

**BEFORE THE  
STAY SAFE OHIO ORDER DISPUTE RESOLUTION COMMISSION**

**In the Matter of Dispute Resolution**

**Request Number OH258**

**DISPUTE RESOLUTION COMMISSION  
ADVISORY OPINION AND RECOMMENDATION**

Summary

1. The Dispute Resolution Commission recommends that the Delaware County Health District properly determined, based on the information provided, that portable drive-in theaters may operate within the guidelines provided in this opinion.

Background

2. On or about May 21, 2020, Jason Orcena submitted a dispute resolution request on behalf of the Union County Health District to the Dispute Resolution Commission (“Commission”) pursuant to paragraph 25 of the Stay Safe Ohio Order (“Order”) issued on April 30, 2020, by the Director of the Ohio Department of Health.<sup>1</sup> Specifically, the District requests a review of whether a portable drive-in theater owned and operated by Direct Instructional Support Systems (d.b.a. “SuperGames”) may be permitted to operate under the Order. The dispute resolution request was assigned number OH258.

3. Paragraph 25 of the Order authorizes the Commission to facilitate the resolution of conflicts between decisions or actions by local health authorities under the Order.

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 May 28, 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 in the implementation of the Order and the relief requested by the entity submitting the request referenced above.

6. Based on the information provided by the local health authorities with conflicting positions regarding the implementation of the Order and the relief requested by the

---

<sup>1</sup> The Stay Safe Ohio Order can be found at: <https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>.

person or entity submitting the request referenced above, the Commission hereby issues its opinion as follows. Pursuant to paragraph 25 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 Delaware County Health District has properly interpreted the Order in determining that portable drive-in theaters, and Direct Instructional Support Systems (d.b.a. "SuperGames") may operate so long as any entity providing this service can do so in a safe manner. Paragraph 13.g. of the Order specifically excludes "drive-in theatres" from the list of businesses that must remain closed. Further, paragraphs 2 and 16 outline the Order's social distancing requirements; paragraph 8 requires that employees wear facial coverings (with certain exceptions); paragraph 20 provides general requirements for safe business operations; and paragraph 21.b. outlines specific requirements for consumer and retail businesses. The Commissioners opine that the Order's specific reference to drive-in theaters is equally applicable to portable drive-in and traditional drive-in theaters. These entities may operate so long as such operation is within the safety parameters of the Order outlined in this paragraph as well as standards outlined in any other relevant or subsequent order issued by the Director of the Ohio Department of Health or the Governor. The Commission notes that portable drive-ins are not the only service provided by the business in question here. This advisory opinion is limited to the portable drive-in theater aspect of this business and does not apply to other aspects of the business, which were not presented as part of this request.

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 the implementation of the Order, 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: May 28, 2020 at 4:00PM