OPINION NO. 87-004

Syllabus:

A public or private agency desiring to appropriate property in an agricultural district is not required to so notify the Ohio Department of Agriculture as specified in R.C. 929.05(B), where the property sought to be appropriated is less than ten acres or ten per cent of an individual property under one ownership and

currently used in agricultural production in an agricultural district, whichever is greater.

To: Steven D. Maurer, Director, Ohio Department of Agriculture, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, February 4, 1987

I have before me your request for my opinion concerning certain provisions of the State of Ohio's "agricultural district" law found in R.C. Chapter 929. Specifically, you state:

> Our...question focuses on a reading of Division A of [R.C.] 929.05 in conjunction with Division B of that same Section. Division A places limitations on the authority of a public or private agency to appropriate more than 10 acres or 10 per cent of an individual's property within an agricultural district. The language of the two Divisions, when read together, appears ambiguous in a certain respect. Namely, whether a public or private agency must notify the Ohio Department of Agriculture more than 30 days prior to filing of a petition when the land sought to be appropriated is less than 10 acres or 10 per cent of an individual's property in an agricultural district.

Therefore, we would ask your office to render an opinion on the following specific question of law:

> Does Section 929.05 require a public or private agency desiring to appropriate land in an agricultural district to notify the Department of Agriculture not fewer than 30 days before commencing proceedings, when the land sought to be appropriated is less than 10 acres or 10 per cent of an individual property under one ownership currently in an agricultural district.

R.C. Chapter 929 constitutes one portion of the State of Ohio's farmland preservation program designed to slow the wholesale and irretrievable conversion of farmland to commercial or industrial use.[1] To this end, the General Assembly has enacted R.C. 929.05 which, inter alia, prohibits the appropriation of certain property which has been designated as part of an "agricultural district,"[2] and provides in part:

> (A) No public or private agency, as defined in section 163.01 of the Revised Code, shall appropriate more than ten acres or ten per cent of an individual

---

[1] See generally Comment, Farm Land Preservation in Ohio - Good News for Land Speculators? 12 Capital U.L. Rev. 229 (1982). The other provision of the Revised Code designed to prevent the conversion of farmland consists of a series of statutes which defer property taxes of land exclusively devoted to agricultural purposes. See R.C. 5713.30-.39.

[2] Pursuant to R.C. 929.02(A), under specifically enumerated circumstances, "[a]ny person who owns agricultural land may file an application with the county

> property under one ownership and currently used in agricultural production in an agricultural district, whichever is greater, except as provided by this section. No state agency, municipal corporation, county, township, or other political subdivision or taxing authority, or any other public entity, and no person shall advance a grant, loan, interest subsidy, or other distribution of public funds within an agricultural district for the construction of housing, or commercial or industrial facilities to serve non-agricultural uses of land, except as provided in this section.
>
> (B) A public or private agency desiring to appropriate land in an agricultural district and a public entity or person desiring to make a distribution of public funds as provided in division (A) of this section shall, not fewer than thirty days before commencing proceedings or taking the action, give written notice of the intent to the department of agriculture unless the agency, public entity, or person has received the approval of an environmental document that includes consideration of the impact on agricultural land from an appropriate federal agency and the department of agriculture is listed among the agencies for coordination of the document. (Emphasis added.)

See also R.C. 163.01(A)(defining a "public agency" as "any governmental corporation, unit, organization, or officer authorized by law to appropriate property in the courts of this state" and "private agency" as "any other corporation authorized by law to appropriate property in the courts of this state"); R.C. 929.01(A)(defining "agricultural production" as used in R.C. Chapter 929).[3] R.C. 929.05(B) further requires that the notice or environmental document submitted by the public or private agency to the Department of Agriculture, be accompanied by a report justifying the proposed action. An evaluation of alternatives that would not require the action within the agricultural district must also be included. This

---

auditor to place the land in an agricultural district...." The primary benefits of characterizing property as belonging to an agricultural district are the aforementioned deferral of property taxes, the prohibition against the collection of special assessments on real property pursuant to R.C. 929.03, and the prohibition against appropriations by public or private agencies under R.C. Chapter 163 pursuant to R.C. 929.05.

[3] R.C. 929.01(A) provides:

> "Agricultural production" means commercial apiculture, animal husbandry, or poultry husbandry; the production for a commercial purpose of field crops, tobacco, fruits, vegetables, timber, nursery stock, ornamental shrubs, ornamental trees, flowers, or sod; or any combination of such husbandry or production and includes the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with such husbandry or production.

report is then reviewed by the Department of Agriculture to determine its effect on "agricultural production in the district and on the policies, plans, objectives, and programs of other state or local government agencies." If the Director of the Department of Agriculture should then determine that the proposed action would have an adverse effect on any of these considerations or jeopardize the "protection, promotion, or enhancement of the public health, safety, peace, or welfare of some or all of the inhabitants of the state," then he must inform the Governor of his finding within thirty days after his receipt of the written notice. The Governor must then issue an order preventing the public or private agency from taking the proposed action for sixty days. During the sixty day period, the Director of the Department of Agriculture must publish notice of, and hold, a public hearing on the matter. The Director must also send notice to any municipality whose territory includes any part of the agricultural district and to any public or private agency, public entity or person seeking to appropriate the property or make the distribution of funds. Having held the hearing, the Director must make final findings and recommendations, and deliver a copy of his findings to the public or private agency. Any agency with power to review appropriation or distribution must then use these findings and recommendations in making a final determination.

You wish to know whether the notice requirements of division (B) of R.C. 929.05 apply to appropriations of less than ten acres or ten per cent of an individual property. In order to find that the notice requirements do apply in such a situation, I would have to find that the phrase in division (B) "as provided in division (A) of this section" refers to the distribution of public funds, but not to the appropriation of property. In that instance, the opening language of division (B), "[a] public or private agency desiring to appropriate land in an agricultural district" would stand alone, unmodified, and would require an appropriating agency to follow the notice requirements of division (B), regardless of the amount of acreage being appropriated. If, however, the phrase "as provided in division (A) of this section" refers to an agency desiring to appropriate land as well as to a public or private agency or person desiring to make a distribution of public funds, then the requirements of division (B) would apply only to those appropriations specified in division (A) - those of more than ten acres or ten per cent of an individual property. Generally, it is the plain meaning of statutory language which must be applied. State ex rel. Stanton v. Zangerle, 117 Ohio St. 436, 159 N.E. 823 (1927); Swetland v. Miles, 101 Ohio St. 501, 130 N.E. 22 (1920). However, where statutory ambiguity is involved, legislative intent may be ascertained through statutory construction. R.C. 1.49; Caldwell v. State, 115 Ohio St. 458, 154 N.E. 792 (1926). As you point out, the intended meaning of R.C. 929.05(B) is unclear. Thus, I must determine the intention of the General Assembly through the construction of R.C. 929.05.

It is a well-established rule of statutory construction that a statute must be read and construed as a whole. Humphrys v. Winous Co., 165 Ohio St. 45, 133 N.E.2d 780 (1956); First Federal Savings & Loan Ass'n v. Evatt, 143 Ohio St. 243, 54 N.E.2d 795 (1944). In the present instance, it is apparent that R.C. 929.05(A) and (B) relate to each other, and therefore must be read together. See, e.g., State v. Berry, 25 Ohio St. 2d 255, 267 N.E.2d 775 (1971)(reading divisions of a statute in pari materia). The language employed by the legislature in the

first sentence of division (B) closely parallels that used in division (A). R.C. 929.05(A) first prohibits the appropriation of more than ten acres or ten per cent of an individual property within an agricultural district. The second portion of division (A) prohibits the distribution of funds within an agricultural district for housing, commercial, or industrial development. The first sentence of R.C. 929.05(B) mirrors this order, providing a procedure whereby a public or private agency which desires to appropriate property or distribute funds for the specified non-agricultural uses, may do so under certain circumstances, even though the appropriation or distribution of funds would be otherwise prohibited by R.C. 929.05(A). The parallel construction of these two divisions indicates that the language employed in the first sentence of R.C. 929.05(B) concerning the appropriation of property specifically refers to those appropriations prohibited by R.C. 929.05(A). Thus, I conclude that the notice provisions recited in R.C. 929.05(B) are applicable only where the property sought to be appropriated is of an area greater than ten acres or ten per cent of an individual property under one ownership, whichever is greater, and the property is used for the purposes designated by R.C. 929.05(A).

My conclusion is also supported by another rule of statutory construction. Pursuant to R.C. 1.49(A) and (E), when ascertaining the intended meaning of a statute, the "object sought to be attained" and the "consequences of a particular construction" may be considered. See also State v. Sidell, 30 Ohio St. 2d 45, 282 N.E.2d 367 (1972)(through R.C. 1.49, the General Assembly has recognized certain basic rules of statutory construction); Pylant v. Pylant, 61 Ohio App. 2d 247, 401 N.E.2d 940 (Huron County 1978)(consideration of the apparent object of a statute and the consequences of a given interpretation is an appropriate means to construe a statute). As described above, R.C. 929.05(B) provides a specific procedure whereby the appropriation of property or distribution of funds by a public or private agency may be accomplished even though proscribed, as a general matter, by division (A). Were the first sentence of R.C. 929.05(B) interpreted to include all appropriations of property used for agricultural purposes within an agricultural district by a public or private agency, then even the smallest appropriations could potentially be subject to the elaborate notice and hearing requirements specified in division (B).

In light of the object sought to be attained by the legislature through R.C. 929.05, it is apparent that such a result was not intended. As noted above, the primary objective of R.C. Chapter 929 is the preservation of Ohio's farmland. The legislature sought to achieve this goal in part through the proscription of appropriations by public and private agencies. The fact that the appropriation of property of less than ten acres or ten per cent of an individual property under one ownership is expressly excluded from the prohibitions contained in division (A), however, demonstrates that it was also the legislature's intention that these appropriations should not be restricted because their relatively small size does not threaten to substantially reduce the total percentage of arable farmland within the State. Considering the apparent objective of the legislature to regulate through R.C. 929.05 only those appropriations which have a substantial impact on the amount of agricultural property within the State, I must conclude that the General Assembly did not intend to inhibit appropriations of less than ten acres or ten per cent of an individual

property by subjecting them to the rigorous notice and hearing requirements specified in division (B).

Therefore, it is my opinion, and you are hereby advised that a public or private agency desiring to appropriate property in an agricultural district is not required to so notify the Ohio Department of Agriculture as specified in R.C. 929.05(B), where the property sought to be appropriated is less than ten acres or ten per cent of an individual property under one ownership and currently used in agricultural production in an agricultural district, whichever is greater.