

articles of incorporation. The articles of incorporation must include the nonprofit corporation's name, the place in Ohio where its principal office is to be located, the corporation's purpose or purposes, and the names and addresses of not less than three natural persons who are to be initial trustees of the nonprofit corporation. R.C. 1702.04(A)(1)-(4). The articles of incorporation may also include additional information relating to initial members of the nonprofit corporation, qualifications for membership, classification of members, and certain other matters. R.C. 1702.04(B)(1)-(7).

The general authority of a nonprofit corporation and the functions it may perform are described in R.C. 1702.12, and are, in large part, the same as those permitted a corporation for profit under the general corporation law. *See* R.C. 1701.13. In addition, a nonprofit corporation's specific powers are derived from its articles of incorporation and code of regulations. 1979 Op. Att'y Gen. No. 79-061 at 2-204; *see* R.C. 1702.04.

Accordingly, a nonprofit corporation formed under R.C. Chapter 1702, as a general rule, is neither established by, nor functions as, an agency of state or local government.⁷ *See generally* 1995 Op. Att'y Gen. No. 95-018 at 2-105 ("[b]ecause the library you describe was created as a nonprofit corporation in accordance with either R.C. Chapter 1702 or R.C. Chapter 1713 (educational corporations), it was not created as a division of the state by authority of the state"). To the contrary, a nonprofit corporation is a private, nongovernmental entity. *See generally* 1979 Op. Att'y Gen. No. 79-061 at 2-204 ("[a] privately organized entity that performs a public purpose occupies a status no different from that of countless other non-profit corporations, the private nature of which is indisputable"). *Cf. also* 1999 Op. Att'y Gen. No. 99-028 (a nonprofit corporation established under R.C. Chapter 1702 and

or the officers thereof." 1996 Op. Att'y Gen. No. 96-028 at 2-103; *accord* 1979 Op. Att'y Gen. No. 79-055 at 2-184.

⁷1999 Op. Att'y Gen. No. 99-028 at 2-188 and 2-189 stated that there are instances in which courts have held that publicly-funded nonprofit corporations are public offices or public bodies subject to the Ohio public records law, R.C. 149.43, and the Ohio open meetings law, R.C. 121.22. None of the cases cited in that opinion, however, is controlling for purposes of determining what constitutes a "public authority" for purposes of R.C. 4115.03-.16. As explained in 1999 Op. Att'y Gen. No. 99-028 at 2-189:

The determination of "whether a particular entity is public or private ... depends on the specific statutory purpose for which the determination is being made." 1995 Op. Att'y Gen. No. 95-001 at 2-4. For purposes of the public records law and the open meetings law, the terms "public office" and "public body" have express statutory definitions. *See* R.C. 149.011(A); R.C. 121.22(B)(1). These definitions have been construed expansively and are not limited to entities that are actual government agencies. *See State ex rel. Freedom Communications, Inc.*, 82 Ohio St. 3d at 579, 697 N.E.2d at 212 ("[a]n entity need not be operated by the state or a political subdivision thereof to be a public office under R.C. 149.011(A)"). Because of this difference in the scope of the definitions, even though the Ohio Historical Society had conceded that it was a public office for purposes of Ohio's public records law in the case of *State ex rel. Fenley v. Ohio Historical Society*, 64 Ohio St. 3d 509, 597 N.E.2d 120 (1992), this did not preclude the court in the later case of *Ohio Historical Society v. State Employment Relations Board* [66 Ohio St. 3d 466, 613 N.E.2d 591 (1993)] from finding that the Society was not a state agency or an arm of the state for purposes of the public employees' collective bargaining law.

