OPINION NO. 91-051

Syllabus:

1. A county dispatch center which arranges for towing services at the request of the county sheriff or sheriff's deputies is required to dispatch a towing service which has entered into a competitively bid contract with the sheriff pursuant to R.C. 307.86 only where the towing service is actually being purchased by the sheriff (as opposed to the vehicle owner) and where the cost of the service purchased exceeds ten thousand dollars. The determination of what constitutes a purchase pursuant to R.C. 307.86 is a question of fact.

2. A county dispatch center may use a rotational list for the dispatch of towing services at the request of the county sheriff or sheriff's deputies, provided that the requirements of R.C. 307.86 do not apply and further provided that the use of such a rotational list does not involve an agreement in the nature of a contract, combination, or conspiracy which restrains trade or commerce.

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio
By: Lee Fisher, Attorney General, December 31, 1991

I have before me your request for an opinion concerning the method by which a county dispatch center may arrange for towing services for the removal of vehicles upon the request of the sheriff or deputy sheriffs. Specifically, you have indicated that "[a] rotational system is utilized by the dispatcher whereby towing companies that are available to tow vehicles at the request of the sheriff and his deputies are included in numerical order on a designated towing list. Each company on the list is contacted in numerical sequence until all companies have been called upon once to provide services, whereupon, the sequence begins anew." Your questions in this regard may be stated as follows:

1. Is a county dispatch center which arranges for towing services at the request of the county sheriff or sheriff's deputies required to dispatch a towing service which has entered into a competitively bid contract with the sheriff?

2. If the answer to the first question is no, may the county dispatch center use a rotation system for the selection of towing services to be dispatched at the request of the sheriff or sheriff's deputies?

Although I am aware of no authority which permits a county dispatch center to provide for the removal of vehicles, I note that the county dispatcher merely contacts the towing company on behalf of the sheriff or sheriff's deputies. The services of the towing company are provided directly to the sheriff or sheriff's deputies. Thus, your questions actually concern the authority of the sheriff.[1]

The authority of the sheriff to contract for towing services stems from his general authority to "preserve the public peace." R.C. 311.07. *See, e.g.*, 1958 Op. Att'y Gen. No. 3039, p. 676 (sheriff's duty in preserving the public peace includes the removal of damaged motor vehicles blocking public highways, and the sheriff may contract for the rendition of emergency service and may arrange for such service to

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1 I assume, for purposes of this opinion, that the sheriff is providing police services for the county. I do not address the situation in which the sheriff, pursuant to R.C. 311.29, contracts to perform police functions or provide police services for another political subdivision, nor do I address the situation in which the county provides dispatch services for a municipal corporation pursuant to R.C. 307.15. *See* 1990 Op. Att'y Gen. No. 90-076.

be furnished at his own summons or the summons of his deputies). Further, the sheriff has specific authority to engage the services of a private towing service in some instances. R.C. 4513.60(A)(1), for example, permits the sheriff, under certain circumstances, to arrange for the removal of a motor vehicle from private residential or private agricultural property, or a repair or storage garage, "by a private tow truck operator or towing company." Additionally, any police officer has the authority to "provide for the removal" of a motor vehicle found unattended "upon any highway, bridge, or causeway, or in any tunnel, where such vehicle constitutes an obstruction to traffic," R.C. 4511.67.[2] *See also* R.C. 4513.61.

The Applicability of R.C. 307.86

Turning to your first question, R.C. 307.86 provides that

> [a]nything to be purchased...including, but not limited to, any...service, except the services of an accountant, architect, attorney at law, physician, professional engineer, construction project manager, consultant, surveyor, or appraiser by or on behalf of the county or contracting authority, as defined in section 307.92 of the Revised Code, at a cost in excess of ten thousand dollars, except as provided in [sections of the Revised Code not relevant here], shall be obtained through competitive bidding.

"[C]ontracting authority" is defined as "any board, department, commission, authority, trustee, official, administrator, agent, or individual which has authority to contract for or on behalf of the county or any agency, department, authority, commission, office or board thereof." R.C. 307.92. Since the sheriff has authority to enter into contracts on his own behalf, *see, e.g.*, R.C. 311.29, the sheriff is a contracting authority. Thus, towing services purchased (1) by or on behalf of the sheriff and (2) at a cost in excess of ten thousand dollars must be obtained through competitive bidding.

The background information you provided indicates that in most cases where the sheriff requests a towing service, the owner of the towed vehicle, rather than the sheriff, pays the charges for such towing directly to the towing company.[3] This fact indicates that such services are not "purchased...by or on behalf of the county or contracting authority." R.C. 307.86. "Purchase" is not defined for purposes of R.C. 307.86, and therefore must be understood in its natural, literal, common or plain sense. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "purchase" as "[t]o obtain in exchange for money or its equivalent; buy." *The American Heritage Dictionary* 1005 (2d college ed. 1985). Clearly, the sheriff does not obtain towing services in exchange for money where the owner of the vehicle pays the towing company. Thus, where the owner of a vehicle pays the charges for its tow, there is no purchase by or on behalf of the sheriff. Since R.C. 307.86 applies only to purchases "by or on behalf of the county or contracting authority," the requirement of competitive bidding does not apply where the owner of the towed vehicle pays all charges for the tow. This construction of R.C. 307.86 is in accord with the purpose underlying the requirement for competitive

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2 "Police officer" is defined for purposes of R.C. 4511.67 as "every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations." R.C. 4511.01(Z). Since the sheriff and sheriff's deputies have the power to make arrests for violations of R.C. 4511.67 on all state highways, R.C. 4513.39, they are "police officers" for purposes of R.C. 4511.67.

3 You do not explain the circumstances under which the sheriff calls for the services of a towing company but the owners of the vehicles pay for the services of such company. I assume that this occurs when, for example, the vehicle is towed pursuant to the sheriff's authority and the owner of the vehicle is required by a specific provision of law to pay for the services of the towing company. *See, e.g.*, R.C. 4513.60(E) (requires the owner to pay the charges for the tow and storage of a motor vehicle removed under the authority of the sheriff pursuant to R.C. 4513.60(A)(1)).

bidding, which is "to afford a certain measure of protection to taxpayers." 1976 Op. Att'y Gen. No. 76-023 at 2-72. Where an expenditure of tax money is not at issue, "the policy considerations which provide the basis for the competitive bidding requirement have no application."[4] *Id.* at 2-73.

When the sheriff *is* purchasing towing services, the requirements of R.C. 307.86 apply if and only if the cost of the service purchased exceeds ten thousand dollars. While it is highly unlikely that the cost of any single tow will exceed ten thousand dollars, the aggregate cost of tows for a given period could exceed ten thousand dollars. In 1980 Op. Att'y Gen. No. 80-038, one of my predecessors found, with respect to competitive bidding statutes, that

> the threshold limitation provided in the statute should be interpreted as relating separately to any purchase or lease which may reasonably and in good faith be deemed to constitute a separate contract or purchase order. The purchase or lease contemplated may not be split into separate contracts or orders for the purpose of evading the requirements of the statute.

Id. at 2-162. *See also State ex rel. Kuhn v. Smith*, 25 Ohio Op. 2d 203, 194 N.E.2d 186 (C.P. Monroe County 1963) (school repairs may not be done piecemeal to avoid competitive bidding); *State ex rel. Ashland County v. Snyder*, 2 Ohio N.P. (n.s.) 261 (C.P. Ashland County 1904) (competitive bidding requirements cannot be evaded by elimination of work that would normally be included in a bridge contract); *Wing v. City of Cleveland*, 9 Ohio Dec. Reprint 551 (C.P. Cuyahoga County 1885) (competitive bidding may not be avoided by the purchase of separate orders of less than the threshold amount). Thus, if it is reasonable to purchase towing services on the basis of each individual tow, as for example, when such services are required infrequently, and each individual tow costs less than ten thousand dollars, competitive bidding would not be required. If, however, towing services are needed so frequently that reason requires the purchase of such services on the basis of a particular period of time, for example, one year, rather than on an "as needed" basis, competitive bidding would have to be employed if the cost of services for that period exceeded ten thousand dollars. Additionally, it might be reasonable for the sheriff to procure towing services separately for each region of the county or to make separate purchases for different types of towing jobs, for example, the towing of passenger vehicles and the towing of heavy construction equipment.

Where separate purchases for towing services are reasonable and in good faith, and thus not for the purpose of avoiding the requirement of competitive bidding, then the threshold amount of ten thousand dollars applies separately to each purchase. However, what constitutes a "purchase" for purposes of R.C. 307.86 is ultimately a question of fact to be determined on a case-by-case basis. Since I cannot determine questions of fact, 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact finding body"), I cannot offer an opinion as to whether, assuming it is the sheriff who is actually purchasing the towing services at issue, the sheriff must obtain towing services through competitive bidding. That determination must, at least initially, be made by you with reference to the parameters and definitions I have described.

Antitrust Restrictions on the County's Use of Towing Services

Your second question asks whether, in the event the sheriff is not required to obtain towing services through competitive bidding, the dispatch center may use a rotational list for the selection of towing companies. You have indicated that your primary concern is whether the use of a rotational list for the dispatch of towing services will violate the antitrust laws. I assume for purposes of this opinion that when you ask about "antitrust laws" you are referring to the Sherman Act, 15 U.S.C.S. §§1-7(1985), as amended, the Clayton Act, 15 U.S.C.S. §§12-18a (1985 &

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[4] In contrast, I note that New Jersey courts have held that competitive bidding requirements apply even where no public monies are expended in the towing and storage of vehicles. *See Kurman v. Newark*, 124 N.J. Sup. 89, 304 A.2d 768 (App. Div. 1973).

Supp. 1990), §§19-27 and §44 (1975 & Supp. 1990), and 29 U.S.C.S. §52 (1975 & Supp. 1990), as amended, the Federal Trade Commission Act, 7 U.S.C.S. §610 (1978) and 15 U.S.C.S. §§41-58 (1975 & Supp. 1990), §1692*l* (1982 & Supp. 1990), as amended, and the Robinson-Patman Act, 15 U.S.C.S. §13 (1985), §21a (1975), as amended, and also to the Ohio antitrust law, the Valentine Act, R.C. Chapter 1331.

A. Federal Law

The Robinson-Patman Act is inapplicable to your question since it only prohibits discrimination in connection with the sale of "commodities," which do not include intangibles such as services. *May Department Store v. Graphic Process Co.*, 637 F.2d 1211 (9th Cir. 1980). The Sherman Act is much broader. It prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations," 15 U.S.C.S. §1 (1985), and also declares that "[e]very person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony." 15 U.S.C.S. §2 (1985). The Federal Trade Commission Act prohibits "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C.S. §45(a) (1985 & Supp. 1990). Finally, although the Clayton Act does not proscribe conduct relevant to the issue here,[5] it does provide remedies applicable to violations of the Sherman Act. *See Palm Springs Medical Clinic Inc. v. Desert Hospital*, 628 F. Supp. 454, 458 (D.C. Cal. 1986) ("Section 4 of the Clayton Act [15 U.S.C.S. §15 (1985)] *is* the damages remedy for violations of the Sherman Act" (emphasis in original); *see also* 15 U.S.C.S. §§25 and 26 (1975 & Supp. 1990) (injunctive relief for violations of the Sherman Act).

In order for a particular trade practice or activity to violate either the Sherman Act or the Federal Trade Commission Act, the activity or practice must have some nexus with interstate commerce, although it need not actually occur in the flow of interstate commerce. In *McClain v. Real Estate Board of New Orleans*, 444 U.S. 232, 241 (1979), the Court recognized that "[t]he broad authority of Congress under the Commerce Clause has, of course, long been interpreted to extend beyond activities actually *in* interstate commerce to reach other activities that, while wholly local in nature, nevertheless substantially *affect* interstate commerce." (Emphasis in original.) The Court noted that the jurisdictional requirements of the Sherman Act may be satisfied under the "in commerce" or "effect on commerce" theory. *Id.* at 242. Furthermore, the Federal Trade Commission Act expressly applies to activities or practices "in or affecting commerce." 15 U.S.C.S. §45 (1975 & Supp. 1990). Thus, any activity or practice which occurs in or substantially affects interstate commerce may be subject to the Sherman Act and the Federal Trade Commission Act.

The requirement that an activity or practice substantially affect interstate commerce has been interpreted very broadly by the courts. For example, in *McClain, supra*, although the activity complained of, which concerned the practices of local real estate brokers, occurred entirely locally, the Court held that an affect on interstate commerce was established by the fact that funds for the financing of residential property sold in the local area were raised from "out-of-state investors and from interbank loans obtained from interstate financial institutions," and that "[m]ortgage obligations...were traded as financial instruments in the interstate secondary mortgage market." *McClain* at 245. Thus, even though the activity at issue was purely local, the fact that the defendants' general business

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5 The Clayton Act prohibits the making of a sale or contract for the sale of goods, under certain circumstances, where restrictions are placed on the purchaser or lessee with respect to the merchandise or other commodities of a competitor of the seller or lessor. 15 U.S.C.S. §14 (1985). Additionally, the Clayton Act prohibits certain activities with respect to acquisition by one corporation of the stock of another, 15 U.S.C.S. §18 (1985); certain interlocking directorates, 15 U.S.C.S. §19 (1975); and certain purchases by common carriers in the case of the interlocking directorates, 15 U.S.C.S. §20 (1975).

activity had some connection with interstate commerce was sufficient to invoke the application of the Sherman Act.

With respect to your question, therefore, even though all of the towing done pursuant to the sheriff's rotational list might be done within Ohio, the general business activity of the various towing companies might create a sufficient connection with interstate commerce to warrant application of these federal antitrust laws. *See, e.g., Cowan v. Corley*, 814 F.2d 223 (5th Cir. 1987) (the fact that vehicles were towed on interstate highways was a sufficient nexus with interstate commerce for purposes of the Sherman Act). *But see Walker County Wrecker and Storage Ass'n v. Walker County*, 604 F. Supp. 28 (S.D. Texas 1984) (the fact that some of the towing originated on an interstate highway was insufficient to sustain a claim under the Sherman Act or the Clayton Act). Clearly, whether or not the required nexus with interstate commerce exists depends upon the facts of each particular case, and thus, I am unable to make this determination. Op. No. 83-057. I will assume, however, for purposes of this opinion, that a sufficient nexus with interstate commerce has been established for purposes of both the Sherman Act and the Federal Trade Commission Act.

As noted above, §1 of the Sherman Act, 15 U.S.C.S. §1 (1985), prohibits all contracts, combinations, and conspiracies which restrain trade and commerce among the states or with foreign nations. The Sherman Act also prohibits monopolies. 15 U.S.C.S. §2 (1985). "'Monopoly' power exists in a geographic market if one competitor has the power to raise prices to supra-competitive levels or has the power to exclude competition in the relevant market either by restricting entry of new competitors or by driving existing competitors out of the market." *American Key Corp. v. Cole Nat. Corp.*, 762 F.2d 1569, 1581 (11th Cir. 1985). The facts which you have presented do not suggest a monopoly. Thus, in order for a violation of 15 U.S.C.S. §1 to occur, there must be an agreement in the nature of a contract, combination or conspiracy to restrain trade. In the facts which you have presented, the towing companies which are available to tow vehicles at the request of the sheriff and his deputies are included on a list which is used, in a rotating fashion, by the sheriff or the county dispatcher at the request of the sheriff or his deputies. You have not indicated that there is any contract, combination or conspiracy, or indeed an agreement of any kind, among the towing companies or between any of the towing companies and either the sheriff or the county dispatcher with respect to the creation or use of such a rotational list. It appears that the list is a unilateral arrangement for the convenience of the sheriff or the county dispatcher and that no influence was exerted upon the sheriff or county dispatcher by those companies on the list to either include or exclude particular suppliers. On the basis of these facts, I find that no "contract, combination or conspiracy" exists and, therefore, the use of such a list is not a violation of the Sherman Act.

If the towing companies had entered into an agreement among themselves and with the sheriff whereby the towing companies agreed to perform services on a strictly rotational basis, a violation of the Sherman Act likely would exist. Indeed, an agreement among competitors to allocate customers in order to minimize competition is a *per se* violation of the Sherman Act. *United States v. Cooperative Theatres of Ohio, Inc.*, 845 F.2d 1367 (6th Cir. 1988); *see also Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690 (1962). An arrangement by which each towing company is called in rotation to provide services may be a method by which the towing companies can allocate customers in order to minimize or even eliminate competition with respect to tow requests from the sheriff's office. Whether or not a violation of the Sherman Act actually exists requires proof of "the existence of the alleged agreement and...that defendants knowingly entered into the conspiracy." *Cooperative Theatres* at 1373. The existence of the agreement need not be proven directly, however, but may be inferred from the facts surrounding the activity in question. *Interstate Circuit Inc. v. U.S.*, 306 U.S. 208 (1939). Moreover, the intent to restrain trade may be presumed. *Cooperative Theatres*.

Even if a particular activity were to constitute a contract, combination or conspiracy in restraint of trade among the states or with foreign nations, the liability of the state and its political subdivisions may be limited with respect to such activity. Such activity might, for example, be immune from the Sherman Act

by reason of the state action doctrine. In *Parker v. Brown*, 317 U.S. 341 (1943), the Court held that regulatory action of the state cannot violate the Sherman Act. The Court later clarified the state action doctrine to exempt from the scope of the Sherman Act "anticompetitive conduct engaged in as an act of government by the state as sovereign, or, by its subdivisions, pursuant to state policy to displace competition with regulation or monopoly public service." *City of Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389, 413 (1978). The determination as to whether sufficient state action exists to invoke the immunity is a two-part test: "First, the challenged restraint must be 'one clearly articulated and affirmatively expressed as state policy,' second, the policy must be 'actively supervised' by the state itself." *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980), quoting *City of Lafayette* at 410. Such state policy, however, need not expressly permit the displacement of competition; it is sufficient that the suppression of competition is the foreseeable result of the policy. *City of Columbia v. Omni Outdoor Advertising, Inc.*, 59 U.S.L.W. 4259, 4261 (April 1, 1991). Since I have determined that the facts you have presented do not indicate a violation of the Sherman Act, however, it is not necessary to address whether sufficient state action exists to invoke immunity.

Additionally, under certain circumstances, local governments and local government officials are not liable in damages pursuant to the Local Government Antitrust Act of 1984, 15 U.S.C.S. §§34-36 (Supp. 1990), as amended. This act provides that "[n]o damages, interest on damages, costs, or attorneys' fees may be recovered under section 4, 4A or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) [15 U.S.C.S. §15, 15a, or 15c] from any local government, or official or employee thereof acting in an official capacity." 15 U.S.C.S. §35(a) (Supp. 1990). Since §4 of the Clayton Act, 15 U.S.C.S. §15 (1985), provides the damages remedy for violations of the Sherman Act, the county and the county sheriff are not liable for damages for violations of the Sherman Act. *See, e.g., Chris' Wrecker Service v. Town of Fairfield*, 619 F. Supp. 480 (D.C. Conn. 1985) (15 U.S.C.S. §35(a) applied to bar action by towing company seeking damages against town for alleged antitrust violation for denying the company reinstatement to an approved list of towing firms used by the town police). I note, however, that the Local Government Antitrust Act does not prevent a plaintiff from seeking other remedies such as injunctive relief. *See* 15 U.S.C.S. §§25 and 26 (1975 & Supp. 1990).

I turn now to the Federal Trade Commission Act, which prohibits "unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C.S. §45 (1975 & Supp. 1990). The scope of this act is broader than the Sherman Act, since its purpose is "to stop in their incipiency acts and practices which, when full blown, would violate [the Sherman Act and the Clayton Act] as well as to condemn as 'unfair methods of competition' existing violations of them." *F.T.C. v. Motion Picture Advertising Service Co.*, 344 U.S. 392, 394 (1953), *reh'g denied*, 345 U.S. 914 (1953). Thus, violations of the Sherman Act are necessarily also violations of the Federal Trade Commission Act, although the converse is not necessarily true. *F.T.C. v. Cement Institute Inc.*, 333 U.S. 683 (1948), *reh'g denied*, 334 U.S. 839 (1948). However, for the reasons that follow, I find that the Federal Trade Commission Act does not prohibit the sheriff's or the county dispatcher's use of a rotational list of towing companies under the facts you have provided.

As originally enacted, the Federal Trade Commission Act prohibited only "unfair methods of competition in commerce." Federal Trade Commission Act, ch. 311, 38 Stat. 719 (1914). Thus, the original purpose of the Act was limited to the protection of competitors against unfair methods of competition used by other competitors. Although this prohibition indirectly benefitted consumers by protecting competition, it was not until the Federal Trade Commission Act was amended in 1938 by the Wheeler-Lea Act to prohibit "unfair or deceptive acts or practices in commerce," ch. 49, 52 Stat. 111, that the Act provided direct protection to consumers. That amendment "made it clear that Congress, through [15 U.S.C.S. §45 (1975 & Supp. 1990)], charged the Federal Trade Commission with protecting consumers as well as competitors." *F.T.C. v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 (1972). Thus, the Federal Trade Commission Act protects competitors against the unfair methods of competition of other competitors and protects both competitors and consumers against unfair acts or practices in commerce.

With respect to the prohibition against unfair methods of competition, I note that, under the facts which you have related, neither the sheriff nor the county dispatcher is a competitor in the field of vehicle towing. The activity in question, the creation and use by the sheriff or the county dispatcher of a rotational list for the selection of towing companies, is clearly not a method of competition. It follows, therefore, that the creation and use of such a list by the sheriff or county dispatcher does not violate the prohibition of unfair methods of competition of the Federal Trade Commission Act.

Further, there is no indication that the prohibition of "unfair or deceptive acts or practices" includes the acts or practices of the consumer. "Consumer" is defined as "[o]ne that consumes.... One who acquires goods or services." *American Heritage Dictionary* 315 (2d college ed. 1985). The towing service is acquired by the sheriff or by the county dispatcher for the use of the sheriff or sheriff's deputies. Thus, the use of the rotational list of the sheriff or the county dispatcher, on behalf of the sheriff, is an act or practice of a consumer and therefore does not fall within the scope of the Federal Trade Commission Act.[6]

B. Ohio Law

The Valentine Act, which appears at R.C. Chapter 1331, prohibits the existence of a "trust," defined as "a combination of capital, skill, or acts *by two or more persons*" for any of the purposes enumerated in R.C. 1331.01(B). (Emphasis added.) Thus, unless there are two or more persons acting together for one or more of the purposes enumerated in R.C. 1331.01, there can be no violation of the statute. *See, e.g., The Daily Monument Co. v. Crown Hill Cemetary Ass'n.*, 114 Ohio App. 143, 152, 176 N.E.2d 268, 274 (Summit County 1961) ("[i]t, therefore, follows that there must be a combination of persons or entities who act together in violation of the provisions of [R.C. Chapter 1331] before there can be a cause of action stated"). *See also Nelson Radio & Supply Co., Inc. v. Motorola, Inc.*, 200 F.2d 911, 914 (5th Cir. 1952) ("[i]t is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy").

As I noted above, the facts which you have given me concerning the use by the sheriff or county dispatcher of a rotational towing list do not suggest that the necessary "combination of persons" exists for a violation of R.C. 1331.01. The rotational towing list appears to be a unilateral device prepared either by the sheriff for the use and convenience of the sheriff or sheriff's deputies, or by the county dispatcher for his own use and convenience in selecting a towing company when requested by the sheriff or sheriff's deputies. The use of such a list by the sheriff or his deputies or by the county dispatcher for the purpose of contacting a towing company does not require or include the agreement of the towing companies which appear on the list. Since no "combination of capital, skill, or acts by two or more persons" exists, R.C. 1331.01(B), the creation and use of such a list is not a "trust" in violation of R.C. 1331.01.

Accordingly, it is my opinion, and you are hereby advised that:

1. A county dispatch center which arranges for towing services at the request of the county sheriff or sheriff's deputies is required to dispatch a towing service which has entered into a competitively bid contract with the sheriff pursuant to R.C. 307.86 only where the towing service is actually being purchased by the sheriff (as opposed to the vehicle owner) and where the cost of the service purchased exceeds ten thousand dollars. The determination of what constitutes a purchase pursuant to R.C. 307.86 is a question of fact.

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6 I note that even if a violation of the Federal Trade Commission Act occurs, the liability of the county may be limited. The state action immunity doctrine enunciated in *Parker v. Brown*, 317 U.S. 341 (1943) has been applied to the Federal Trade Commission Act. *See, e.g., California State Board of Optometry v. F.T.C.*, 910 F.2d 976 (D.C. Cir. 1990).

2. A county dispatch center may use a rotational list for the dispatch of towing services at the request of the county sheriff or sheriff's deputies, provided that the requirements of R.C. 307.86 do not apply and further provided that the use of such a rotational list does not involve an agreement in the nature of a contract, combination, or conspiracy which restrains trade or commerce.