

In the  
**Supreme Court of Ohio**

CINCINNATI CITY SCHOOL DISTRICT  
BOARD OF EDUCATION,

Plaintiff-Appellee,

v.

STATE BOARD OF EDUCATION OF  
OHIO, *et al.*,

Defendants-Appellants.

Case No. **08-1480**

On Appeal from the  
Hamilton County  
Court of Appeals,  
First Appellate District

Court of Appeals Case  
No. C-070494

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**MEMORANDUM IN SUPPORT OF JURISDICTION OF  
DEFENDANTS-APPELLANTS, STATE BOARD OF EDUCATION OF OHIO AND  
OHIO DEPARTMENT OF EDUCATION**

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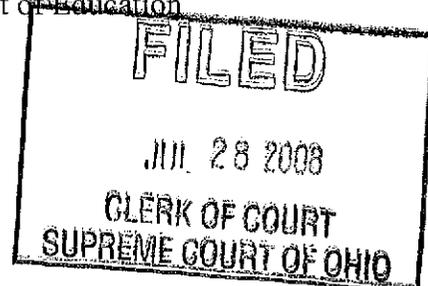
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## INTRODUCTION

R.C. 2335.39 (“Fee-Shifting Statute”) draws a bright-line distinction between large entities that have the resources to fund litigation and smaller entities that do not. Only parties without substantial resources may recover attorney fees after successfully litigating against the State—a result that makes eminent sense given the costs of litigation and the State’s limited resources. Thus, the statute excludes from eligibility individuals with a net worth over a million dollars, businesses or other entities with a net worth exceeding five million dollars, sole owners of such businesses, and entities that employ more than 500 people.

In this case, the question is whether the term “organization” in the Fee-Shifting Statute includes political subdivisions such as school districts, counties, and municipalities. As the trial court recognized, the answer is an unequivocal “yes,” because such entities fall well within commonly understood dictionary definitions of “organization.” The First District, however, disagreed and held that because “organization” follows the terms “business,” “partnership,” “corporation,” and “association,” only private entities qualify as “organizations” under the Fee-Shifting Statute. Thus, the First District mistakenly held that the Cincinnati City School District Board of Education (“School District”) was eligible to recover fees, even though it employs more than 500 people.

This issue is of paramount importance to the State and to large political subdivisions across Ohio. Allowing the answer to remain unclear denies such entities the ability to make informed calculations regarding the potential costs and benefits of pursuing litigation against the State. For this reason, the issue requires immediate resolution.

The case also merits the Court’s review because the First District’s decision both is incorrect and potentially imposes substantial costs upon the State. The First District erred by ignoring both the plain language of the statute and this Court’s repeated admonition that courts

need not resort to canons of construction when statutory text is unambiguous. Thus, rather than applying the canon of *ejusdem generis*, the appeals court should have consulted only a dictionary to discern the meaning of “organization.” But even if it were necessary to turn to canons of statutory construction, the First District’s erroneous result conflicts with the General Assembly’s intent in passing the Fee-Shifting Statute. It further conflicts with the proper application of *ejusdem generis* because the relevant class is that of large entities, not private entities.

For these and other reasons, the Court should review this case, and it should reverse the appeals court’s decision to void the plain meaning of statutory language with a canon of construction. It should instead hold that large political subdivisions are indeed large “organizations,” so they should fund their own litigation against the State, just like large corporations and other large institutions must.

## STATEMENT OF THE CASE AND FACTS

**A. The School District successfully sued the State in a case that is presently pending before this Court.**

The School District sued the State Board of Education of Ohio and the Ohio Department of Education (collectively, “State”), challenging the method used to provide funding to public school districts. The School District prevailed on summary judgment and then moved to recover attorney fees. App. Op., Exh. 2 at ¶ 1. The merits of the underlying case are still in dispute, and the case is presently pending before this Court. *Cincinnati City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, No. 08-0919.

**B. The trial court rejected the School District’s request for attorney fees.**

Under the Fee-Shifting Statute, several types of entities are ineligible to collect attorney fees from the State. More specifically, the statute excludes the following from the definition of “eligible party”:

(b) An individual whose net worth exceeded one million dollars at the time the action or appeal was filed;

(c) A sole owner of an unincorporated business that had, or a partnership, corporation, association, or organization that had, a net worth exceeding five million dollars at the time the action or appeal was filed, except that an organization that is described in subsection 501(c)(3) and is tax exempt under subsection 501(a) of the Internal Revenue Code shall not be excluded as an eligible party under this division because of its net worth;

(d) A sole owner of an unincorporated business that employed, or a partnership, corporation, association, or organization that employed, more than five hundred persons at the time the action or appeal was filed.

R.C. 2335.39(A)(2). The School District constitutes a “political subdivision” under R.C. 2743.01(B).

Because the Fee-Shifting Statute does not define “organization,” the trial court resorted to *Black’s Law Dictionary*, which provides that “[o]rganization includes a corporation, *government*

or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.” App. Op., Exh. 2 at ¶ 5 (citing *Black’s Law Dictionary* 991 (5th ed. 1979)) (emphasis added). The trial court also searched an Internet website, “dictionary.com,” which defined “organization” as “a group of people organized for some end or work.” *Id.*; Dictionary.com Unabridged (2006), available at <http://dictionary.reference.com/browse/organization> (last visited July 23, 2008). Noting that a school district is a political subdivision, see R.C. 2743.01(B)—and therefore meets *Black’s Law Dictionary’s* definition—and that a school district involves a group of “people organized for some end or work”—and therefore meets the dictionary.com definition—the trial court found that a school district is an “organization” under the statute. *Cincinnati City Sch. Dist. Bd. of Educ. v. St. Bd. of Educ. of Ohio* (June 8, 2007), Hamilton County Ct. of Common Pleas case no. A0603908, at 2, 7. Then finding that the Cincinnati School District employed more than 500 people at the time the action was filed under the fees statute, the trial court denied the motion for fees. App. Op., Exh. 2 at ¶ 5.

**C. The First District reversed, concluding that the School District was not an “organization” and thus was eligible to collect attorney fees from the State.**

The School District appealed to the First District, which reversed. Although the lower court noted the reciprocal common meanings of “organization” and “school district,” it held that applying *ejusdem generis* to R.C. 2335.39(A)(2)(d) shows that “the term ‘organization’ . . . was not intended to encompass entities such as a school district.” App. Op., Exh. 2 at ¶ 23. After looking up definitions for “partnership,” “corporation,” “association,” and “unincorporated business” in *Black’s Law Dictionary*, the appeals court concluded that the School District was not an “organization” because these four other entities were not governmental in nature. App. Op., Exh. 2 at ¶ 22.

The State now appeals the decision below.

**THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST**

**A. The Court should review this case because it affects many entities in many cases.**

First, the Court should review this case because it affects many entities. Under the First District's reading, an estimated 150 political subdivisions, including 79 school districts, would become eligible to recover attorney fees in suits against the State. This new right for larger political subdivisions turns on its head a key rationale behind the fees statute—that large entities have sufficient resources to afford, and to make informed decisions regarding, legal representation. The General Assembly wrote the Fee-Shifting Statute to permit smaller political subdivisions with fewer resources, upon prevailing against the State, to recover attorney fees to help defray the cost of counsel. The appeals court's decision eliminates distinctions built into the fees statute. Under that opinion, all political subdivisions qualify for fees, regardless of the number of workers employed or assets owned, because governmental entities are not "organizations."

The potential cost to the State of such a transition in the Fee-Shifting Statute's meaning is staggering, as legal disputes between large political subdivisions and the State are commonplace. Whether the issue is home rule, e.g., *Am. Fin. Servs. Ass'n v. City of Cleveland*, 112 Ohio St. 3d 170, 2006-Ohio-6043, school finance, e.g., *Cincinnati City Sch. Dist. Bd. of Educ. v. State Bd. of Educ.*, No. 08-0919, or something else, e.g., *Cuyahoga County Bd. of Comm'rs v. State*, 112 Ohio St. 3d 59, 2006-Ohio-6499, litigation between large political subdivisions and the State is virtually inevitable. Without immediate resolution of the Fee-Shifting Statute's meaning, Ohio's larger political subdivisions will be unable to evaluate, in advance, the potential costs and benefits of litigating against the State. The State, moreover, will be unable to estimate

meaningfully in its budget process, its potential exposure to attorney fees awards. For these reason, they should support the Court's taking review in this case.

**B. The decision below will generate ancillary litigation over which set of taxpayers will pay the cost of attorney fees in such cases.**

The ultimate cost of litigation between two public bodies necessarily falls upon the public fisc. The only question is *which* public entity's taxpayers will foot the bill for attorney fees. The First District's decision creates uncertainty on this issue, and this uncertainty will yield costly ancillary litigation. Of course, any fee-shifting provision produces some ancillary litigation regarding the *amount* of recovery (that is, disputes over, for instance, the number of hours worked or the acceptable hourly rate). But here, the decision below is worse, because it creates *two* layers of litigation. Not only will it create case-by-case litigation on the amount of fees, but until the issue is settled, it will also invite prefatory litigation on the issue here. Ohio's other eleven appellate districts will need to determine *whether* large public entities like the School District here are eligible to collect attorney fees. To lessen this upward pressure on the cost of litigation, the Court should grant review and clarify the meaning of "organization" in the Fee-Shifting Statute.

**C. The decision below will lead to large, unanticipated expenditures from the State's budget.**

Third, the increased cost for the State will be significant. In this case alone, the School District seeks half a million dollars in attorney fees from the State. With each new lawsuit between the State and large political subdivisions rendered eligible by the appeals court's decision, the costs charged to the State will grow. And the newly available fees could give rise to abusive litigation or exorbitantly expensive representation. If the appeals court's rule applies beyond the First District, the true expense for the State will almost certainly add up to millions of dollars over time. And larger political subdivisions will shift the costs of litigation from local

taxpayers to taxpayers statewide, forcing all Ohioans to subsidize advocacy on behalf of these larger political subdivisions' interests.

For each of these reasons, the Court should grant review in this case.

## ARGUMENT

### **Appellant State of Ohio's Proposition of Law:**

*Because a board of education or other political subdivision is an "organization" under R.C. 2335.39(A)(2)(d), it is ineligible to recover attorney fees from the State if it has more than five hundred employees.*

The School District here is an "organization" under the Fee-Shifting Statute for two reasons. First, the plain meaning of "organization" includes political subdivisions such as the School District, and the statute's text nowhere indicates a contrary intent. Second, the canon of *ejusdem generis* does not dictate a contrary result here; if any canon applies, it is that courts must construe statutes consistently with their purpose. The General Assembly's purpose in enacting the Fee-Shifting Statute was to distinguish entities with sufficient resources to bear the cost of litigating against the State from entities without such resources. Large political subdivisions such as the School District fall into the former category, not the latter.

#### **A. The plain, unambiguous meaning of "organization" under R.C. 2335.39(A)(2)(d) includes "political subdivision."**

As the Court has held repeatedly, if the plain meaning language of a statute is clear, no further interpretation is necessary. E.g., *Barth v. Barth* (2007), 113 Ohio St. 3d 27, 2007-Ohio-973, at ¶ 10. Defining the term "organization" by its common meaning was the first and only interpretative step required of the courts below. And because the plain meaning of "organization" includes entities that are political divisions, the School District cannot recover attorney fees.

As noted above, the Fee-Shifting Statute declares ineligible for fees “[a] sole owner of an unincorporated business that employed, or a partnership, corporation, association, or *organization* that employed, more than five hundred persons at the time the action or appeal was filed.” R.C. 2335.39(A)(2)(d) (emphasis added). The statute does not define the terms unincorporated business, partnership, corporation, association, or organization. Accordingly, the court’s duty was to apply each term’s everyday meaning. *Sharp v. Union Carbide Corp.* (1988), 38 Ohio St. 3d 69, 70 (“where a particular term employed in a statute is not defined, it will be accorded its plain, everyday meaning”). The trial court, as the appeals court recognized, used *Black’s Law Dictionary* and an Internet website to discern the common meaning of “organization,” which it found to include “government or governmental subdivision or agency.” App. Op., Exh. 2 at ¶ 5 (citation omitted). Moreover, the conclusion that a political subdivision is an organization is supported by common usage and common sense. The interpretation of the provision thus should end there. “To construe or interpret what is already plain is not interpretation but legislation, which is not the function of the courts.” *Clark v. Scarpelli* (2001), 91 Ohio St. 3d 271, 274.

The trial court properly ended its analysis after finding that the common meaning of “organization” includes “governmental subdivision”—thus, the School District is an “organization” that employs more than five hundred people. Although “organization” has a broad common definition that covers several types of entities, including government, the term is unambiguous. Its breadth is purposeful in a provision that contains several broad categorical terms that include various types of entities. To delve any deeper into plain terms of clear statutory language unnecessarily undermines the statute’s plain meaning.

**B. Even if resorting to canons of construction were necessary, the court of appeals erroneously allowed its application of *ejusdem generis* to undercut a logically primary canon.**

As shown above, the plain meaning of the Fee-Shifting Statute rendered unnecessary any resort to canons of construction. But even if this were not so, the appellate court's use of *ejusdem generis* was erroneous because the court's application of the canon conflicted with the General Assembly's intent in passing the Fee-Shifting Statute.

As the Court has noted, when construing an ambiguous statute, the legislature's intent serves as the starting point. "In construing a statute, the reviewing court must ascertain the intent of the legislature in enacting the statute." *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless* (2007), 113 Ohio St. 3d 394, 397-98, 2007-Ohio-2203, ¶ 12 (citing *Rosette v. Countrywide Home Loans, Inc.*, 105 Ohio St. 3d 296, 2005-Ohio-1736, ¶ 12). In so doing, the court cannot invoke a canon of construction—including that of *ejusdem generis*—to frustrate the legislature's purpose. *State v. Warner* (1990), 55 Ohio St. 3d 31, 62.

The court of appeals erred by applying *ejusdem generis* to reach a result that is incompatible with the Fee-Shifting Statute's purpose: to ameliorate the financial disincentive for small entities to litigate against the State without imposing exorbitant costs upon the State's coffers. Consistent with this purpose, the statute distinguishes between large and small entities by using two measurements of size: number of personnel and net resources. For purposes of eligibility to recover attorney fees, the statute distinguishes between entities with greater than five hundred employees (larger and ineligible) and those with fewer (smaller and eligible). R.C. 2335.39(A)(2)(d). Similarly, the statute distinguishes between entities with a net worth greater than \$5 million (larger and eligible) and those worth less (smaller and ineligible). These distinctions make clear that the General Assembly's intent in passing the Fee-Shifting Statute was to level the playing field between large entities and small ones in terms of ability to absorb

the costs of litigating against the State. The First District's application of *ejusdem generis* thwarts this purpose by holding that political subdivisions are not "organizations" and thus conveying a privileged status upon large public entities.

Moreover, even if one applies *ejusdem generis*, that canon favors the State, rather than the School District. Under *ejusdem generis*, "where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated." *Light v. Ohio Univ.* (1986), 28 Ohio St. 3d 66, 68; see also *State v. Aspell* (1967), 10 Ohio St. 2d 1, *syllabus* ¶ 2. In this case, the relevant "class" is that of large entities that are capable of funding their own litigation, not public versus private entities, so a proper application of *ejusdem generis* indicates that entities such as the School District *are* "organizations."

Allowing such entities to collect fees conflicts with the distinctions that the General Assembly placed in the statute, and thus undercuts the General Assembly's intent. The Court should grant review to correct this misstep.

## CONCLUSION

For the above reasons, this Court should grant review and reverse the decision below.

Respectfully submitted,

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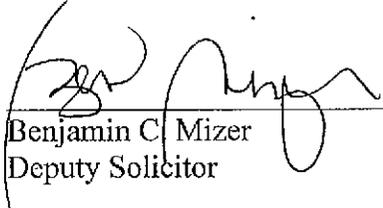
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Ohio Department of Education

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Defendants-Appellants State Board of Education of Ohio and Ohio Department of Education was served by U.S. mail this 28th day of July, 2008, on the following counsel:

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CINCINNATI CITY SCHOOL  
DISTRICT BOARD OF EDUCATION,

APPEAL NO. C-070494  
TRIAL NO. A-0603908

Plaintiff-Appellant,

*DECISION.*

vs.

STATE BOARD OF EDUCATION OF  
OHIO

PRESENTED TO THE CLERK  
OF COURTS FOR FILING

and

JUN 13 2008

OHIO DEPARTMENT OF  
EDUCATION,

COURT OF APPEALS

Defendants-Appellees.

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: June 13, 2008



*Bricker & Eckler LLP, Nicholas A. Pittner, James J. Hughes III, Jennifer A. Flint,*  
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*Marc Dann*, Attorney General, and *Todd R. Marti*, Assistant Attorney General, for  
Defendants-Appellees.

Please note: This case has been removed from the accelerated calendar.

**EXHIBIT 2**

**SYLVIA S. HENDON, Judge.**

{¶1} Plaintiff-appellant, the Cincinnati City School District Board of Education (“the District”), filed suit against defendants-appellees, the State Board of Education of Ohio and the Ohio Department of Education (“the State Board”). The District sought to challenge the State Board’s method of providing funding to public school districts. The District was successful in its lawsuit. The trial court granted it summary judgment, and this court recently upheld the trial court’s decision.<sup>1</sup>

{¶2} Subsequent to the entry of summary judgment, the District filed a motion pursuant to R.C. 2335.39 seeking compensation for the attorney fees that it had incurred. The trial court denied the motion for attorney fees on the ground that the District was not an eligible party entitled to such fees.

{¶3} The District has appealed from the trial court’s denial of its motion for attorney fees, arguing in its sole assignment of error that the trial court’s ruling was in error. For the following reasons, the judgment of the trial court is reversed.

***R.C. 2335.39 and the Trial Court’s Decision***

{¶4} R.C. 2335.39 provides that a prevailing eligible party in a civil suit against the state may seek compensation for attorney fees. R.C. 2335.39(A)(2) defines who is an eligible party. It specifically states that an eligible party is “a party to an action or appeal involving the state, other than the following: (a) The state; (b) An individual whose net worth exceeded one million dollars at the time the action or appeal was filed; (c) A sole owner of an unincorporated business that had, or a

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<sup>1</sup> See *Cincinnati City School Dist. Bd. of Edn. v. State Bd. of Edn.*, 1st Dist. No. C-070084, 2008-Ohio-1434.

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partnership, corporation, association, or organization that had, a net worth exceeding five million dollars at the time the action or appeal was filed \* \* \*; (d) A sole owner of an unincorporated business that employed, or a partnership, corporation, association, or organization that employed, more than five hundred persons at the time the action or appeal was filed.”

{¶5} The trial court determined that, under R.C. 2335.39(A)(2)(d), the District was an organization that employed more than 500 persons at the time that the underlying action had been filed. R.C. 2335.39 does not define “organization.” Because the legislature chose not to define the term, the trial court relied on the dictionary definition of “organization” to determine whether the District fell within this category. The trial court specifically relied on the Fifth Edition of Black’s Law Dictionary, which states that “[o]rganization includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.”<sup>2</sup> The trial court additionally cited the *dictionary.com* definition of organization as “a group of people organized for some end or work.”

{¶6} Concluding that the District was an organization employing more than 500 people, the trial court denied its motion for attorney fees.

***Standard of Review***

{¶7} We must first determine what standard is applicable to our review of the trial court’s decision.

{¶8} The District argues that the central issue on appeal is a question of law concerning whether the trial court correctly construed R.C. 2335.39(A) to determine

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<sup>2</sup> Black’s Law Dictionary (5 Ed.Rev.1979) 991.

that the District was an organization. Consequently, the District asserts that this court must review de novo the trial court's denial of its motion for attorney fees.

{¶9} But the State Board argues that this court must review the trial court's decision for an abuse of discretion, as that is the applicable standard of review for fee decisions.

{¶10} The State Board correctly notes that R.C. 2335.39(B)(2)(b) provides that "[t]he order of the court may be modified by the appellate court only if it finds that the grant or the failure to grant an award, or the calculation of the amount of an award, involved an abuse of discretion."

{¶11} But it is also well settled that the interpretation of statutory authority is a question of law that is reviewed de novo.<sup>3</sup> In this case, the trial court declined to grant a fee award after interpreting the term "organization" in R.C. 2335.39(A)(2)(d) to include a school district. The failure to grant a fee award directly correlated with the trial court's interpretation of the term "organization." Accordingly, we determine that, as the central issue in this appeal is a question of law, our review of the trial court's decision is de novo.

*Eligible Party*

{¶12} We must now determine whether the District is an eligible party under R.C. 2335.39(A)(2). The term "eligible party" is defined in terms of exclusions. In other words, all parties to an action or appeal involving the state other than those described in subdivisions (A)(2)(a) through (A)(2)(d) are eligible parties.

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<sup>3</sup> *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, 871 N.E.2d 1167, ¶8.

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***R.C. 2335.39(A)(2)(a), (b), and (c)***

{¶13} R.C. 2335.39(A)(2)(a) provides that “the state” is not an eligible party. The statute further indicates that the term “state” should be accorded “the same meaning as in section 2743.01 of the Revised Code.”<sup>4</sup> R.C. 2743.01(A) defines state as “the state of Ohio, including, but not limited to, the general assembly, the supreme court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. ‘State’ does not include political subdivisions.”

{¶14} R.C. 2743.01(B) further defines the term “political subdivisions” as “municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.” This statute clearly indicates that a school district is a political subdivision. And political subdivisions are not included in the definition of “state.” Consequently, the District is not “the state” and is not excluded as an eligible party under R.C. 2335.39(A)(2)(a).

{¶15} No assertion has been made that the District should be excluded as an eligible party under R.C. 2335.39(A)(2)(b) or (c). And it is clear from the definition of these subdivisions that they are not applicable to the District. Consequently, they need not be further addressed.

***R.C. 2335.39(A)(2)(d)***

{¶16} As we have stated, R.C. 2335.39(A)(2)(d) excludes as an eligible party “[a] sole owner of an unincorporated business that employed, or a partnership,

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<sup>4</sup> See R.C. 2335.39(A)(6).

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corporation, association, or organization that employed, more than five hundred persons at the time the action or appeal was filed.”

{¶17} The statute does not define the terms contained in the subdivision, and the District does not openly and obviously fall within any of the enumerated categories. Because the statute itself does not define “organization,” the trial court relied on the dictionary definition of the term to conclude that the District was an organization. We cannot agree with the trial court’s conclusion.

{¶18} When interpreting this statute, we must keep in mind an important principle of statutory construction, that of ejusdem generis. “Under the rule of ejusdem generis, where in a statute terms are first used which are confined to a particular class of objects having well-known and definite features and characteristics, and then afterwards a term having perhaps a broader signification is conjoined, such latter term is, as indicative of legislative intent, to be considered as embracing only things of a similar character as those comprehended by the preceding limited and confined terms.”<sup>5</sup>

{¶19} R.C. 2335.39(A)(2)(d) lists the following terms: unincorporated business, partnership, corporation, association, and organization. After applying the principle of ejusdem generis, we determine that city school districts do not share similar characteristics with the other entities listed in this statute and that they should not be considered organizations.

{¶20} Black’s Law Dictionary defines a school district as a “political subdivision of a state, created by the legislature and invested with local powers of self-government, to build, maintain, fund, and support the public schools within its

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<sup>5</sup> *Moulton Gas Serv., Inc. v. Zaino*, 97 Ohio St.3d 48, 2002-Ohio-5309, 776 N.E.2d 72, ¶14, quoting *State v. Aspell* (1967), 10 Ohio St.2d 1, 225 N.E.2d 226, paragraph two of the syllabus.

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territory and to otherwise assist the state in administering its educational responsibilities.”<sup>6</sup> A school district is clearly an entity responsible for governmental activities for the purpose of ensuring a functioning public school system.

{¶21} But the definition of the other entities listed in R.C. 2335.39(A)(2)(d) indicates that they do not share a similar purpose. Black’s Law Dictionary defines “partnership” as a “voluntary association of two or more persons who own and carry on a business for profit.”<sup>7</sup> “Corporation” is defined as an “entity having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely.”<sup>8</sup> And an “association” is both an “unincorporated organization that is not a legal entity separate from the persons who compose it” and a “gathering of people for a common purpose.”<sup>9</sup> Last, while Black’s Law Dictionary does not specifically define “unincorporated business,” it does define the term business as a “commercial enterprise carried on for profit.”<sup>10</sup>

{¶22} The definitions of partnerships, corporations, associations, and unincorporated businesses indicate that such entities do not possess governmental powers, but rather are usually private bodies. The purpose of these entities is generally to make a profit for their members, not to assist the state or to regulate a not-for-profit entity such as a public school. Further, the governing bodies of these entities are not elected by popular vote in the manner pertaining to a school board.

{¶23} All the foregoing observations lead us to conclude that the term “organization” in R.C. 2335.39(A)(2)(d) was not intended to encompass entities such as a school district.

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<sup>6</sup> Black’s Law Dictionary (8 Ed.Rev.2004) 1373.

<sup>7</sup> Id. at 1152.

<sup>8</sup> Id. at 365.

<sup>9</sup> Id. at 132.

<sup>10</sup> Id. at 211.

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{¶24} And although a determination still must be made as to the merits of the District's fee claim and the amount the District is entitled to recover in attorney fees, we note that our conclusion comports with the basic purpose of R.C. 2335.39. The District was forced to bring this action because the State Board had failed to follow the method for calculating school funding mandated by the Ohio Revised Code. The State Board's action led to this lawsuit, and as the District prevailed in its lawsuit, the trial court should consider the merits of its claim for attorney fees.

{¶25} Because a school district is not an organization, the trial court erred in determining that the District was not an eligible party under R.C. 2335.39(A)(2). The District's assignment of error is sustained.

***Conclusion***

{¶26} Having sustained the District's sole assignment of error, we reverse the trial court's judgment and remand this case for the trial court to reconsider the District's motion for attorney fees based on the determination that the District is an eligible party.

Judgment reversed and cause remanded.

**SUNDERMANN, P.J., and CUNNINGHAM, J., concur.**

*Please Note:*

The court has recorded its own entry on the date of the release of this decision.