

**OPINION NO. 88-007****Syllabus:**

1. The Bureau of Disability Determination is required to comply with the terms of R.C. 126.30 with respect to all purchases, leases, or acquisitions of equipment, materials, goods, supplies, or services, notwithstanding that the Bureau receives its funding from the federal government through the Social Security Administration.
2. Pursuant to 41 C.F.R. §1-15.713-7 (1984), the Bureau of Disability Determination may not expend funds it receives from the federal government through the Social Security Administration in satisfaction of interest charges the Bureau incurs under R.C. 126.30.
3. The Rehabilitation Services Commission shall provide the Bureau of Disability Determination state funds with which the Bureau may satisfy the payment of interest charges it incurs under R.C. 126.30.

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**To: Robert L. Rabe, Administrator, Rehabilitation Services Commission, Columbus, Ohio**

**By: Anthony J. Celebrezze, Jr., Attorney General, March 29, 1988**

You have requested my opinion regarding the use of federal funds by the Bureau of Disability Determination (BDD) to pay interest charges that are incurred by BDD pursuant to the terms of R.C. 126.30, the prompt payment law. R.C. 126.30 reads, in part, as follows:

(A) Any state agency that purchases, leases, or otherwise acquires any equipment, materials, goods, supplies, or services from any person and fails to make payment for the equipment, materials, goods, supplies, or services by the required payment date shall pay an interest charge to the person in accordance with division (E) of this section. Except as otherwise provided in division (B), (C), or (D) of this section, the required payment date shall be the date on which payment is due under the terms of a written agreement between the state agency and the person or, if a specific payment date is not established by such a written agreement, the required payment date shall be thirty days after the state agency receives a proper invoice for the amount of the payment due.

R.C. 126.30(F) further provides, in part, that, "[n]o appropriations shall be made for the payment of any interest charges required by...[R.C. 126.30]," and "[a]ny state agency required to pay interest charges under...[R.C. 126.30] shall make the payments from moneys available for the administration of agency programs." See also R.C. 126.30(B) (date for required payment when the state agency receives a defective or improper invoice); R.C. 126.30(C), (D) (application of R.C. 126.30 to claims and invoices submitted to the Department of Human Services and the Bureau

of Workers' Compensation respectively); R.C. 126.30(E) (amount of interest to be paid under R.C. 126.30, and the date when such payment shall be made); R.C. 126.30(G) (annual filing by state agency of report detailing the interest charges the agency paid under R.C. 126.30 during the previous fiscal year). Thus, under R.C. 126.30, a state agency is required to pay an interest charge upon late payments to any person from whom the state agency has purchased, leased, or otherwise acquired equipment, materials, goods, supplies, or services.

According to your letter, BDD's operating budget is funded exclusively by the federal government, through the Social Security Administration, and BDD receives no state funds by way of General Assembly appropriation. You further state that BDD, in compliance with R.C. 126.30, has paid the interest charges assessed thereunder when it has not paid its vendors promptly. Such payments have been made out of the federal funds provided to BDD through the Social Security Administration for BDD's various operations.

The Social Security Administration, however, has informed BDD that it may not use federal funds to pay interest charges incurred by BDD under R.C. 126.30. The Social Security Administration claims that the federal procurement regulations appearing in Title 41 of the Code of Federal Regulations, Public Contracts and Property Management, prohibit the use of federal funds for such a purpose. In this regard, 41 C.F.R. §1-15.713-7 (1984) states as follows: "Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation and except as provided for in paragraph (a) of §1-15.712-2."<sup>1</sup> (Footnote added.)

With respect to the foregoing, your specific questions are as follows:

1. May federal funds available to BDD through the Social Security Administration be used to pay interest incurred under the prompt payment law on any bills not paid promptly by BDD?
2. If such funds may not be used for the payment of such expenses, is BDD exempt from the prompt payment law?

Before addressing your particular questions, I find it helpful to review briefly the relationship that exists between BDD and the Social Security Administration under state and federal law, and the specific duties and responsibilities imposed upon BDD as a result thereof. 42 U.S.C. §§423-425 and §§1381-1383c, and the regulations promulgated thereunder, *see* 20 C.F.R. §§404.1-325 and §§404.1501-1825; 20 C.F.R. §§416.101-2227 (1987), govern respectively the federal disability insurance benefit (DIB) and supplemental security income benefit (SSI) programs administered by the Social Security Administration. In order to be eligible for disability insurance or supplemental security income benefits, an individual must satisfy a number of statutory requirements, including a requirement that the individual be disabled. *See* 42 U.S.C. §§423 and 1382. For purposes of the various provisions governing both the DIB and SSI programs, the term "disability" means the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months." 42 U.S.C. §§423(d)(1)(A) and 1382c(a)(3)(A). Thus, in order to be eligible for disability insurance or supplemental security income benefits, an individual must suffer from a medically determinable physical or mental impairment which is severe enough to result in an inability to engage in any substantial gainful activity.

42 U.S.C. §§421(a)(1) and 1383b(a) further provide that a state agency shall perform the disability determination function in any state that has agreed to assume

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<sup>1</sup> 41 C.F.R. §1-15.712-2(a) (1984), which is not applicable here, provides that rental costs of space in a privately owned building is an expense that may be paid for out of federal funds.

responsibility for the performance thereof and that has complied with the federal statutory requirements pertaining thereto. For purposes of the various provisions governing determinations of disability, the term "disability determination function" means "making determinations as to disability and carrying out related administrative and other responsibilities," 20 C.F.R. §§404.1602; *see also* 20 C.F.R. §416.1002, and "state agency" is defined as "that agency of a State which has been designated by the State to carry out the disability determination function," 20 C.F.R. §§404.1502; 404.1602; and 416.1002. Accordingly, BDD has been established within the Rehabilitation Services Commission (RSC), *see* R.C. 3304.12; R.C. 3304.15; 3 Ohio Admin. Code 3304-1-01(C), as the state agency responsible for performing disability determinations pursuant to the federal statutory scheme described above. *See generally* 1983 Op. Att'y Gen. No. 83-013. Further, the costs incurred by the state in establishing and operating BDD are funded exclusively with federal moneys pursuant to the terms of 42 U.S.C. §421(e), which are provided either "in advance or by way of reimbursement." *See also* 20 C.F.R. §404.1626 (describing the procedures by which the Social Security Administration provides federal funds to a state for all direct and indirect costs it incurs in performing disability determination functions).

I now direct my attention to your specific questions. For ease of discussion I shall consider initially your second question. You ask whether BDD may be exempt from complying with the terms of R.C. 126.30 if it is unable to use the funds it receives from the federal government to pay interest charges incurred thereunder. In particular, in conversations with a member of my staff you have questioned whether the source of funding provided a state agency for its various operations may have a bearing on whether that agency is required to comply with R.C. 126.30. Thus, with respect to BDD for example, you wish to know whether BDD may be exempt from the requirements of R.C. 126.30 insofar as BDD's budget is funded exclusively with federal dollars.

Resolution of your question requires that I consider the extent to which an exception to the application of R.C. 126.30 may exist for state agencies that receive their funding exclusively from the federal government. It is a well-established principle that exceptions to the application or operation of the terms of a particular statute shall be recognized only when such exceptions are set forth clearly and unambiguously either in the statute itself or in another statute, and in those instances in which the General Assembly has not enacted an exception to the terms of a particular statute, there is a presumption that it has intended that there shall be no exceptions thereto. *Scheu v. State of Ohio*, 83 Ohio St. 146, 157-58, 93 N.E. 969, 972 (1910) ("we must observe the rule that an exception to the provisions of a statute not suggested by any of its terms should not be introduced by construction from considerations of mere convenience"); *Morris Coal Co. v. Donley*, 73 Ohio St. 298, 76 N.E. 945 (1906) (syllabus, paragraph one) (*Siegfried v. Everhart*, 55 Ohio App. 351, 353, 9 N.E.2d 891, 892 (Summit County 1936) ("[t]he general rule is that where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and in such case it is not the province of a court to introduce an exception by construction"); 1935 Op. Att'y Gen. No. 3989, vol. I, p. 209, at 214. *See also Pioneer Linen Supply Co. v. Evatt*, 146 Ohio St. 248, 251, 65 N.E.2d 711, 712 (1946) ("exceptions to a general law are not favored and must be strictly construed, and what is not clearly excluded from the operation of a law is clearly included therein"); 1971 Op. Att'y Gen. No. 71-075 at 2-254 (same); 1935 Op. Att'y Gen. No. 4199, vol. I, p. 489, at 493 ("[i]t is well settled that an exception to a provision in a statute must be strictly construed and should only be applied to cases that are clearly within the terms of such exception"). Thus, absent a clear and unequivocal expression on the part of the General Assembly providing for an exception to the terms of a statute, such an exception may not otherwise be implied.

My review of R.C. 126.30 persuades me that BDD is required to comply with the provisions of that section, notwithstanding that BDD's budget is funded exclusively with federal dollars. In this regard, R.C. 126.30 makes no exception to its terms for state agencies that receive their funding, either in whole or in part, from the federal government. Rather, R.C. 126.30(A) states unambiguously, and without qualification, that interest charges incurred thereunder shall be paid by

"[a]ny state agency that purchases, leases, or otherwise acquires any equipment, materials, goods, supplies, or services." (Emphasis added.) As used in R.C. 126.30, *inter alia*, R.C. 1.60 defines "state agency" to mean "every organized body, office, or agency established by the laws of the state for the exercise of any function of state government." As I have already noted, BDD has been established and designated as the administrative subdivision of RSC responsible for making disability determinations, a responsibility that has, in turn, been delegated to the state government pursuant to state and federal law. 42 U.S.C. §421(a)(1); 42 U.S.C. §1383b(a); R.C. 3304.15; 3 Ohio Admin. Code 3304-1-01(C). Thus, BDD is a "state agency," as defined in R.C. 1.60 and, as such, is subject to the terms of R.C. 126.30. Because R.C. 126.30 makes no exception to its terms for state agencies that receive funding from the federal government, I conclude that BDD must comply with the requirements set forth therein. *See generally State ex rel. Celebrezze v. Board of County Commissioners of Allen County*, 32 Ohio St. 3d 24, 27, 512 N.E.2d 332(1987) ("it is a cardinal rule of construction that where a statute is clear and unambiguous, there is 'no occasion to resort to the other means of interpretation,'" quoting from *Stingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902) (syllabus, paragraph two)); *Sears v. Weimer*, 143 Ohio St. 312, 55 N.E.2d 413 (1944) (syllabus, paragraph five) ("[w]here the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted").

You also have asked whether federal funds available to BDD through the Social Security Administration may be used to pay interest charges incurred by BDD under R.C. 126.30, or whether the language of 41 C.F.R. §1-15.713-7 may properly be interpreted as prohibiting such an expenditure. You note in this particular respect that the interest payments required by R.C. 126.30 do not appear to be the same as, or equivalent to, any of those enumerated in the federal regulation.

The specific regulation about which you have inquired appears in chapter 1 of Title 41 of the Code of Federal Regulations. Chapter 1 sets forth the various federal procurement regulations that apply to a wide range of contracts and cooperative agreements that the federal government maintains with private sector entities and state and local governmental units. Part 1-15 of chapter 1 describes the cost principles and procedures that shall govern with respect to such contracts, *see* 41 C.F.R. §1-15.000 (1984) (part 1-15 contains "general cost principles and procedures for the negotiation and administration of fixed-price, cost-reimbursement, and other types of contracts, the pricing of contracts and contract modifications whenever cost analysis is performed (*see* §1-3.807-2), and the determination, negotiation, or allowance of costs when such action is required by a contract clause"), and subpart 1-15.7 enumerates the principles and standards that are to apply in the case of such contracts with state, local, and federally recognized Indian tribal governments, *see* 41 C.F.R. §1-15.108 (subpart 1-15.7 provides "principles and standards for determining costs applicable to contracts with State and local governments and federally recognized Indian tribal governments," and are designed "to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between these governments and the Federal Government"); 41 C.F.R. §1-15.701-1 (subpart 1-15.7 sets forth "principles for determining the allowable costs of programs administered by State, local, and federally recognized Indian tribal governments under contracts with the Federal Government"). 41 C.F.R. §1-15.701-2(a) further states that the application of such principles and standards is based upon the fundamental premise that "[s]tate, local, and federally recognized Indian tribal governments are responsible for the efficient and effective administration of contract programs through the application of sound management practices." In accordance therewith, 41 C.F.R. §1-15.713 describes certain costs incurred by a contracting agency in conjunction with a federal contract or cooperative agreement for which federal funds may not be allocated or expended. Among such costs, 41 C.F.R. §1-15.713-7 includes interest on borrowings, however represented, bond discounts, costs of financing and refinancing operations, and legal and professional fees paid in connection therewith.

In prior opinions I have emphasized the limitations placed upon me in my capacity as Attorney General to provide definitive interpretations of federal statutory law and administrative regulations to state departments and agencies that

must operate in accordance with such laws and regulations. In 1985 Op. Att'y Gen. No. 85-007, for example, I stated at 2-25 as follows:

Let me note, first, that I have neither the capacity to provide authoritative interpretations on questions of federal law, *see, e.g.*, 1982 Op. Att'y Gen. No. 82-097 at 2-270 n. 7; 1982 Op. Att'y Gen. No. 82-071, nor the authority to exercise on behalf of another state official discretion which has been delegated to him, *see generally State ex rel. Copeland v. State Medical Board*, 107 Ohio St. 70, 140 N.E. 660 (1923); *State ex rel. Commissioners of Franklin County v. Guilbert*, 77 Ohio St. 333, 83 N.E. 80 (1907); 1984 Op. Att'y Gen. No. 84-098; 1984 Op. Att'y Gen. No. 84-067. Thus, where there is no definitive interpretation on a matter of federal law, I am able to advise only whether your adoption of a particular interpretation appears to be consistent with your duty to carry out your responsibilities under the law of this state. *See* R.C. 109.12 ("[t]he attorney general, when so requested, shall give legal advice to a state officer...in all matters relating to [his] official duties"). *See generally State ex rel. Hunt v. Hildebrant*, 93 Ohio St. 1, 12, 112 N.E. 138, 141 (1915), *aff'd*, 241 U.S. 565 (1916) (where no direction has been given, an officer "has implied authority to determine, in the exercise of a fair and impartial official discretion, the manner and method" of performing his duties).

*Cf.* 1985 Op. Att'y Gen. No. 85-078 (advising the Ohio Bureau of Employment Services of the meaning to be accorded a term appearing in 20 C.F.R. §652.9, which was otherwise undefined therein, where such term had been defined in a prior federal publication and thereafter adopted with approval by the federal courts). Thus, absent a definitive interpretation of 41 C.F.R. §1-15.713-7, I can only advise you in this situation whether your interpretation of the language of that section comports with your duty to carry out the responsibilities imposed on you by state and federal law.

The particular terms that appear in 41 C.F.R. §1-15.713-7 are not defined, for purposes of that section, in subpart 1-15.7. *Cf.* 41 C.F.R. §1-15.702 (defining certain words and phrases as used in subpart 1-15.7). Further, my research has not disclosed any federal case law defining the scope of 41 C.F.R. §1-15.713-7. Thus, in this instance, I must limit myself to advising you whether your interpretation of the language of 41 C.F.R. §1-15.713-7 is compatible with your responsibilities under state and federal law.

On this point, I find that I am unable to concur in your suggested interpretation of the foregoing regulation. First, I am persuaded that a court, if asked to consider this question, would be inclined to construe the language of 41 C.F.R. §1-15.713-7 that refers to "[i]nterest on borrowings (however represented)" as broad enough to encompass the type of interest payments envisioned by R.C. 126.30. More importantly, however, your proposed interpretation of 41 C.F.R. §1-15.713-7, to the extent that it conflicts with the interpretation already placed upon such regulation by the Social Security Administration, would appear to be inconsistent with certain responsibilities imposed upon you by state and federal law in connection with the state's receipt of federal funds under the federal disability insurance benefit program. As I have already noted, BDD and the Social Security Administration are engaged, pursuant to state and federal law, in a cooperative partnership for purposes of administering the federal disability insurance benefit program. As a part of that arrangement, the federal government provides BDD the funds it requires to operate, and to perform the disability determination functions it has been assigned. Pursuant to 20 C.F.R. §§404.1626(d) and (f), however, the federal government reserves the right to condition the state's receipt of such funds upon their use in a manner approved by the Social Security Administration. In this regard, 20 C.F.R. §404.1626(d) declares that the state may not incur or make expenditures for items of cost not approved by the Social Security Administration, or in excess of the amount made available to the state thereby. 20 C.F.R. §404.1626(f) further provides that, "[a]ny monies paid to the State which are used for purposes not within the scope of these regulations will be paid back to the Treasury of the United

States." See also 20 C.F.R. §404.1626(e).<sup>2</sup> The imposition of such conditions upon the state's receipt of federal moneys for BDD reflects a permissible exercise of Congress' spending power under article I, §8 of the United States Constitution.<sup>3</sup> See, e.g., *South Dakota v. Dole*, 483 U.S. \_\_\_, 107 S.Ct. 2793 (1987) (incident to the spending power, Congress may attach conditions to the receipt of federal funds by the states); *King v. Smith*, 392 U.S. 309 (1968) (same); *Ohio State Pharmaceutical Association v. Creasy*, 587 F.Supp. 698, 705 (S.D. Ohio 1984) ("[t]he federal government may impose terms and conditions upon the allotment of money to a state. State laws, regulations or policies which are inconsistent with federal regulations are invalid and may result in termination of funds under the Social Security program").

Thus, the receipt of federal funds by BDD in conjunction with the federal disability insurance benefit program is accompanied by an obligation on the part of BDD to use those funds in a manner that meets with the approval of the Social Security Administration. In this instance the Social Security Administration has interpreted its own regulation as prohibiting BDD from expending those funds in satisfaction of interest charges that may be incurred by BDD under R.C. 126.30. Insofar as such an interpretation appears to be a reasonable one, and related to the federal government's interest in promoting sound management practices by state and local governments with whom it contracts for the receipt of federal funds, see 41 C.F.R. §1-15.701-2(a); *Massachusetts v. United States*, 435 U.S. 444, 461 (1978) (plurality opinion) (conditions imposed upon the receipt of federal grants may be illegitimate if they are unrelated "to the federal interest in particular national projects or programs"); *Ivanhoe Irrigation District v. McCracken*, 357 U.S. 275, 295 (1958) ("the Federal Government may establish and impose reasonable conditions relevant to federal interest in the project and to the overall objectives thereof"), I am constrained to conclude that BDD must abide by such interpretation. Accordingly, BDD may not expend federal funds it receives through the Social Security Administration in satisfaction of interest charges it incurs under R.C. 126.30.

I am aware that the foregoing resolution of your questions presents a practical dilemma for BDD insofar as the only funds immediately available to BDD with which it may satisfy the payment of interest charges it incurs under R.C. 126.30 are the funds it receives from the federal government through the Social Security Administration. As I have noted, however, BDD has been created as an administrative subdivision of RSC, which is itself a "state agency" for purposes of R.C. 126.30. See 1986 Op. Att'y Gen. No. 86-075. Further, RSC receives state funds by way of General Assembly appropriation for the purpose of carrying out the duties and responsibilities conferred upon it by state law. See, e.g., Am. Sub. H.B. 171, 117th Gen. A. (1987) (eff., in part, July 1, 1987) (section 74, uncodified) (appropriating approximately thirty million dollars to RSC out of the general revenue fund for fiscal years 1988 and 1989). As the superior governmental entity vis-a-vis BDD, therefore, RSC must ensure that BDD complies with the terms of R.C. 126.30 and take whatever actions are appropriate in that regard, which may include

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<sup>2</sup> 20 C.F.R. §404.1626(e) (1987) reads as follows:

After the close of a period for which funds have been made available to the State, the State will submit a report of its actual expenditures. We will give the State an audit report showing whether the expenditures were consistent with cost principles described in Subpart 1-15.7 of Part 1-15 of the Federal Procurement Regulations (41 CFR 1-15.7) and in written guidelines in effect at the time the expenditures were made or incurred.

<sup>3</sup> Article I, §8 of the United States Constitution provides, in pertinent part, that, "Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States."

providing BDD with state funds otherwise appropriated by the General Assembly to RSC with which BDD may satisfy the payment of interest charges it incurs under R.C.126.30.

Based upon the foregoing it is my opinion, and you are advised that:

1. The Bureau of Disability Determination is required to comply with the terms of R.C. 126.30 with respect to all purchases, leases, or acquisitions of equipment, materials, goods, supplies, or services, notwithstanding that the Bureau receives its funding from the federal government through the Social Security Administration.
2. Pursuant to 41 C.F.R. §1-15.713-7 (1984), the Bureau of Disability Determination may not expend funds it receives from the federal government through the Social Security Administration in satisfaction of interest charges the Bureau incurs under R.C. 126.30.
3. The Rehabilitation Services Commission shall provide the Bureau of Disability Determination state funds with which the Bureau may satisfy the payment of interest charges it incurs under R.C. 126.30.