

Note from the Attorney General's Office:

The syllabus of 2015 Op. Att'y Gen. No. 2015-035 was clarified by 2016 Op. Att'y Gen. No. 2016-005.

December 15, 2015

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SYLLABUS:

2015-035

A countywide 9-1-1 system may operate more than the number of wireless public safety answering points specified in R.C. 128.571 and receive a full disbursement of moneys from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55, so long as the number of wireless public safety answering points for which a county uses those moneys does not exceed the number specified in R.C. 128.571. (2009 Op. Att'y Gen. No. 2009-031, overruled, on the basis of statutory amendment).



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OPINION NO. 2015-035

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Dear Prosecutor Vigluicci:

You have requested an opinion about the meaning of R.C. 128.571. Specifically, you ask whether R.C. 128.571 limits the total number of public safety answering points (PSAPs) that a countywide 9-1-1 system may have and still receive a full disbursement from the wireless 9-1-1 government assistance fund pursuant to R.C. 125.55. You have explained that your question arises from a letter sent by the 9-1-1 Program Office of the Department of Administrative Services. According to that letter, “[R.C.] 128.571 limits the number of wireless PSAPs a countywide 9-1-1 system can operate and provide wireless 9-1-1 funding to support.” The letter further states that a county’s disbursement from the wireless 9-1-1 government assistance fund will be reduced by fifty percent if that county has more than four or, if applicable, five wireless PSAPs on January 1, 2016.¹

A wireless 9-1-1 charge of twenty-five cents per month is imposed on every wireless telephone number that is associated with a billing address in the state. R.C. 128.42(A)(1). The charge is collected by the wireless service provider and remitted to the administrator of the 9-1-1 Program Office of the Department of Administrative Services. R.C. 128.42(A)(1); R.C. 128.46. The charges are deposited, in specified percentages, into four funds in the state treasury: the wireless 9-1-1 government assistance fund; the wireless 9-1-1 administrative fund; the wireless 9-1-1 program fund; and the next generation 9-1-1 fund. R.C. 128.54(A). The 9-1-1 Program Office of the Department of Administrative Services “oversee[s] administration of the wireless 9-1-1 government assistance fund, the wireless 9-1-1 program fund, and the next generation 9-1-1 fund.” R.C. 128.40. Before the end of each month, the Tax Commissioner “shall disburse moneys from the wireless 9-1-1 government assistance fund, plus any accrued interest on the fund, to each county treasurer.” R.C. 128.55(A)(1). Each “county shall disburse, in accordance with the allocation formula set forth in the final plan, the amount the county so received to any other subdivisions in the county and any regional councils of

¹ If a municipal corporation having a population of greater than 175,000 is located within the county, the allowable number of PSAPs for that county is increased by one. R.C. 128.571(B).

governments in the county that pay the costs of a public safety answering point providing wireless enhanced 9-1-1 under the plan.” R.C. 128.55(B).²

Moneys disbursed to a countywide 9-1-1 system pursuant to R.C. 128.55 may be used to pay various expenses that are required for a PSAP to provide wireless enhanced 9-1-1. R.C. 128.57. The expenses that are allowable under R.C. 128.57 are subject to the limitations established in R.C. 128.571. R.C. 128.57. R.C. 128.571 provides:

(A) Payment of costs specified in [R.C. 128.57(A)-(D)] from a disbursement under [R.C. 128.55] shall be limited to those specified and payable costs incurred for a specified number of public safety answering points of the particular 9-1-1 system as follows:

(1) For the period beginning on March 1, 2009, and ending on December 31, 2015, a countywide 9-1-1 system may use disbursements for not more than five public safety answering points per calendar year.

(2) Except as provided in [R.C. 128.571(B)³]:

(a) For the period beginning on January 1, 2016, and ending on December 31, 2017, a countywide 9-1-1 system may use disbursements for not more than four public safety answering points per calendar year.

(b) For the period beginning on January 1, 2018, and thereafter a countywide 9-1-1 system may use disbursements for not more than three public safety answering points per calendar year.

....

(C) If a county exceeds the allowable number of public safety answering points under this section, disbursements to countywide 9-1-1 systems made to the county from the wireless 9-1-1 government assistance fund and the next generation 9-

² “Wireless enhanced 9-1-1” is defined as “a 9-1-1 system that, in providing wireless 9-1-1, has the capabilities of phase I and, to the extent available, phase II enhanced 9-1-1 services as described in 47 C.F.R. 20.18 (d) to (h).” R.C. 128.01(E). Phase I requires service providers to “provide the telephone number of the originator of a 911 call and the location of the cell site or base station receiving a 911 call from any mobile handset accessing their systems to the designated Public Safety Answering Point[.]” 47 C.F.R. 20.18(d)(1). Phase II enhanced 9-1-1 service involves providing “the location of all 911 calls by longitude and latitude in conformance with Phase II accuracy requirements [set forth in 47 C.F.R. 20.18(h)].” 47 C.F.R. 20.18(e).

³ R.C. 128.571(B) provides:

If within a county there is a municipal corporation with a population of over one hundred seventy-five thousand according to the most recent federal decennial census, that county may use disbursements for one public safety answering point in addition to the number of public safety answering points allowed under [R.C. 128.571(A)(2)].

1-1 fund shall be reduced by fifty per cent until the county complies with the public safety answering point limitations established under this section. (Footnote added.)

Thus, the answer to your inquiry hinges upon the meaning of “the allowable number of public safety answering points” for the purpose of R.C. 128.571(C).

The primary goal of statutory construction is to give effect to the intent of the General Assembly. *See Clark v. Scarpelli*, 91 Ohio St. 3d 271, 274, 2001-Ohio-39, 744 N.E.2d 719; 2008 Op. Att'y Gen. No. 2008-027, at 2-287. The starting place for determining the General Assembly's intent is an examination of the language used. *State v. Hairston*, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471, at ¶12. Effect must be given to the words used, without any additions to or deletions from the statute. *Cline v. Ohio Bureau of Motor Vehicles*, 61 Ohio St. 3d 93, 97, 573 N.E.2d 77 (1991). If the meaning of a statute is clear from its plain language, there is no need to engage in further statutory interpretation. *Clark v. Scarpelli*, 91 Ohio St. 3d at 274. If, however, the statute's meaning is not clear, the canons of statutory construction may be applied to ascertain the intent of the General Assembly. *Cline v. Ohio Bureau of Motor Vehicles*, 61 Ohio St. 3d at 96. A statute is ambiguous if it is reasonably capable of more than one meaning. *Clark v. Scarpelli*, 91 Ohio St. 3d at 274 (“[a] statute is ambiguous when its language is subject to more than one reasonable interpretation”).

“[W]ords and phrases in a statute must be read in context of the whole statute.” *Commerce & Indus. Ins. Co. v. Toledo*, 45 Ohio St. 3d 96, 102, 543 N.E.2d 1188 (1989); *State v. Cravens*, 42 Ohio App. 3d 69, 536 N.E.2d 686 (Hamilton County 1988) (syllabus, paragraph 1) (“[t]he interpretation starts and ends with the words chosen by the legislature, but it is not limited to the words alone, because the whole context of the enactment must be considered”); 1998 Op. Att'y Gen. No. 98-011, at 2-59 (“[i]t is axiomatic that statutes must be read as a whole”). Furthermore, statutes addressing the same subject shall be read *in pari materia*. *Eggleston v. Harrison*, 61 Ohio St. 397, 404, 55 N.E. 993 (1900) (“acts upon the same subject are to be construed as a whole, with reference to an entire system, of which all are parts”); *In re Darling*, 9th Dist. No. 03CA0023, 2003-Ohio-7184, 2003 WL 23094930, at ¶ 23. Thus, we construe the meaning of division (C) of R.C. 128.571 within the context of the entire statute, *i.e.*, R.C. 128.571, and the other provisions of R.C. Chapter 128.

Upon examination of the language of R.C. 128.571, we find that the statute is not ambiguous. R.C. 128.571(C) provides that a disbursement of moneys from the wireless 9-1-1 government assistance fund to a county shall be reduced if the “county exceeds the *allowable number* of public safety answering points *under this section* ... until the county complies with the public safety answering point *limitations established under this section*.” (Emphasis added.) The “allowable number” and the PSAP “limitations” established under R.C. 128.571 are the number of wireless PSAPs for which a county may use a disbursement of wireless 9-1-1 government assistance fund moneys.

R.C. 128.571 begins by declaring that the “[p]ayment of costs ... from a disbursement under [R.C. 128.55] shall be limited to those ... costs incurred for a specified number of public safety answering points[.]” R.C. 128.571(A). Divisions (A)(1) and (A)(2) thereafter specify that in a

calendar year, a county may “use” disbursements from the 9-1-1 government assistance fund for a certain number of PSAPs. R.C. 128.571(A)(1)-(2). Thus, the plain language of R.C. 128.571(A) limits the number of PSAPs in a countywide 9-1-1 system for which moneys from a disbursement pursuant to R.C. 128.55 may be used. When the language of division (C) of R.C. 128.571 is read *in pari materia* with the language of division (A), it is evident that the “allowable number of public safety answering points under [R.C. 128.571]” and “the public safety answering point limitations established under [R.C. 128.571]” are the number of wireless PSAPs for which the statute authorizes a county to use a disbursement of moneys from the wireless 9-1-1 government assistance fund. In other words, the limitation on the number of PSAPs in R.C. 128.571 applies to the number of wireless PSAPs in a countywide 9-1-1 system that may be funded by a disbursement from the wireless 9-1-1 government assistance fund, rather than to the total number of wireless PSAPs that a countywide 9-1-1 system may operate.

This conclusion is bolstered by other provisions of R.C. Chapter 128. The costs of operating and maintaining a PSAP may be funded through an assessment on real property in the county or by allocating those costs among the political subdivisions served by the countywide 9-1-1 system. *See* R.C. 128.07(B)(5); R.C. 128.22(A)(2). R.C. 128.55(C) states that “[n]othing in [R.C. Chapter 128] affects the authority of a subdivision operating or served by a public safety answering point ... to use ... any other authorized revenue of the subdivision ... for the purposes of providing basic or enhanced 9-1-1.” Accordingly, a disbursement from the wireless 9-1-1 government assistance fund is not the sole source of funding for a wireless PSAP. Insofar as a countywide 9-1-1 system need not rely exclusively upon moneys disbursed pursuant to R.C. 128.55 to furnish emergency communication services, and insofar as R.C. 128.571(A) expressly states that a disbursement may be used to support a certain number of PSAPs, we read R.C. 128.571(C) to mean that a county’s disbursement is reduced only when the number of wireless PSAPs in a countywide 9-1-1 system for which a disbursement is used exceeds the number specified in R.C. 128.571(A) and (B).

The plain language of R.C. 128.571(A) does not limit the total number of wireless PSAPs that a countywide 9-1-1 system may operate. Rather, the language of R.C. 128.571(A) limits the number of PSAPs for which a disbursement of moneys from the wireless 9-1-1 government assistance fund may be used. Reading R.C. 128.571(C) as a limitation on the total number of wireless PSAPs that a 9-1-1 system may operate renders meaningless the explicit language of R.C. 128.571(A) that restricts the *use* of a disbursement to a specified number of wireless PSAPs. A statute “should not be construed in a manner that would render part of [the] statute meaningless.” 1998 Op. Att’y Gen. No. 98-011, at 2-59. Moreover, to read R.C. 128.571(C) as imposing a limit on the total number of wireless PSAPs that a countywide 9-1-1 system may operate impermissibly requires us to add words to the statute that the General Assembly did not include. The General Assembly could have chosen language that expressly limited a county’s total number of wireless PSAPs. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (“it would not have been difficult to find language which would express that purpose”); 2008 Op. Att’y Gen. No. 2008-025, at 2-277 n.9. For example, if R.C. 128.571(A) stated “a countywide 9-1-1 system may not *operate* more than” a specified number of wireless PSAPs and R.C. 128.571(C) stated that a county’s disbursement from the wireless 9-1-1 government assistance fund shall be reduced by fifty percent if the county “operates

more than the allowable number of public safety answering points," then a restriction on the total number of wireless PSAPs would exist.

Having found that R.C. 128.571 is not ambiguous, we need not apply principles of statutory construction to discern its meaning. As explained by the Ohio Supreme Court,

the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. *The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact.* That body should be held to mean what it has plainly expressed, and hence no room is left for construction.

Slingluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph 2) (emphasis added); *accord State v. Hairston* at ¶12.

We recognize that R.C. 128.571(C) may have been intended by the General Assembly to be an incentive for a countywide 9-1-1 system to consolidate the number of wireless PSAPs it operates. That intent is evidenced by the General Assembly's reference to R.C. 128.571 as establishing a "consolidation schedule[.]" R.C. 128.02(C)(4) (part of the duties of the statewide emergency services internet protocol network steering committee is to "[m]ake recommendations for consolidation of public-safety-answering-point operations in this state, including recommendations for accelerating the *consolidation schedule* established in [R.C. 128.571], to accommodate next-generation 9-1-1 technology and to facilitate a more efficient and effective emergency services system" (emphasis added)). The plain language of R.C. 128.571 advances that goal of consolidation. Counties in which all wireless PSAPs are supported, in part or entirely, by a disbursement from the wireless 9-1-1 government assistance fund have a strong incentive to reduce the number of wireless PSAPs in order to continue to receive the full amount that may be disbursed from the wireless 9-1-1 government assistance fund. Although this incentive may not be as strong for counties that pay the expenses of some or all of their wireless PSAPs with other moneys, an incentive for many counties nevertheless exists. The incentive to consolidate PSAPs would be more compelling if the statute expressly limited the total number of PSAPs that a county may operate, instead of limiting the number of PSAPs for which moneys from the wireless 9-1-1 government assistance fund may be used. We are constrained, however, by the plain, unambiguous language chosen by the General Assembly. If the General Assembly intends a different result, it may amend the statute for that purpose. *See* 2008 Op. Att'y Gen. No. 2008-025, at 2-275. Therefore, we conclude that a countywide 9-1-1 system may operate more than the number of wireless PSAPs specified in R.C. 128.571 and receive a full disbursement of moneys from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55, so long as the

number of wireless PSAPs for which a county uses those moneys does not exceed the number specified in R.C. 128.571.⁴

In reaching our conclusion, we have not overlooked the principle that “an agency’s interpretation of a statute that it has the duty to enforce will not be overturned unless the interpretation is unreasonable.” *State ex rel. Clark v. Great Lakes Constr. Co.*, 99 Ohio St. 3d 320, 2003-Ohio-

⁴ R.C. 128.571 was originally enacted as R.C. 4931.651. Am. Sub. S.B. 129, 127th Gen. A. (2008) (eff. Dec. 30, 2008). At that time, R.C. 4931.651 provided:

On or after March 1, 2009, payment of costs specified in divisions (A) to (D) of [R.C. 4931.65 (now R.C. 128.57)] and so payable from a disbursement under [R.C. 4931.64 (now R.C. 128.55)] shall be limited to those specified and payable costs incurred after that date for not more than five public safety answering points of the particular 9-1-1 system.

Am. Sub. S.B. 129. That version of the statute was the subject of 2009 Op. Att’y Gen. No. 2009-031, at 2-208. In that opinion, the Attorney General was asked “whether a county that has adopted a final plan for the provision of wireless enhanced 9-1-1 … may rotate on a monthly basis the PSAPs that will receive moneys from the wireless 9-1-1 government assistance fund.” 2009 Op. Att’y Gen. No. 2009-031, at 2-206. The Attorney General concluded that R.C. 4931.651 limited the use of those moneys “to pay the costs of no more than five PSAPs per month.” 2009 Op. Att’y Gen. No. 2009-031, at 2-208. As there was no requirement in R.C. 4931.651, or any other section of the Revised Code, that the disbursement be used to pay the costs of the same five PSAPs, the opinion concluded that a countywide 9-1-1 system had discretion to rotate on a monthly basis the five PSAPs that would be supported by the disbursements. 2009 Op. Att’y Gen. No. 2009-031, at 2-208.

In 2012, the General Assembly amended R.C. 4931.651 and renumbered it R.C. 5507.571. Sub. H.B. 360, 129th Gen. A. (2012) (eff. Dec. 20, 2012). Sub. H.B. 360 enacted divisions (A)(1) and (2) and divisions (B) and (C). The General Assembly added language that expressly limited the use of a disbursement from the wireless 9-1-1 government assistance fund to support a specified number of PSAPs “per calendar year.” Sub. H.B. 360. That restriction is part of the current version of R.C. 128.571. *See, e.g.*, R.C. 128.571(A)(1) (“[f]or the period beginning on March 1, 2009, and ending on December 31, 2015, a countywide 9-1-1 system may use disbursements for not more than five public safety answering points per calendar year”); Am. Sub. H.B. 59, 130th Gen. A. (2013) (eff. June 30, 2013, with certain sections effective on other dates) (renumbering R.C. 5507.571 as R.C. 128.571).

In light of the addition of “per calendar year” to R.C. 128.571(A), the conclusion of 2009 Op. Att’y Gen. No. 2009-031, at 2-208, that a countywide 9-1-1 system may rotate on a monthly basis the five PSAPs for which a disbursement of wireless 9-1-1 government assistance fund moneys may be used is no longer accurate under current law. We, therefore, overrule 2009 Op. Att’y Gen. No. 2009-031 on the basis of statutory amendment.

3802, 791 N.E.2d 974, at ¶10; *see also Weiss v. P.U.C.O.*, 90 Ohio St. 3d 15, 17-18, 734 N.E.2d 775 (2000) (“[d]ue deference should be given to statutory interpretations by an agency that has accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility”). Although the Tax Commissioner disburses moneys from the wireless 9-1-1 government assistance fund, R.C. 128.55(A)(1), the 9-1-1 Program Office has enforcement duties insofar as it “oversee[s] administration” of the fund, R.C. 128.40. As discussed above, the 9-1-1 Program Office has interpreted R.C. 128.571 as requiring a reduction in a county’s disbursement from the wireless 9-1-1 government assistance fund when the total number of wireless PSAPs operated by a countywide 9-1-1 system exceed the number set forth in R.C. 128.571(A) and (B).

An agency’s interpretation is afforded deference when a statute is ambiguous and the agency’s interpretation is reasonable and consistent with the language of the statute. R.C. 1.49(F) (“[i]f a statute is ambiguous, the court … may consider … [t]he administrative construction of the statute”); *Lang v. Dir., Ohio Dep’t of Job and Family Servs.*, 134 Ohio St. 3d 296, 2012-Ohio-5366, 982 N.E.2d 636, at ¶12 (a court will determine whether the agency’s interpretation is reasonable after determining that a statute is ambiguous); *Lopez v. Ohio Dep’t of Human Servs.*, 88 Ohio App. 3d 231, 234, 623 N.E.2d 689 (Defiance County 1993) (“if [a] statute is ambiguous, the agency’s interpretation of the statute is … given due deference”); 1994 Op. Att’y Gen. No. 94-084, at 2-414 (“courts will give deference to any reasonable administrative construction of the statutes that govern the agency’s own duties and responsibilities”). We do not believe that deference to the 9-1-1 Program Office’s interpretation is warranted here. The plain language of R.C. 128.571 is not ambiguous. That language does not impose a limitation on the total number of wireless PSAPs that may be operated in a countywide 9-1-1 system as a condition of receiving a full disbursement of moneys from the wireless 9-1-1 government assistance fund.

Based upon the foregoing, it is our opinion, and you are hereby advised that a countywide 9-1-1 system may operate more than the number of wireless public safety answering points specified in R.C. 128.571 and receive a full disbursement of moneys from the wireless 9-1-1 government assistance fund pursuant to R.C. 128.55, so long as the number of wireless public safety answering points for which a county uses those moneys does not exceed the number specified in R.C. 128.571. (2009 Op. Att’y Gen. No. 2009-031, overruled, on the basis of statutory amendment).

Very respectfully yours,



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