OPINION NO. 90-015

Syllabus:

A curfew, which pursuant to R.C. 307.71 may be imposed on "any of the unincorporated areas" of a county, need not be uniform throughout the county, but may be imposed on some, one, or all of the unincorporated areas, including a single township or portion thereof, as is necessary to preserve the public peace, health, and safety, provided that the curfew is enforced in a nondiscriminatory manner and that it provides fair and adequate notice of where and when its restrictions are in effect.

To: Paul F. Kutscher, Jr., Seneca County Prosecuting Attorney, Tiffin, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 3, 1990

I have before me your request for my opinion regarding curfews imposed pursuant to R.C. 307.71. Specifically, you ask whether a board of county commissioners can provide for a curfew for one township or one portion of a township, or whether the curfew must be uniform county-wide.

R.C. 307.71(A) states:

> Whenever the adoption of a curfew for persons under eighteen years of age is deemed necessary by the board of county commissioners for the immediate preservation of the public peace, health, or safety in any of the unincorporated areas of such county, the board of county commissioners may adopt a resolution setting forth the provisions of such curfew and the necessity for such curfew together with a statement of the reasons for such necessity, and providing for its enforcement within such unincorporated areas of the county.

Pursuant to the above language, therefore, assuming all other conditions of the statute are met, the board of county commissioners may impose a curfew on "any of the unincorporated areas" of the county.

The word "any" is frequently interpreted to provide a choice of "some, one, or all" of the particular thing or things specified. For example, in interpreting a provision in R.C. 3507.05 that voting machines must permit each voter to vote at "any election," the court held that the word "any" does not mean the machines must be usable at all elections, rather it "is used in the sense of 'some' or 'one.' It is simply a derivative of the word 'one' or the weakened adjective form 'a' or 'an.'" *State ex rel. Benjamin v. Brown*, 164 Ohio State 189, 191, 129 N.E.2d 468, 470 (1955). Similarly, a statutory requirement that a warning sign be posted on the highway in advance of "any component part" of certain speed detection devices, meant "that the Legislature intended that the warning signs be posted in advance of any *one* of the component parts of the timing device rather than in advance of *every* component part of the mechanism." *State v. Peters*, 9 Ohio App. 2d 343, 344, 224 N.E.2d 916, 917 (Montgomery County 1965). *See also Wachendorf v. Shaver*, 149 Ohio St. 231, 239-40, 78 N.E.2d 370, 375 (1948) (statute allowing petitions for incorporation of "any territory" into a village means "any or all" territory without regard to whether it is platted or unplatted); *In the Matter of Terrence D. Wyrock*, Nos. 7951776, 7951777, slip op. at 5-8 (Ct. App. Cuyahoga County June 5, 1980) (unreported) (provision of R.C. 2151.356 allowing juvenile court to make "any disposition authorized by [R.C.] 2151.355" permits court to impose "one, some, or all of the orders of disposition contained therein"); *Herbert v. Young*, 23 Ohio Misc. 2d 13, 15, 491 N.E.2d 402, 405 (C.P. Clermont County 1984) (statutory language which provided that "any party...may subpoena any member or members of the arbitration board" meant "any or all" parties or board members, regardless of other distinguishing characteristics).

I am aware that there are times when construction of a statute requires the word "any" to be interpreted as meaning "all" or "every." *See, e.g., Motor Cargo, Inc. v. Board of Township Trustees*, 52 Ohio Op. 257, 259, 117 N.E.2d 224, 227 (C.P. Summit County 1953) (stating with respect to the scope of a zoning exemption available to "any public utility" that "the word 'any' is equivalent and has the force of 'every' or 'all'"). This construction is not the most common meaning of the word "any," however, and the proper rule of construction is that "any" must be interpreted according to its context. *See Wachendorf v. Shaver*, 149 Ohio St. at 239, 78 N.E.2d at 375 ("'[a]ny' is a word of flexible meaning and must be interpreted in the light of the context"); *State v. Peters*, 9 Ohio App. 2d at 344, 224 N.E.2d at 917 ("[a]lthough the word, "any," is sometimes used to mean "every," this is not its preferred dictionary definition. Actually, it is a general word and may have a diversity of meanings[1] depending upon the context and subject-matter of the statute in which it is used") (footnote added).

I find nothing in the context of R.C. 307.71 to indicate that the word "any" should be given an interpretation other than its more common meaning of some, one, or all of a larger number or quantity of the particular thing or things specified. The entire phrase used in R.C. 307.71, "in any of the unincorporated areas of the county," conveys the sense that a county may be made up of an unspecified number of such areas. In addition, R.C. 307.71 gives the commissioners authority to determine the provisions of the curfew. It is implicit in this grant of discretion that the legislature intended the commissioners to have the ability to tailor the curfew restrictions to the facts of the particular situation which has created the need "for the immediate preservation of the public peace, health, or safety." R.C. 307.71.[2] The ability to set curfew restrictions for "some, one, or all" of the unincorporated areas of the

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1 *Webster's New World Dictionary* 62 (2d college ed. 1984) (examples omitted) lists six definitions of the word "any":

> 1. one, no matter which, of more than two...2. some, no matter how much or how little, how many, or what kind...3. without limit...4. even one, the least amount or number of...5. every...6. of considerable size or extent.

2 The authority of the board of county commissioners to impose a curfew under R.C. 307.71 is predicated on a finding of necessity "for the immediate preservation of the public peace, health, or safety." I note that this

county in response to the particular needs of the situation at hand is fully consistent with this legislative intent.

I am not aware of any Ohio cases dealing with whether a legislative authority can impose a curfew on only part of the territory within its jurisdiction. Courts in other states, however, have looked favorably on such geographically limited curfews, so long as they are uniformly enforced within the restricted area. For example, in the case of *Peters v. Breier*, 322 F. Supp. 1171, 1172 (E.D. Wis. 1971), the court upheld a city ordinance placing a curfew on a single park during certain hours, noting that the ordinance "carefully defines the area that is restricted and the hours of the curfew. It also provides for appropriate notice. It applies to all persons and cannot be condemned as selective or discriminatory." A North Carolina appellate court upheld a curfew imposed by a county upon just the parks within the county in the case of *North Carolina v. Allred*, 21 N.C. App. 229, 204 S.E.2d 214 (1974), *appeal dismissed*, 285 N.C. 591, 205 S.E.2d 724 (N.C. 1974), *cert. denied* 419 U.S. 1127 (1975). The curfew was imposed because nightly meetings in the parks conducted by a specific organization were resulting in "public turmoil." The court noted that even though the activities of that organization were the major factor in bringing on the conditions which resulted in the curfew, once the curfew was issued it was uniformly enforced as to all persons desiring to use the park. *See also Davis v. Justice Court*, 10 Cal. App. 3d 1002, 89 Cal. Rptr. 409 (1970) (upholding a county curfew limited geographically to a single housing project); *cf. United States v. Chalk*, 441 F.2d 1277 (4th Cir. 1971) (noting that a city-wide curfew would have been suspect if it had been limited only to certain neighborhoods on the basis of race), *cert. denied*, 404 U.S. 943 (1971). Based on these cases, I see nothing in R.C. 307.71 which prevents the curfew restrictions from being limited to a particular place or places in the county, as long as the restrictions are enforced uniformly against all persons who violate them.[3]

If a curfew is to be less than county-wide, I advise the commissioners to exercise care in defining the boundaries of the curfew area. I am not aware of any reason why it would be inappropriate per se to limit a curfew to a single township or identifiable portion of a township. The nature of the area involved, however, may in some instances make enforcement of a limited curfew impractical and in other instances, legally impermissible. Fundamental principles of due process require that a legislative enactment provide "fair warning and notice of what is prohibited or required so that one may act accordingly...[and] provide reasonably clear standards for law enforcement officials and triers of fact in order to prevent arbitrary and discriminatory enforcement." *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242, 1248 (M.D. Pa. 1975) (citations omitted) (upholding constitutionality of juvenile curfew ordinance after severing impermissibly vague words and phrases), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964 (1976). A curfew prohibits behavior that is otherwise legal and that may also be subject to some degree of constitutional protection.[4] Thus, it is not the behavior, in and of itself,

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emergency legislative power with respect to curfews is more limited than that of municipalities. Municipal authority to impose a curfew derives from the home rule powers granted in Ohio Const. art XVIII, §3, *see In re Carpenter*, 31 Ohio App. 2d 184, 287 N.E.2d 399 (Franklin County 1972), and therefore consists of both ordinary and emergency legislative authority.

3 I note that, pursuant to R.C. 307.71, the commissioners may only impose a curfew on minors. If a geographically limited curfew were imposed, uniform enforcement would require that the restrictions be enforced against all minors who come into the area and not just a particular group of minors.

4 I note that juvenile curfews can vary greatly as to the specific behaviors prohibited and the exceptions available. A body of case law has developed analyzing when such prohibitions infringe on the exercise of fundamental rights and what degree of constitutional protection is appropriate with respect to juveniles. Generally speaking, while courts have allowed more regulation of juvenile than of adult behavior, the more restrictive and inflexible a juvenile curfew is, the greater the danger that it

which creates the offense, but the time and place where the behavior occurs. It is essential, therefore, that clear notice be provided of the times and places where the curfew is in effect, so that both juveniles subject to the curfew and law enforcement officials can reasonably determine when and where behavior is restricted. *See, e.g., Naprstek v. City of Norwich*, 545 F.2d 815, 818 (2d Cir. 1976) (juvenile curfew ordinance which failed to provide time for the end of a daily curfew held void for vagueness). If the area under consideration for curfew has no easily discernible boundaries, the problems involved in providing fair warning and notice may range from difficult to insurmountable. In such instances the commissioners may find that a county-wide curfew is the more practical or possibly even the only option.

It is, therefore, my opinion and you are hereby advised that a curfew, which pursuant to R.C. 307.71 may be imposed on "any of the unincorporated areas" of a county, need not be uniform throughout the county, but may be imposed on some, one, or all of the unincorporated areas, including a single township or portion thereof, as is necessary to preserve the public peace, health, and safety, provided that the curfew is enforced in a nondiscriminatory manner and that it provides fair and adequate notice of where and when its restrictions are in effect.

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will violate constitutional standards. *See, e.g., In re Carpenter*, 31 Ohio App. 2d 184, 287 N.E.2d 399 (Franklin County 1972) (curfew upheld); *City of Eastlake v. Ruggiero*, 7 Ohio App. 2d 212, 220 N.E.2d 126 (Lake County 1966) (curfew upheld); *City of Wadsworth v. Owens*, 42 Ohio Misc. 2d 1, 536 N.E.2d 67 (Wadsworth Mun. Ct. 1987) (curfew unconstitutional); *In re Mosier*, 59 Ohio Misc. 83, 394 N.E.2d 368 (C.P. Van Wert County 1978) (curfew unconstitutional); *see also Johnson v. City of Opelousas*, 658 F.2d 1065 (5th Cir. 1981) (curfew unconstitutional); *Naprstek v. City of Norwich*, 524 F.2d 815 (2d Cir. 1976) (curfew void for vagueness); *Waters v. Barry*, 711 F. Supp. 1121 (D.D.C. 1989) (grant of TRO barring enforcement of curfew), *summary judgment granted*, 711 F. Supp. 1125 (D.D.C. 1989) (curfew unconstitutional); *McCollester v. City of Keene*, 514 F. Supp. 1046 (D.N.H. 1981) (curfew unconstitutional), *rev'd on other grounds*, 668 F.2d 617 (1st Cir. 1982), *later proceeding*, 586 F. Supp. 1381 (D.N.H. 1984) (amended curfew unconstitutional); *Bykofsky v. Borough of Middletown*, 401 F. Supp. 1242 (M.D. Pa. 1975) (curfew upheld), *aff'd mem.*, 535 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964 (1976).