

**BEFORE THE
OHIO STAY AT HOME ORDER DISPUTE RESOLUTION COMMISSION**

In the Matter of Dispute Resolution

Request Number OH025

**DISPUTE RESOLUTION COMMISSION
ADVISORY OPINION AND RECOMMENDATION**

Summary

1. The Dispute Resolution Commission recommends that the Miami County health department properly determined that CR Butts is essential based on the information provided, if it adheres to the framework provided in paragraph 7 below.

Background

2. On or about April 10, 2020, CR Butts submitted a dispute resolution request to the Dispute Resolution Commission (“Commission”) pursuant to paragraph 23 of the Amended Stay at Home Order (“Order”) issued on April 2, 2020, by the Director of the Ohio Department of Health.¹ The dispute resolution request was assigned number OH025.

3. Paragraph 23 of the Order authorized the Director to appoint the members of the Commission and delegated authority to the Commission to facilitate the resolution of disputes regarding what is or is not an essential business in circumstances where a conflict between decisions or actions by local health authorities is demonstrated.

4. On April 6, 2020, the Director of the Ohio Department of Health appointed Lydia Mihalik, Director of the Ohio Development Services Agency, Sheryl Maxfield, Director of the Ohio Department of Commerce and Sam Randazzo, Chair of the Public Utilities Commission of Ohio to the Commission.

5. On April 16, 2020, the Commission met to consider and address the verified dispute resolution request referenced above along with information provided by the local health authorities with conflicting positions regarding what similar businesses are or are not

¹ The Amended Stay at Home Order can be found at:
https://content.govdelivery.com/attachments/OHOOD/2020/04/02/file_attachments/1418062/Signed%20Amended%20Director%27s%20Stay%20At%20Home%20Order.pdf

essential businesses and the relief requested by the person or entity submitting the request referenced above.

6. Based on the information provided by the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses and the relief requested by the person or entity submitting the request referenced above, the Commission hereby issues its opinion as follows. Pursuant to paragraph 23 of the Order, the decision of the Commission shall be final.

Advisory Opinion and Recommendation

7. It is the opinion of the Commission that the Miami County health department has properly interpreted the Order in determining that CR Butts is an essential business, if it conforms to the requirements outlined here. In its request to this Commission, CR Butts alleged that it sells retail products listed in paragraph 12.b. of the Order, including food products and non-prescription medication. The Commission finds that this business is essential and may continue to operate and maintain its essential lines of business and, to a limited extent, non-essential lines of business provided that: (1) all non-essential activities are strictly incidental to essential lines of business; and (2) the business is being conducted in accordance with the Order's requirements that attach to businesses engaged in essential functions. If the sale of non-essential products becomes more than incidental for the business, it loses its essential status. A business may not use the form of essential lines of business as justification for receiving essential business status when, in substance, the business' primary line of business activity is non-essential. Therefore, CR Butts is an essential business provided that its primary line of business is limited to the sale of the essential goods outlined in its request: food products and non-prescription medication.

8. It is the recommendation of the Commission that the Ohio Department of Health take such action as may be necessary to advise city and county health departments whose interpretation of the Order conflicts with the opinion set forth above in paragraph 7 to conform their enforcement of the Order to such above opinion.

9. It is the recommendation of the Commission that this advisory opinion and recommendation be promptly provided to the local health authorities with conflicting positions regarding what similar businesses are or are not essential businesses, provided to the person or entity submitting the request referenced above and published through a public posting at the Ohio Department of Health's website.

COMMISSIONERS:

Approving:

Lydia Mihalik

Sheryl Maxfield

Sam Randazzo

Issuance Date and Time April 16, 2020 at 4:00PM

Effective Date and Time² April 18, 2020 at 4:00PM

² Assumes that the Advisory Opinion and Recommendation is not suspended, altered or modified by the Director of the Ohio Department of Health or the Director's designee.