999) (defining “privilege,” in part, as “the right to prevent disclosure of certain information in court”), with *Daff*, 2007-Ohio-3238, at ¶66 (R.C. 4141.21 “is an evidence exclusion provision that excludes information the employer furnished to the ODJFS from admission into evidence.”).⁵ Evidentiary privileges “are to be construed narrowly because they impede the search for truth and contravene the principle that the public has a right to everyone’s evidence.” *State v. Perez*, 124 Ohio St. 3d 122, 2009-Ohio-6179, 920 N.E.2d 104, at ¶121 (citations omitted); *see also Giusti v. Akron Gen. Med. Ctr.*, 178 Ohio App. 3d 53, 2008-Ohio-4333, 896 N.E.2d 769, at ¶17 (Summit County) (“[p]rivileges, being in derogation of common law, are to be strictly construed”). Under this same reasoning, an interpretation of R.C. 4141.43(A) that limits the scope of the evidence exclusion provision in R.C. 4141.21 is preferable to one that expands the scope of R.C. 4141.21 and prevents the use of otherwise valid evidence at trial.

⁵ Privilege can also mean immunity from suit, as with the doctrine of absolute privilege. *See Black’s Law Dictionary* 1215 (7th ed. 1999). On this point, there is some confusion regarding R.C. 4141.21. For example, one court has concluded that R.C. 4141.21 does not confer either an absolute or qualified privilege. *Pasanovic v. Amer. Gen. Fin., Inc.*, No. 92AP-651, 1992 Ohio App. LEXIS 4773, at *4-5 (Franklin County Sept. 17, 1992). However, a number of courts have concluded that statements made during an unemployment compensation hearing are absolutely privileged. *See, e.g., Barilla v. Patella*, 144 Ohio App. 3d 524, 534, 760 N.E.2d 898 (Cuyahoga County 2001) (upholding summary judgment for former employer on employee’s defamation claim); *Horsley v. Wal-Mart, Inc.*, No. 97CA17, 1997 Ohio App. LEXIS 5988, at *9-10 (Lawrence County Dec. 23, 1997) (same). For purposes of the present opinion, though, we need not resolve this issue.

In sum, for the reasons set forth above, it is my opinion, and you are hereby advised that the Ohio Department of Job and Family Services, in support of civil or criminal prosecutions arising out of investigations by the Bureau of Workers' Compensation, may provide certified copies of employer payroll records to the Bureau or the appropriate prosecuting authority and may allow a Department representative to testify regarding those records at trial.

Respectfully,



RICHARD CORDRAY
Ohio Attorney General