

December 19, 2006

J. Nick Baird, M.D.  
Director of Health  
Ohio Department of Health  
246 North High Street  
Columbus, Ohio 43215

SYLLABUS:

2006-054

1. Pursuant to the test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus), the provisions contained in R.C. Chapter 3722, requiring the licensing of adult care facilities by the Ohio Department of Health, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation is bound by the provisions of R.C. Chapter 3722 and is not permitted, pursuant to its home-rule powers under Ohio Const. art. XVIII, § 3, to adopt police regulations that conflict with R.C. Chapter 3722 and rules adopted under that chapter.
2. A municipal corporation is not empowered, in the exercise of its police powers under Ohio Const. art. XVIII, § 3, to adopt municipal licensing requirements for adult care facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, or other regulations that alter, impair, or limit the operation of facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, because those licensing requirements or regulations would conflict with R.C. Chapter 3722 and rules adopted under that chapter.



STATE OF OHIO  
OFFICE OF THE ATTORNEY GENERAL  
JIM PETRO, ATTORNEY GENERAL

Opinions Section  
30 E. Broad St., 15<sup>th</sup> Floor  
Columbus, OH 43215-3400  
Telephone: (614) 752-6417  
Facsimile: (614) 466-0013  
www.ag.state.oh.us

December 19, 2006

OPINION NO. 2006-054

J. Nick Baird, M.D.  
Director of Health  
Ohio Department of Health  
246 North High Street  
Columbus, Ohio 43215

Dear Director Baird:

We have received your request for an opinion addressing conflicts between state and local regulation of adult care facilities (ACFs). You have asked if the statutory authority granted to the Ohio Department of Health (ODH) in R.C. Chapter 3722 to license and regulate ACFs preempts local regulation and prevents local jurisdictions from enacting ACF regulations that conflict with the requirements and criteria set forth in R.C. Chapter 3722 and 6 Ohio Admin. Code Chapter 3701-20. You are concerned particularly with regulations adopted by the City of Youngstown and the City of Columbus.<sup>1</sup>

On the basis of the analysis set forth in this opinion, we reach the following conclusions:

1. Pursuant to the test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus), the provisions contained in R.C. Chapter 3722, requiring the licensing of adult care facilities by the Ohio Department of Health, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation is bound by the provisions of R.C. Chapter 3722 and is not permitted, pursuant to its home-rule powers under Ohio Const. art. XVIII, § 3, to adopt police regulations that conflict with R.C. Chapter 3722 and rules adopted under that chapter.

---

<sup>1</sup> You have expressed concerns also about local regulation by statutory entities that have no home-rule powers. The authority of any such entity to regulate adult care facilities is governed by statute and depends upon the interpretation and application of R.C. Chapter 3722, 6 Ohio Admin. Code Chapter 3701-20, and the statutes governing the particular local entity. Issues governing particular statutory entities differ from those governing municipal corporations and are not addressed in this opinion.

2. A municipal corporation is not empowered, in the exercise of its police powers under Ohio Const. art. XVIII, § 3, to adopt municipal licensing requirements for adult care facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, or other regulations that alter, impair, or limit the operation of facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, because those licensing requirements or regulations would conflict with R.C. Chapter 3722 and rules adopted under that chapter.

### **Authority of the Ohio Department of Health to License and Regulate Adult Care Facilities**

In order to address your concerns, it is necessary to consider the provisions of state statute that govern the regulation of adult care facilities. R.C. Chapter 3722 establishes a comprehensive program for the licensing and regulation of adult care facilities<sup>2</sup> by the Ohio Department of Health. It provides that the Director of Health “shall inspect, license, and regulate adult care facilities,” R.C. 3722.04(A)(1), and gives the Public Health Council<sup>3</sup> the exclusive authority to adopt rules in accordance with R.C. Chapter 119 governing the licensing and operation of adult care facilities, R.C. 3722.10(A).<sup>4</sup> Licensing standards include requirements

---

<sup>2</sup> An “[a]dult care facility” is defined to include an adult family home or an adult group home and to exclude various other types of facilities, including hospice facilities, nursing homes, and residential facilities licensed or otherwise regulated by the Ohio Department of Mental Retardation and Developmental Disabilities. R.C. 3722.01(A)(9). An “[a]dult family home” is “a residence or facility that provides accommodations to three to five unrelated adults and supervision and personal care services to at least three of those adults.” R.C. 3722.01(A)(7). An “[a]dult group home” is “a residence or facility that provides accommodations to six to sixteen unrelated adults and provides supervision and personal care services to at least three of the unrelated adults.” R.C. 3722.01(A)(8); *see also* 6 Ohio Admin. Code 3701-20-01(D), (F), (G).

<sup>3</sup> The Public Health Council consists of seven members appointed by the Governor to serve for designated terms of office. R.C. 3701.33. The Public Health Council is part of the Department of Health and has various powers and duties prescribed by statute, including the power to adopt rules that are of general application throughout the state. R.C. 3701.02; R.C. 3701.34(A)(1).

<sup>4</sup> There is some ambiguity in the rulemaking language of R.C. 3722.10. That language states that “[t]he public health council shall have the exclusive authority to adopt and shall adopt rules in accordance with Chapter 119. of the Revised Code governing the licensing and operation of adult care facilities.” R.C. 3722.10(A). The language might be read as granting the Public Health Council “the exclusive authority” to adopt rules governing the licensing and operation of adult care facilities, and requiring the Council to adopt those rules in accordance with R.C. Chapter 119. Alternatively, the language might be read to provide that the Council “shall have

for building and fire safety, staff qualifications and training, health testing of staff and residents, dietary services, sanitation, and rights of residents. R.C. 3722.02; R.C. 3722.04-.041; R.C. 3722.10; R.C. 3722.12-.13; R.C. 3722.151; 6 Ohio Admin. Code Chapter 3701-20.

State law prohibits anyone from operating an adult care facility unless the facility is validly licensed by the Director of Health under R.C. 3722.04(A). R.C. 3722.16(A)(1); *see also* 6 Ohio Admin. Code 3701-20-02(A). It also prohibits the placement of any person in an adult care facility that is operating without a license. R.C. 3722.16(D)(1); *see also* 6 Ohio Admin. Code 3701-20-02(F). A licensee must comply with the terms of the license and with inspections made pursuant to statute. R.C. 3722.04. The Director has power to investigate and to enforce licensing requirements. R.C. 3722.16-.17. The Director is also authorized to impose civil penalties as provided by rule or to seek injunctive relief. R.C. 3722.05-.09; 6 Ohio Admin. Code 3701-20-26. Fines are established by statute for certain violations. R.C. 3722.99. The provisions of R.C. Chapter 3722 and the rules adopted under it thus apply to ACFs throughout the state, establishing a statewide licensing program administered by ODH.

Provisions addressing the regulation of adult care facilities by local political subdivisions appear in R.C. 3722.03, defining the extent to which a political subdivision may use its zoning power to regulate ACFs.<sup>5</sup> This statute establishes standards for compliance with local zoning

---

the exclusive authority to adopt [rules in accordance with Chapter 119. of the Revised Code] and shall adopt rules in accordance with Chapter 119. of the Revised Code,” thereby precluding rulemaking under R.C. Chapter 119 by another state entity (such as the Department of Mental Health), but leaving open the question whether rules might be adopted by a political subdivision under provisions other than R.C. Chapter 119. *Compare* R.C. 3733.02 (“[t]he public health council, subject to Chapter 119. of the Revised Code, shall adopt, and has the exclusive power to adopt, rules of uniform application throughout the state” governing manufactured home parks); 1981 Op. Att’y Gen. No. 81-097, at 2-367 (R.C. 3733.02 does not give the Public Health Council the exclusive power to make rules pertaining to house trailer parks, but only the exclusive power to make house trailer park rules that are of statewide application).

<sup>5</sup> The full text of R.C. 3722.03 is as follows:

(A) *Any person may operate an adult family home licensed as an adult care facility as a permitted use in any residential district or zone, including any single-family residential district or zone of any political subdivision. Such adult family homes may be required to comply with area, height, yard, and architectural compatibility requirements that are uniformly imposed upon all single-family residences within the district or zone.*

(B) *Any person may operate an adult group home licensed as an adult care facility as a permitted use in any multiple-family residential district or zone of any political subdivision, except that a political subdivision that has enacted a*

laws, providing that any person may operate an adult family home (licensed as an adult care facility) as a permitted use in any residential district or zone, subject to compliance with certain types of standards that are imposed upon all single-family residences within the district or zone, and that any person may operate an adult group home (licensed as an adult care facility) as a permitted use in any multiple-family residential district or zone, with limited exceptions. R.C. 3722.03(A), (B). The statute specifies that it “does not affect any right of a political subdivision to permit a person to operate an adult group home licensed under this chapter in a single-family residential district or zone under conditions established by the political subdivision.” R.C. 3722.03(C). The statute also permits certain limitations on the excessive concentration of adult family homes and adult group homes. R.C. 3722.03(D).

---

zoning ordinance or resolution establishing planned-unit development districts as defined in [R.C. 519.021] may exclude adult group homes from such districts, and a political subdivision that has enacted a zoning ordinance or resolution may regulate adult group homes in multiple-family residential districts or zones as a conditionally permitted use or special exception, in either case, under reasonable and specific standards and conditions set out in the zoning ordinance or resolution to:

(1) Require the architectural design and site layout of the home and the location, nature, and height of any walls, screens, and fences to be compatible with adjoining land uses and the residential character of the neighborhood;

(2) Require compliance with yard, parking, and sign regulation.

(C) This section does not affect any right of a political subdivision to permit a person to operate an adult group home licensed under this chapter in a single-family residential district or zone under conditions established by the political subdivision.

(D)(1) Notwithstanding divisions (A) and (B) of this section and except as otherwise provided in division (D)(2) of this section, *a political subdivision that has enacted a zoning ordinance or resolution may limit the excessive concentration of adult family homes and adult group homes required to be licensed as adult care facilities*

(2) *Nothing in division (D)(1) of this section authorizes a political subdivision to prevent or limit the continued existence and operation of adult family homes and adult group homes existing and operating on the effective date of this section and required to be licensed as adult care facilities. A political subdivision may consider the existence of such homes for the purpose of limiting the excessive concentration of adult family homes or adult group homes required to be licensed as adult care facilities that are not existing and operating on the effective date of this section.*

R.C. 3722.03 (emphasis added).

R.C. Chapter 3722 does not state expressly that no political subdivision may adopt a licensing requirement for adult care facilities. The provisions of R.C. Chapter 3722 do, however, indicate an intent that the licensing procedure administered by ODH be the only licensing procedure applicable to an ACF. For example, R.C. 3722.02 states that “[a] person seeking a license to operate an adult care facility shall submit to the director of health an application on a form prescribed by the director [of health]” and certain other information (pertaining to compliance with building standards, fire prevention and safety requirements, and water and sewer system standards), thereby indicating that this is the only license required to operate an adult care facility. *See also* 6 Ohio Admin. Code 3701-20-10 to 3701-20-12. The various provisions of R.C. Chapter 3722 consistently speak of the ODH licensing arrangement as a single licensing arrangement. *See, e.g.*, R.C. 3722.04(A)(1) (“[t]he director of health shall inspect, license, and regulate adult care facilities. . . . [T]he director shall issue a license to an adult care facility that meets the requirements of [R.C. 3722.02] and that the director determines to be in substantial compliance with the rules adopted by the public health council”); *cf.* R.C. 3721.09 (providing that state provisions governing the licensing of nursing homes and residential care facilities are not applicable in political subdivisions that are certified by the Director of Health as having and enforcing their own standards which are equal to or more stringent than the state provisions).

The provisions of R.C. 3722.03 addressing local regulation of ACFs indicate an intent on the part of the General Assembly that the operation of state-licensed ACFs be generally allowed throughout the state, subject to only the local regulation expressly permitted by that statute. *See generally* 1996 Op. Att’y Gen. No. 96-009 (township zoning authority is limited by R.C. 2151.418, which is similar to R.C. 3722.03); *cf.* 2000 Op. Att’y Gen. No. 2000-022, at 2-142 to 2-143 (state regulation of manufactured home parks pursuant to R.C. Chapter 3733 and rules of the Public Health Council does not preempt local zoning not in conflict with state statutes). Various other provisions of R.C. Chapter 3722 expressly include local participation in certain aspects of the licensing and inspection procedure, thereby indicating an intent that the state licensing system be the exclusive licensing system, with local participation included only as provided by state statute. *See, e.g.*, R.C. 3722.02; R.C. 3722.04; R.C. 3722.10(A)(11) (employees of a political subdivision may be authorized to enter an adult care facility “to inspect the facility” or for other purposes); R.C. 3722.15 (employees of certain local entities may be authorized to enter adult care facilities). The language of R.C. 3722.10 granting the Public Health Council “exclusive authority” to adopt rules governing the licensing and operation of adult care facilities provides additional support for the argument that ODH’s licensing system is the only licensing system permitted in Ohio. *See note 4, supra.*

R.C. Chapter 3722 thus establishes a statewide licensing and regulatory program for adult care facilities. To determine how this program operates within municipal corporations, it is necessary to consider the constitutional home-rule powers of municipal corporations and the manner in which those powers have been interpreted and applied by the Ohio Supreme Court.

**Constitutional Home-Rule Powers of a Municipal Corporation to Adopt ACF Licensing Requirements and Other Regulations as an Exercise of Police Power**

Section 3 of Article XVIII of the Ohio Constitution states:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Ohio Const. art. XVIII, § 3. Pursuant to this home-rule provision, a city or village may provide for its own government, and may also adopt and enforce regulations dealing with police, sanitary, or similar matters so long as the regulations are not in conflict with general laws. *See* 2003 Op. Att’y Gen. No. 2003-011, at 2-82; *see also Neil House Hotel Co. v. City of Columbus*, 144 Ohio St. 248, 251, 58 N.E.2d 665 (1944) (when municipal regulations “conflict with general laws relating to affairs of statewide interest, the general laws are paramount”); *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) (syllabus, paragraph one) (“[m]unicipalities in Ohio are authorized to adopt local police, sanitary and other similar regulations by virtue of Section 3, Article XVIII, of the Ohio Constitution, and derive no authority from, and are subject to no limitations of, the General Assembly, except that such ordinances shall not be in conflict with general laws”).<sup>6</sup>

A statutory provision is considered a valid exercise of the state’s police powers if it bears a real and substantial relationship to the public health, safety, or general welfare and is not unreasonable or arbitrary. *Bd. of County Comm’rs v. Village of Marblehead*, 86 Ohio St. 3d 43, 44-46, 711 N.E.2d 663 (1999); *City of Canton v. Whitman*, 44 Ohio St. 2d 62, 68, 337 N.E.2d 766 (1975). The adoption of a licensing requirement for purposes of establishing uniform health and safety standards has been recognized as an exercise of police power. *See, e.g., Clermont Envtl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 48-49, 442 N.E.2d 1278 (1982) (statutes governing the issuance of hazardous waste facility installation and operation permits were enacted in the exercise of the general police power of the state); *State ex rel. McElroy v. City of Akron*, 173 Ohio St. 189, 193, 181 N.E.2d 26 (1962) (state licensing of watercraft constitutes a valid exercise of the police power). The Ohio Supreme Court has recognized that the power to license is part of the power to regulate and has concluded that “any municipal ordinance, which prohibits the doing of something without a municipal license to do it, is a police regulation

---

<sup>6</sup> In addition to providing home-rule powers pursuant to Ohio Const. art. XVIII, § 3, the Ohio Constitution authorizes a municipality to adopt a charter for its government and, subject to the provisions of § 3, to exercise its powers of local self-government under the charter. Ohio Const. art. XVIII, § 7. The existence of a municipal charter does not affect the portion of § 3 authorizing a municipality to adopt police regulations that do not conflict with general laws. Therefore, it is unnecessary for this opinion to include a separate discussion of chartered municipalities. *See* 2005 Op. Att’y Gen. No. 2005-005, at 2-51 to 2-53; 2003 Op. Att’y Gen. No. 2003-011, at 2-82, n.3.

within the meaning of Section 3 of Article XVIII of the Ohio Constitution.” *Auxter v. City of Toledo*, 173 Ohio St. 444, 446, 183 N.E.2d 920 (1962); *see also Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 244, 602 N.E.2d 1147 (1992).

The licensing or other regulation of adult care facilities provides protection for residents of adult care facilities and for the public in general and, therefore, is an appropriate subject for police regulation. *See generally State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 193; *Williams v. Scudder*, 102 Ohio St. 305, 131 N.E. 481 (1921) (syllabus, paragraphs one and two) (public health is one of the most vital subjects for the exercise of the police power of the state). In accordance with the provisions of Ohio Const. art. XVIII, § 3, however, a municipal corporation may exercise its police power in the adoption of licensing requirements or other regulations governing adult care facilities only to the extent that the licensing requirements or other regulations do not conflict with general laws of the state.

### **Test for Determining When a State Statute Is a General Law for Purposes of Home-Rule Analysis**

The Ohio Supreme Court established the following test for determining whether a statute is a general law for purposes of Ohio Const. art. XVIII, § 3:

To constitute a general law for purposes of home-rule analysis, a statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally.

*City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus); *accord American Financial Services Ass’n v. City of Cleveland*, 2006-Ohio-6043, ¶32. *See generally City of Dublin v. State*, 118 Ohio Misc. 2d 18, 2002-Ohio-2431, 769 N.E.2d 436, ¶223 (C.P. Franklin County) (“[t]he term ‘general law’ is a term of art that does not include every law that the General Assembly enacts”); 2003 Op. Att’y Gen. No. 2003-011, at 2-83; 2002 Op. Att’y Gen. No. 2002-036, at 2-229 n.4; *see also Village of Linndale v. State*, 85 Ohio St. 3d 52, 54, 706 N.E.2d 1227 (1999) (“[g]eneral laws are those enacted by the General Assembly to safeguard the peace, health, morals, and safety and to protect the property of the people of the state”).

Your questions pertain generally to the licensing and regulatory scheme established in R.C. Chapter 3722. Accordingly, to analyze the relevant issues, it is appropriate to consider R.C. Chapter 3722 as a whole. *See, e.g., City of Canton v. State* at ¶18 (finding it appropriate “to view statutory schemes in their entirety, rather than a single statute in isolation” in determining whether the statutes are general laws); *Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245; 2005 Op. Att’y Gen. No. 2005-005, at 2-47 n.9; 2003 Op. Att’y Gen. No. 2003-011, at 2-85.

**To Constitute a General Law for Purposes of Home-Rule Analysis, a Statute Must Be Part of a Statewide and Comprehensive Legislative Enactment**

An examination of R.C. Chapter 3722 indicates that it is a general law pursuant to the test established in *City of Canton v. State* and restated in *American Financial Services Ass'n v. City of Cleveland*. The first prong of the test is satisfied because R.C. Chapter 3722 was adopted as a statewide and comprehensive legislative enactment. The provisions of R.C. Chapter 3722 were initially enacted in 1990 for the purpose of “provid[ing] for the licensure and regulation of adult care facilities by the Department of Health.” 1989-1990 Ohio Laws, Part III, 3783 (Am. Sub. H.B. 253, eff. Nov. 15, 1989, with certain sections eff. other dates) (title). The legislation requires adult care facilities throughout the state to comply with state regulations and standards. *See generally State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 192 (“[d]ue to our changing society, many things which were once considered a matter of purely local concern and subject strictly to local regulation, if any, have now become a matter of statewide concern, creating the necessity for statewide control”). The provisions have been amended from time to time and continue to provide a comprehensive program for the inspection, licensing, and regulation of adult care facilities. *See, e.g.*, R.C. 3722.04; R.C. 3722.10; R.C. 3722.16.

It is evident that the intent behind the statewide licensing of adult care facilities was to guarantee compliance throughout the state with standards necessary to protect the public health and safety of all of Ohio’s residents. The summary of R.C. Chapter 3722 set forth above describes in detail the manner in which the statutory licensing and regulatory requirements impose health and safety standards that protect the public safety and welfare on a statewide basis, in the exercise of the police power of the state.

As discussed more fully in 2003 Op. Att’y Gen. No. 2003-011, at 2-84 to 2-85, the Ohio Supreme Court in *City of Canton v. State* found that the “statewide and comprehensive legislative enactment” standard was met by a comprehensive enactment regulating the disposal of hazardous waste throughout the state and by a statute regulating the registration and licensing of private investigators, and that it was not met by manufactured home provisions that did not provide a comprehensive zoning plan or scheme for licensing, regulation, or registration. The provisions of R.C. Chapter 3722 are similar to the enactments that were found to be statewide and comprehensive. *See City of Canton v. State* at ¶¶17-18, 22-24; *Clermont Envtl. Reclamation Co. v. Wiederhold* (syllabus, paragraphs one and two) (finding that municipal corporations were subject to statutory provisions prohibiting any political subdivision of the state from requiring additional zoning or other approval for the construction and operation of a hazardous waste facility authorized by a state permit);<sup>7</sup> *Ohio Ass’n of Private Detective Agencies, Inc. v. City of*

---

<sup>7</sup> *Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d 44, 442 N.E.2d 1278 (1982), cited favorably in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963, was construed in *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986). The *Fondessy* case found that the statutory prohibition upheld in *Clermont* did not extend to a municipal police power ordinance that did not alter, impair, or limit

*North Olmsted*, 65 Ohio St. 3d at 245 (finding that R.C. Chapter 4749 constituted a general law of the state because it provided for uniform statewide regulation of security personnel).

The provisions of R.C. Chapter 3722 thus enact a statewide and comprehensive legislative scheme, establishing standards that apply to adult care facilities throughout the state for the purpose of protecting public health and safety. Therefore, the statutes in R.C. Chapter 3722 form a comprehensive statewide system of regulation that satisfies the first prong of the *City of Canton* test for a general law.

**To Constitute a General Law for Purposes of Home-Rule Analysis, a Statute Must Apply to All Parts of the State Alike and Operate Uniformly Throughout the State**

The second prong of the *City of Canton* test requires the statute to apply to all parts of the state alike and to operate uniformly throughout the state. R.C. Chapter 3722 meets this requirement because its provisions establish uniform licensing standards and regulatory procedures that apply throughout the state. *See, e.g.*, R.C. 3722.04(A)(1) (“[t]he director of health shall inspect, license, and regulate adult care facilities”); R.C. 3722.05 (enforcement of licensing requirements); R.C. 3722.10 (Public Health Council has exclusive authority to adopt rules governing the licensing and operation of adult care facilities); R.C. 3722.16(A)(1) (prohibition against operating an adult care facility that is not licensed by ODH).

The only provisions of R.C. Chapter 3722 that address the application of the statutory requirements in particular areas of the state are the provisions of R.C. 3722.03 that relate to local zoning. *See* note 5, *supra*. These provisions foster the intent of R.C. Chapter 3722 to provide a comprehensive system for licensing adult care facilities to ensure the health, safety, and welfare of residents of the facilities and of political subdivisions throughout the state. The statutory provisions pertaining to zoning are incorporated into the state regulatory scheme and are applied uniformly throughout the state to the facilities and political subdivisions that come within the statutory language. They reflect the legislative judgment of the General Assembly and establish reasonable distinctions between different classifications. *See City of Canton v. State* at ¶30 (the requirement of uniform operation throughout the state does not prohibit treating different classes differently, but prohibits only classification that is arbitrary, unreasonable, or capricious); *Clermont Env'tl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d at 49; 2003 Op. Att’y Gen. No. 2003-011, at 2-85 to 2-86.

The statutes contained in R.C. Chapter 3722 thus provide for statewide uniformity in the regulation of adult care facilities. The provisions of R.C. Chapter 3722 apply to all parts of the

---

the operation of a hazardous waste facility licensed by the state. The *Fondessy* court concluded that a city ordinance did not conflict with the state licensing scheme where the city ordinance imposed a monthly permit fee and record-keeping requirements upon state-licensed hazardous waste landfills located within the city.

state alike and operate uniformly throughout the state, thereby satisfying the second prong of the test for a general law.

**To Constitute a General Law for Purposes of Home-Rule Analysis, a Statute Must Set Forth Police, Sanitary, or Similar Regulations, Rather than Purport Only to Grant or Limit Legislative Power of a Municipal Corporation to Set Forth Police, Sanitary, or Similar Regulations**

The third prong of the *City of Canton* case provides that, to be a general law, a statute must set forth police, sanitary, or similar regulations, rather than purporting only to grant or limit the legislative power of a municipal corporation. R.C. Chapter 3722 satisfies the third prong because it establishes standards and procedures for the licensing, inspection, and regulation of adult care facilities and for the enforcement of the licensing program, thereby promoting the public health, safety, and welfare. *See, e.g.*, R.C. 3722.02; R.C. 3722.04-.05; R.C. 3722.10; R.C. 3722.16-.17. Therefore, R.C. Chapter 3722 constitutes a police regulation.

As discussed above, R.C. Chapter 3722 provides for a statewide licensing and regulatory system that serves as an exercise of state police power. R.C. Chapter 3722 was enacted to protect persons who reside in adult care facilities, and not for the purpose of restricting the powers of municipal corporations. The only provisions of R.C. Chapter 3722 that pertain to local jurisdictions are the provisions pertaining to zoning, and those apply generally to all local zoning authorities, not only to municipalities. *See, e.g.*, R.C. Chapter 303 (county rural zoning); R.C. Chapter 519 (township zoning). The provisions of R.C. 3722.03 are an integral part of the statewide licensing scheme, which serves an overriding state interest in providing a statewide system for licensing adult care facilities. Hence, R.C. Chapter 3722 does not purport only to limit a municipal corporation's constitutional power. *See* 2003 Op. Att'y Gen. No. 2003-011, at 2-86 to 2-88.

This conclusion is consistent with various cases finding that provisions establishing statewide licensing programs are police regulations constituting general laws of statewide application. *See, e.g.*, *Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245 (R.C. Chapter 4749, which provides for uniform statewide regulation of security personnel, "must be considered a general law of statewide application"); *Clermont Env'tl. Reclamation Co. v. Wiederhold*, 2 Ohio St. 3d at 48; *State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 193. Accordingly, R.C. Chapter 3722 satisfies the third prong of the *City of Canton* test for constituting a general law.

**To Constitute a General Law for Purposes of Home-Rule Analysis, a Statute Must Prescribe a Rule of Conduct Upon Citizens Generally**

The fourth prong of *City of Canton* provides that, to constitute a general law, a statute must prescribe a rule of conduct upon citizens generally. *City of Canton v. State* at ¶34-36. R.C. Chapter 3722 satisfies this prong because its licensure requirements apply generally to all persons who operate adult care facilities in Ohio. *See* R.C. 3722.16(A).

The provisions of R.C. Chapter 3722 are directed to persons seeking to operate adult care facilities in Ohio and apply generally to everyone who undertakes this activity, requiring compliance with standards designed for the protection of the public. *See, e.g.*, R.C. 3722.04; R.C. 3722.10; R.C. 3722.16. Enforcement provisions similarly have general application. *See, e.g.*, R.C. 3722.05; R.C. 3722.17. As discussed above, the language of R.C. 3722.03 that governs zoning provisions establishes limits to the state licensing program and prescribes the local regulation that is permitted. The statutes require citizens to comply with the established standards in providing adult care facilities. Accordingly, R.C. Chapter 3722 meets the fourth and final prong of the *City of Canton* test for a general law.

Thus, pursuant to the test set forth in *City of Canton v. State*, the provisions contained in R.C. Chapter 3722, requiring the licensing of adult care facilities by the Ohio Department of Health, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation is bound by the provisions of R.C. Chapter 3722 and is not permitted, pursuant to its home-rule powers under Ohio Const. art. XVIII, § 3, to adopt police regulations that conflict with R.C. Chapter 3722 and rules adopted under that chapter.

### **Test for Determining When a State Statute takes Precedence Over a Municipal Ordinance**

The test for determining when a state statute takes precedence over a municipal ordinance was set forth in *City of Canton v. State*, as follows:

A state statute takes precedence over a local ordinance when (1) the ordinance is in conflict with the statute, (2) the ordinance is an exercise of the police power, rather than of local self-government, and (3) the statute is a general law.

*City of Canton v. State* at ¶9. It has been determined, as discussed above, that R.C. Chapter 3722 is a general law. It has been determined, further, that the licensing or other regulation of adult care facilities constitutes the exercise of police power, and this determination applies to actions taken by municipalities in the same manner in which it applies to actions taken by the state. Thus, when ODH licenses or regulates ACFs it exercises the police power of the state, and when a municipality licenses or regulates ACFs it exercises the police power of the municipality. The regulation of ACFs is a health and safety issue, rather than a function of the self-government of a municipality. *See, e.g., Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 244 (regulation of private employment is the exercise of police power and is not the exercise of a power of local self-government); *Auxter v. City of Toledo*, 173 Ohio St. at 446.

The final factor to consider in determining whether R.C. Chapter 3722 takes precedence over a municipal ordinance is whether the municipal ordinance conflicts with the state law. If there is a conflict, the state statute must prevail. *See Village of Linndale v. State*, 85 Ohio St. 3d at 53 (“a municipality’s police regulation must yield to the state’s general police regulation when the two conflict”); *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 215, 492

N.E.2d 797 (1986) (a municipality's constitutional power to adopt and enforce police regulations "is limited only by general laws in conflict therewith upon the same subject matter").

The standard test for determining whether a municipal ordinance is in conflict with a general law is "whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Village of Struthers v. Sokol* (syllabus, paragraph two). Another description of the test is that a municipal ordinance cannot forbid and prohibit what the statute permits and licenses. *City of Lorain v. Tomasic*, 59 Ohio St. 2d 1, 4, 391 N.E.2d 726 (1979) (citing *Auxter v. City of Toledo*, 173 Ohio St. 3d at 447).

With respect to state licensing requirements, it has been found that, when a state statute licenses persons to perform an activity throughout the state, a municipal ordinance that imposes licensing requirements in addition to those provided or expressly authorized by the statutory scheme prohibits that which the statute permits and thus conflicts with the statute. *See Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d at 245 ("inasmuch as the local ordinance restricts an activity which a state license permits, the ordinance is in conflict with a general law of the state and violates Section 3, Article XVIII of the Ohio Constitution"); *Auxter v. City of Toledo*, 173 Ohio St. at 447 (a state liquor license authorizes the licensee to carry on the business of selling beer and liquor at the specified place, and a municipal ordinance that prohibits the operation of the business without a city license conflicts with the state law); *see also, e.g., State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 195 (finding that the state watercraft license constituted an excise tax and the state preempted the field, preventing municipalities from levying a license tax on watercraft); 2005 Op. Att'y Gen. No. 2005-005; 2002 Op. Att'y Gen. No. 2002-036, at 2-228 to 2-230; 1985 Op. Att'y Gen. No. 85-101. Thus, the existence of a statewide licensing scheme may preclude a municipality from adopting licensing restrictions of its own.<sup>8</sup>

---

<sup>8</sup> Various state licensing statutes define or limit the authority of political subdivisions to imposing license requirements or other regulations, and an examination of relevant statutory language is necessary to determine whether a conflict exists in a particular case. In the *Private Detective* case, for example, the court found that a municipal ordinance attempting to charge fees for the registration or licensure of private investigators was invalid under Ohio Const. art. XVIII, § 3 because it conflicted with the statewide regulatory program, which included a statute specifically prohibiting the imposition of such fees. *Ohio Ass'n of Private Detective Agencies, Inc. v. City of North Olmsted*, 65 Ohio St. 3d 242, 602 N.E.2d 1147 (1992) (syllabus); *see also, e.g., Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d at 215 (a statute "may be utilized only to limit the legislative power of municipalities by the precise terms it sets forth"); *Tradesmen Int'l, Inc. v. City of Massillon*, No. 2002CA00215, 2003-Ohio-2490, at ¶26 (Ct. App. Stark County May 12, 2003) (where Revised Code provides for statewide licensing of contractors and limits what a municipality may do to regulate electrical contractors, a municipality exceeds its home-rule authority when it expands the statutory definition of electrical contractors); 2005 Op. Att'y Gen. No. 2005-005; 2003 Op. Att'y Gen. No. 2003-011.

In a recent case, *American Financial Services Ass'n v. City of Cleveland*, 2006-Ohio-6043, the Ohio Supreme Court discussed and applied a test that it described as a “conflict-by-implication test, which is consistent with the conflict analysis in *Struthers*.” *American Financial Services Ass'n v. City of Cleveland*, 2006-Ohio-6043, at ¶41. The court summarized the conflict-by-implication test in these words: “any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with state statutes and are therefore unconstitutional.” *American Financial Services Ass'n v. City of Cleveland*, 2006-Ohio-6043, at ¶46.

Under the conflict-by-implication test, the implication of the existence of a state licensing scheme is that any municipal regulation seeking to prohibit conduct that state licensing authorizes is in conflict with state statutes and is therefore unconstitutional. *Village of Sheffield v. Rowland*, discussed in the *American Financial Services* case as an example of the conflict-by-implication test, states the rule as follows: “While dual conditions have been recognized without an explicit statutory provision prohibiting conflict, they are valid only when the municipal ordinances do not *alter, impair, or limit the operation of the state-authorized facility*.” *Village of Sheffield v. Rowland*, 87 Ohio St. 3d 9, 12, 716 N.E.2d 1121 (1999) (emphasis added) (citing *Fondessy Enterprises, Inc. v. City of Oregon*, 23 Ohio St. 3d 213, 492 N.E.2d 797 (1986)).

Thus, even though no provision expressly prohibiting local regulation appears in R.C. Chapter 3722, the conflict-by-implication test requires the conclusion that any local ordinances that alter, impair, or limit the operation of a facility that the state has licensed are in conflict with state statutes and, therefore, are unconstitutional. When the law of the state provides that it is unlawful to operate an adult care facility without a license from the Director of Health, there is a clear implication that operation with a license is permitted and is not subject to interference from local regulations except as permitted by state law. *See* R.C. 3722.16(A); 2003 Op. Att’y Gen. No. 2003-011, at 2-89 to 2-90. Because a license under R.C. Chapter 3722 grants a licensee authority to operate throughout the state, municipal regulations limiting this right conflict with the general law of R.C. Chapter 3722. *See, e.g., Ohio Ass’n of Private Detective Agencies, Inc. v. City of North Olmsted; Auxter v. City of Toledo; State ex rel. McElroy v. City of Akron*.

Thus, municipal ordinances that require a municipal license for activity authorized by a license from ODH, or impose other requirements that alter, impair, or limit the operation of state-licensed ACFs, conflict with the state statutes and, accordingly, are not authorized under Ohio Const. art. XVIII, § 3. We conclude, therefore, that a municipal corporation is not empowered, in the exercise of its police power under Ohio Const. art. XVIII, § 3, to adopt municipal licensing requirements for adult care facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, or other regulations that alter, impair, or limit the operation of facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, because those licensing requirements or regulations would conflict with R.C. Chapter 3722 and rules adopted under that chapter.

It is important to note, however, that a municipal corporation has constitutional power to adopt police, sanitary, and similar regulations that are not in conflict with general laws. Ohio Const. art. XVIII, § 3. Therefore, a municipality may adopt regulations that impact upon adult

care facilities, provided only that they do not conflict with the provisions of R.C. Chapter 3722 or other general laws of the state. *See, e.g., Fondessy Enterprises, Inc. v. City of Oregon* (syllabus, paragraph five) (“[t]he authority of the Environmental Protection Agency to license, supervise, inspect, and regulate hazardous waste facilities does not preclude municipalities from enacting police power ordinances which do not conflict with that authority”); *Weir v. Rimmelin*, 15 Ohio St. 3d 55, 472 N.E.2d 341 (1984) (syllabus) (“[w]here state and local regulations concerning unlawful conduct do not conflict, the state and municipality have concurrent authority under the police power to enforce their respective directives inside the corporate limits of the city”); *State ex rel. McElroy v. City of Akron*, 173 Ohio St. at 195-96 (with respect to the operation of watercraft, finding that under the state licensing system an operator, “having procured the state license needs no other,” but “[a]s long as the charge imposed by the political subdivision is not in the nature of a license for the right or privilege of operating watercraft upon its waters, it is valid”); *City of Youngstown v. Evans*, 121 Ohio St. 342, 346, 168 N.E. 844 (1929) (“[n]ecessarily the conflict which limits the municipal local self-government must relate to a conflict with state legislation on the same subject matter”). Thus, adult care facilities are subject to municipal regulations that are not in conflict with the provisions of R.C. Chapter 3722.

### **Municipal Provisions at Issue**

The determination of precisely when a conflict exists between a state law and a local provision requires a careful examination of particular provisions and the manner in which they interact. A determinative decision cannot be made by means of an opinion of the Attorney General but is, ultimately, a matter for determination by the courts. *See* 2003 Op. Att’y Gen. No. 2003-011, at 2-92. It is clear that we cannot predict what decision a court might make in a particular case. *See* 2004 Op. Att’y Gen. No. 2004-022, at 2-186. We are able, nonetheless, to analyze the manner in which a court might address a particular issue and provide you with our opinion regarding the appropriate analysis, while recognizing that the matter remains subject to determination by the proper authorities.

You have asked specifically about provisions adopted by the City of Youngstown and by the City of Columbus. You have described the relevant provisions of the Youngstown City Code as follows:

### **Youngstown City Code**

In Youngstown, Ohio, the Youngstown City Code (Y.C.C.) purports to regulate “group homes.” Y.C.C. section 1744 *et seq.* The language in the Youngstown ordinance closely tracks R.C. Chapter 3722 and the rules enacted pursuant to that chapter at Ohio Administrative Code (O.A.C.) Chapter 3701-20. The ordinances require ACFs to have a license issued by the Youngstown Health Commissioner. Y.C.C. section 1744.02. Additionally, the ordinance requires ACFs to allow city inspectors access to resident medical records. Y.C.C. section 1744.05.

The Youngstown ordinance serves as an impediment to a state licensed ACF operating within the Youngstown borders. The local licensure requirement essentially mirrors the state licensure requirements, thus resulting in dual licensure and inspection fees. Moreover, the local regulation can lead to different decisions as to whether a facility is in compliance. ODH may determine an ACF to be in compliance with R.C. Chapter 3722 while Youngstown could determine the contrary, thus leaving an ODH licensed ACF unable to operate within the Youngstown city limits.

For the reasons discussed above, we agree with your argument that a local licensing requirement that duplicates the state licensing requirement conflicts with R.C. Chapter 3722 (which is a general law of the state) and is not a permissible exercise of a municipal corporation's constitutional home-rule powers.

You have asked also about particular provisions adopted by the City of Columbus, which you have described as follows:

### **Columbus City Code**

The Columbus City Code (C.C.C.) differs from the Youngstown ordinance in that it does not purport to regulate resident health and safety. Rather, the Columbus ordinance requires ACFs to be licensed as “rooming houses” under C.C.C. section 4501. ACFs are captured under the C.C.C. section 3303, in which “residential care facility” is defined as “the use of a dwelling or dwelling units within a building primarily for providing supervised room, board and care in a residential setting to residents thereof whose disabilities or status limits their ability to live independently, and secondarily for training, rehabilitation and non-clinical services.”

The Columbus ordinance covers the same requirements as the ODH building and fire safety requirements of O.A.C. rules 3701-20-10 through 3701-20-12. This can lead to differing conclusions between the state and local licensors – ODH could conduct a survey where the home is found to be in compliance with the applicable licensure provisions, while Columbus could reach the opposite conclusion. Thus an ODH licensed ACF could not operate within the Columbus city limits.

Again, we agree with your conclusion that the municipal provisions in question conflict with the general laws of the state by establishing a separate licensing system that duplicates the state system and permits inconsistencies.

We conclude that both the Youngstown and Columbus municipal provisions duplicate the state provisions and thereby create the opportunity for and likelihood of conflict with the state

provisions. Their existence alters, impairs, or limits the operation of facilities licensed by ODH, thereby creating conflicts with the statutory scheme.

The discussion and conclusions set forth in this opinion reflect our efforts to analyze and apply current statutes and case law. However, questions of municipal home rule are complex and subject to varying interpretations, and the question whether a conflict exists in a particular instance may be subject to dispute. As noted above, the authority to make definitive determinations rests with the judiciary. *See Beagle v. Walden*, 78 Ohio St. 3d 59, 62, 676 N.E.2d 506 (1997) (“[i]nterpretation of the state and federal Constitutions is a role exclusive to the judicial branch”); 2003 Op. Att’y Gen. No. 2003-011, at 2-92.

### **Conclusions**

Therefore, it is my opinion, and you are advised, as follows:

1. Pursuant to the test set forth in *City of Canton v. State*, 95 Ohio St. 3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (syllabus), the provisions contained in R.C. Chapter 3722, requiring the licensing of adult care facilities by the Ohio Department of Health, constitute a general law for purposes of home-rule analysis under Ohio Const. art. XVIII, § 3. Therefore, a municipal corporation is bound by the provisions of R.C. Chapter 3722 and is not permitted, pursuant to its home-rule powers under Ohio Const. art. XVIII, § 3, to adopt police regulations that conflict with R.C. Chapter 3722 and rules adopted under that chapter.
2. A municipal corporation is not empowered, in the exercise of its police powers under Ohio Const. art. XVIII, § 3, to adopt municipal licensing requirements for adult care facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, or other regulations that alter, impair, or limit the operation of facilities licensed by the Ohio Department of Health pursuant to R.C. Chapter 3722, because those licensing requirements or regulations would conflict with R.C. Chapter 3722 and rules adopted under that chapter.

Respectfully,



**JIM PETRO**  
Attorney General