

July 22, 2015

The Honorable David P. Fornshell
Warren County Prosecuting Attorney
520 Justice Drive
Lebanon, Ohio 45036

SYLLABUS:

2015-024

R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A), taken together, require every law enforcement agency that serves a jurisdiction where a scrap metal or bulk merchandise container dealer is located to provide to each dealer the electronic list described in R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A).



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OPINION NO. 2015-024

The Honorable David P. Fornshell
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Lebanon, Ohio 45036

Dear Prosecutor Fornshell:

You have requested an opinion whether the language of R.C. 4737.04(F)(2) or that of 10B Ohio Admin. Code 4501:5-3-01(A) controls for the purpose of providing to scrap metal dealers or bulk merchandise container dealers a searchable, electronic list of persons known to be thieves or receivers of stolen property, and, if it is necessary that only one law enforcement agency provide this list, whether a township police department or the county sheriff is that agency.

R.C. Chapter 4737 concerns secondhand dealers and junk yards. R.C. 4737.04 addresses scrap metal and bulk merchandise container dealers in particular, and it requires these dealers to register with the Director of Public Safety, R.C. 4737.04(B)(1), and to maintain “an accurate and complete record of all articles purchased or received by the dealer in the course of the dealer’s daily business.” R.C. 4737.04(C). R.C. 4737.04 also provides for the required records to be open to inspection by representatives of law enforcement and the Director of Public Safety. R.C. 4737.04(E)(1). Pursuant to R.C. 4737.04(F)(1), a dealer is prohibited from purchasing or receiving items from a person who refuses to show the dealer the person’s personal identification card. And R.C. 4737.04(F)(2) requires law enforcement to provide to scrap metal and bulk merchandise container dealers a searchable, electronic list of known thieves and recipients of stolen property.

The Director of Public Safety is required to “maintain as a registry a secure database for use by law enforcement agencies.” R.C. 4737.045(E)(1). Among other requirements, this database must be capable of “[m]aking the electronic lists prepared pursuant to [R.C. 4737.04(F)(2)] available through an electronic searchable format for individual law enforcement agencies and for dealers in the state.” R.C. 4737.045(E)(1)(d). The database also must receive

and store the daily transaction data that scrap metal dealers and bulk merchandise dealers are required to send pursuant to R.C. 4737.04(E)(1) and provide search capabilities to law enforcement agencies for enforcement purposes. R.C. 4737.045(E)(1)(a), (b).

R.C. 4737.045(E) also provides explicit rulemaking authority to the Director of Public Safety. R.C. 4737.045(E)(3). The Director shall “[a]dopt rules to enforce [R.C. 4737.01-.045], rules establishing procedures to renew a registration..., rules for the format and maintenance for the records required under [R.C. 4737.012(A) or R.C. 4737.04(C)], and rules regarding the delivery of the report required by [R.C. 4737.04(E)(1)] to the registry.” *Id.*

Your questions concern, in part, R.C. 4737.04(F)(2), which states:

The law enforcement agency that serves the jurisdiction in which a scrap metal dealer or a bulk merchandise container dealer is located shall provide to the scrap metal dealer or bulk merchandise container dealer a searchable, electronic list prepared in accordance with rules adopted by the director, as that agency determines appropriate, of the names and descriptions of persons known to be thieves or receivers of stolen property. The law enforcement agency may request the appropriate clerk of courts to provide the list. No scrap metal dealer or bulk merchandise container dealer shall purchase or receive articles from any person who is either identified on the list the dealer receives from the law enforcement agency, or who appears on the lists made available by the director pursuant to [R.C. 4737.045(E)]. The law enforcement agency also shall provide the list to the department of public safety, in an electronic format in accordance with rules adopted by the director, for inclusion in the registry created in [R.C. 4737.045].

You have asked about the initial phrase of R.C. 4737.04(F)(2), “[t]he law enforcement agency that serves the jurisdiction,” and its meaning vis-à-vis the related Ohio Administrative Code provision.

10B Ohio Admin. Code 4501:5-3-01(A) provides:

in accordance with [R.C. 4737.04(F)(2)], each law enforcement agency that serves the jurisdiction in which a scrap metal dealer or bulk merchandise container dealer, hereinafter collectively referred to as “dealer,” is located shall submit a searchable electronic list to the dealers registered in their jurisdiction and the Ohio department of public safety.

This rule uses the phrase “each law enforcement agency that serves the jurisdiction.” The dissimilarity between the statute and the administrative rule is the use of different modifying

words before the term “law enforcement agency.”¹ R.C. 4737.04(F)(2) refers to “the” law enforcement agency, while rule 4501:5-3-01(A) refers to “each” law enforcement agency. Accordingly, you have asked about the meaning associated with these two words, and you wish to know whether every law enforcement agency that serves a jurisdiction shall provide the list, or if not, which law enforcement agency in a jurisdiction with more than one is “the” law enforcement agency for purposes of R.C. 4737.04(F)(2).²

Validly adopted administrative regulations have the same force and effect as legislative enactments. *See generally, e.g., Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph one) (“[a]dministrative rules enacted pursuant to a specific grant of legislative authority are to be given the force and effect of law”); *State ex rel. DeBoe v. Indus. Comm’n*, 161 Ohio St. 67, 117 N.E.2d 925 (1954) (syllabus, paragraph one) (an administrative rule adopted pursuant to statutory authority has the force of law in Ohio, unless the rule is unreasonable or in clear conflict with statutes governing the same subject matter). Such regulations are therefore subject to the same principles of construction ordinarily applied to statutory provisions. 2010 Op. Att’y Gen. No. 2010-030, at 2-220; 1991 Op. Att’y Gen. No. 91-038, at 2-211 to 2-212; *see, e.g., State ex rel. Miller Plumbing Co. v. Indus. Comm’n*, 149 Ohio St. 493, 496-97, 79 N.E.2d 553 (1948) (“[t]he orders of the Industrial Commission formulating rules for specific safety requirements have the effect of legislative enactments and are, therefore, subject to the ordinary rules of statutory construction”). One such principle is that statutory provisions that address the same subject matter or employ the same terms should be construed together and harmonized if at all possible. 1991 Op. Att’y Gen. No. 91-038, at 2-211 to 2-212; *see* 2010 Op. Att’y Gen. No. 2010-030, at 2-220.

In addition to a goal of harmonizing two provisions when possible, it is a well-settled practice to defer to the interpretation of the relevant administrative agency and its director when considering the application of a particular law. *See* 1994 Op. Att’y Gen. No. 94-084, at 2-414 (“the courts will give deference to any reasonable administrative construction of the statutes that govern the agency’s own duties and responsibilities”); *see also Chevron U.S.A., Inc. v. Natural*

¹ As used here, these words are known in English grammar as determiners. *See* Randolph Quirk et al., *A Comprehensive Grammar of the English Language* § 5.10-.14, at 253-57 (1985). Specifically, “each” is a universal and central determiner, and “the” is a definite article. *Id.*

² Both the statute and the regulation declare that a law enforcement agency that serves the jurisdiction in which a scrap metal dealer or a bulk merchandise container dealer is located shall provide the list described in both provisions. A dealer might be located within a municipal corporation, a township, and a county; any particular location might be within the jurisdiction of multiple law enforcement agencies. Thus, what constitutes a law enforcement agency that serves the jurisdiction in which a dealer is located will have to be ascertained on a case-by-case basis.

Res. Def. Council, Inc., 467 U.S. 837, 843–44 (1984) (unless the language of a statute directly addresses the precise question at issue, the Court must defer to any reasonable construction of the statutory language rendered by the agency authorized to enforce and administer the statute); *Vogel v. City of Cincinnati*, 959 F.2d 594, 598 (6th Cir. 1992), *cert. denied*, 506 U.S. 827 (1992) (“absent clear legislative intent, the construction given a statute by the agency that administers it is entitled to deference, provided it is reasonable”).

Rule 4501:5-3-01(A) uses the word “each.” Pursuant to R.C. 1.42, words in a statute are to be construed according to their common usage and the rules of grammar. In *Random House Webster’s Unabridged Dictionary* 612 (2nd ed. 2001), “each” is defined as “every one of two or more considered individually or one by one.” See generally 1983 Op. Att’y Gen. No. 83-093, at 2-359. In English grammar, “*each* and *every* as determiners are often equivalent to *all*.” Randolph Quirk et al., *A Comprehensive Grammar of the English Language* § 6.51, at 382 (1985); see also note 1, *supra*.

While R.C. 4737.04(F)(2) refers to *the* “law enforcement agency,” indicating a singular entity, it is a codified rule of statutory construction that the singular includes the plural. R.C. 1.43(A); see 2013 Op. Att’y Gen. No. 2013-013, at 2-119. Thus, the use of the singular form of the word “agency” in R.C. 4737.04(F)(2) refers to all law enforcement agencies that serve the jurisdiction. See generally *State ex rel. Republic Steel Corp. v. Quinn*, 12 Ohio St. 3d 57, 59, 465 N.E.2d 413 (1984) (R.C. 1.43(A) applies when construing a statute unless the language of the statute or the context of related statutes clearly provides that R.C. 1.43(A) not apply). The common definition, standard grammatical usage, and rules of statutory construction, taken together with the following supporting discussion, lead us to conclude that “each,” as used in rule 4501:5-3-01(A), and “the,” as used in R.C. 4737.04(F)(2), mean “every” law enforcement agency that serves the jurisdiction in which a scrap metal or bulk merchandise container dealer is located.

Other provisions of R.C. Chapter 4737 specify particular law enforcement personnel when authorizing the exercise of law enforcement responsibilities with respect to junk yards. R.C. 4737.07, for example, declares:

[i]f it is not practical or economically feasible by reason of topography, *as determined by the sheriff or, if the sheriff so designates, a policeman or constable of the township where the junk yard is located*, to obscure the view of a junk yard ... from any state or county highway or township road which is not part of the interstate or primary system, *the sheriff or township policeman or constable* shall require suitable plantings, or a practical and appropriate barrier not less than six feet nor more than ten feet in height, to partially obscure the view of such junk yard from such state or county highway or township road.

(Emphasis added.) Similarly, R.C. 4737.10(A) requires that

[b]efore a license is granted or renewed under [R.C. 4737.05-.12], *the sheriff of each county, or, if the sheriff so designates, a township police officer or constable, and the chief of police of each municipal corporation shall inspect the junk yard within the sheriff's, police officer's, constable's, or chief's respective jurisdiction to determine if it complies with [R.C. 4737.05-.12]. The sheriff, or a township police officer or constable, or chief of police shall submit a written report of such examination to the county auditor of the county or the village solicitor or city director of law of the municipal corporation wherein such junk yard is located.*

(Emphasis added.) Had the General Assembly intended for only one, particular type of law enforcement agency to provide a list to the dealers in its jurisdiction pursuant to R.C. 4737.04(F)(2), or had it intended to defer to county sheriffs to make such a determination, it could have enacted language similar to that used in R.C. 4737.07 or R.C. 4737.10. *See Lake Shore Elec. Ry. Co. v. Pub. Utils. Comm'n of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other matters); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (had the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997), *cert. denied*, 522 U.S. 1091 (1998) ("Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another").

We note that, if we were to reach the opposite conclusion that only one law enforcement agency of several that serve a jurisdiction where a dealer is located is required to provide a list to dealers, the risk is that incomplete information would be provided to the dealers. For example, if only a municipal corporation's police department provides a list to a dealer, known criminals prosecuted at the county level might not be on the list and would consequently remain unknown to a dealer. Similarly, if only a county law enforcement agency is required to provide a list to dealers within the county, known criminals prosecuted at the municipal level might not be on the list and would consequently remain unknown to a dealer.

In consideration of the foregoing, we conclude that R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A), taken together, require every law enforcement agency that serves a jurisdiction where a scrap metal or bulk merchandise container dealer is located to provide the electronic list described in R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A) to each dealer. We recognize that this conclusion may lead to a duplication of efforts and resources by local law enforcement agencies. In particular, we note the sentence in R.C. 4737.04(F)(2) that permits a law enforcement agency to "request the appropriate clerk of courts to provide the list." If the "appropriate clerk of courts" is the same for two law enforcement agencies that serve the jurisdiction where a particular dealer is located, it would be prudent for those two law enforcement agencies to communicate and work together to avoid providing duplicate lists from that clerk of courts to a dealer.

Thus, although every law enforcement agency that serves a jurisdiction where a scrap metal or bulk merchandise container dealer is located is required to provide the electronic list described in R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A) to each dealer, the law enforcement agencies may determine between themselves which agency shall provide such list when the information is duplicative.³ By doing this, law enforcement resources may be used more efficiently within each political subdivision. *See* 2009 Op. Att’y Gen. No. 2009-009, at 2-59. *See generally* 1994 Op. Att’y Gen. No. 94-081, at 2-405 (“a county sheriff and municipal corporation police department should strive to reach a mutually agreeable arrangement whereby the sheriff and police department will function cooperatively in executing their respective law enforcement duties”).

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A), taken together, require every law enforcement agency that serves a jurisdiction where a scrap metal or bulk merchandise container dealer is located to provide to each dealer the electronic list described in R.C. 4737.04(F)(2) and 10B Ohio Admin. Code 4501:5-3-01(A).

Very respectfully yours,



MICHAEL DEWINE
Ohio Attorney General

³ Local law enforcement agencies encountering this situation ought to defer to the Department of Public Safety and its recommended course of action. *State v. Mulhorn*, 72 Ohio App. 3d 250, 594 N.E.2d 630 (Jackson County 1991) (to the extent that any ambiguity exists, an administrative agency’s interpretation of its own rule is entitled to deference); *see also* 1996 Op. Att’y Gen. No. 96-021, at 2-76.