

In *Bowers v. Baughman* (1972), 29 Ohio App. 2d 277, 58 O.O.2d 492, 281 N.E. 2d 201, the Court of Appeals for Allen County held that a psychopathic offender committed to Lima State Hospital could not gain residence in Allen County for divorce purposes under Civ. R. 3(B)(9).

Id. at 16, 516 N.E.2d at 233.

While it must be acknowledged that the above language is dictum,² the fact that the Ohio Supreme Court, in 1987, did not use or acknowledge the language of the modern rule is relevant to the issue raised here, and suggests that Ohio law has not yet embraced the modern rule, at least in many contexts. Although it is possible that in particular contexts an Ohio court might find the reasoning of the modern rule cases persuasive, none of those cases stands as mandatory precedent for Ohio courts applying R.C. 5901.08. Additionally, sound arguments exist for retaining the traditional rule for purposes of eligibility for county veterans' assistance under R.C. 5901.08, such as the clarity of the rule and the avoidance of undue burden on the resources of those counties where prisons are located. Therefore, unless the modern rule is expressly adopted by an Ohio court or by the legislature, veterans service commissions should continue to determine the residence of incarcerated persons for purposes of R.C. 5901.08 by applying the strict traditional rule.

III. Conclusion

It is therefore my opinion, and you are hereby advised that, for purposes of R.C. 5901.08, which specifically concerns eligibility for veterans' assistance funds within a particular county, an incarcerated individual remains a resident of the county where he or she had a domicile prior to the incarceration and the individual is precluded from changing his or her domicile until released. Unless an individual has already established bona fide residence in a county before being incarcerated there, the time spent as a prisoner does not count toward the six month county residence requirement of R.C. 5901.08.

² The Ohio Supreme Court decided the case by holding that the relator had an adequate remedy at law and therefore was not entitled to a writ of mandamus. See *State ex rel. Saunders v. Court of Common Pleas*, 34 Ohio St. 3d 15, 15, 516 N.E.2d 232, 232 (1987). Nevertheless, the court proceeded to discuss the law relating to residence in dictum, as set out above.

OPINION NO. 93-078

Syllabus:

When a manufactured home has been altered in such a way that it no longer meets the definition in R.C. 4501.01(O) of manufactured home and, instead, has become real property as defined by R.C. 5701.02, the altered manufactured home is no longer a motor vehicle under R.C. 4505.01(A); therefore, the provisions of R.C. 4505.11(A) and R.C. 4505.18 require the owner of such an altered manufactured home to surrender the certificate of title.

To: John W. Baker, Knox County Prosecuting Attorney, Mt. Vernon, Ohio
By: Lee Fisher, Attorney General, December 30, 1993

You have requested an opinion regarding whether the owner of a manufactured home must surrender his or her manufactured home title in order to have real property status for tax purposes.

Manufactured Homes - Taxation

R.C. 4501.01(O) defines a manufactured home as follows:

any nonself-propelled vehicle transportable in one or more sections, [with specified dimensions], and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

R.C. 4503.06(A) provides that "[a]ll manufactured homes ... are subject to an annual tax, payable by the owner, for the privilege of using or occupying a manufactured home in this state." R.C. 4503.06(J) further provides that "[t]he taxes levied and revenues collected under this section shall be *in lieu of any general property tax* and any tax levied with respect to the privilege of using or occupying a manufactured home in Ohio *except as provided in sections 4503.04 [a use tax] and 5741.02 [a use tax levied on personal property] of the Revised Code.*" (Emphasis added.) R.C. 4503.06(F) exempts certain manufactured homes from the tax levied by R.C. 4503.06. None of the exemptions, however, involve manufactured homes taxable as real property.¹

Thus, pursuant to the scheme set out in R.C. 4503.06, an item of property that meets the definition of manufactured home contained in R.C. 4501.01(O) will never be treated as real property for tax purposes. In order to achieve real property status, a manufactured home first must be altered in such a way that it loses its character as a manufactured home and no longer meets the statutory definition set out in R.C. 4501.01(O). 1977 Op. Att'y Gen. No. 77-099; 1969 Op. Att'y Gen. No. 69-128.² If, after such alteration, it meets the definition of real property in R.C. 5701.02, the home may be taxed as real property.³ The question of whether

¹ R.C. 4503.06(F)(1) provides an exemption for manufactured homes that are taxable as personal property used in business pursuant to R.C. 5709.01, except those rented and used as residences. Manufactured homes on which the manufactured home tax has already been paid for the year are exempt under R.C. 4503.06(F)(3). R.C. 4503.06(F)(2) deals with travel trailers, not with manufactured homes. Although not a model of clarity, this provision appears not to be an exemption at all, but rather a requirement that, in situations other than those listed, travel trailers should be treated as manufactured homes for purposes of the tax. R.C. 4503.06(F)(3) exempts manufactured homes that bear license plates issued by other states, unless such homes remain in Ohio longer than thirty days.

² The statutory definition of manufactured home has been amended since these opinions were written. Thus, the current test of whether a particular home meets the definition must take into account the changes in the statute and should not be taken directly from prior opinions of the Attorney General.

³ The determination of whether a property tax applies to a particular item of tangible property requires an analysis of whether that property is classified as real or personal property pursuant to the definitions in R.C. 5701.02 -.03. Personal property can be transformed into real property when affixed to the land in such a way as to become accessory to and parcel of the land. *See Zangerle v. Republic Steel Corp.*, 144 Ohio St. 529, 60 N.E.2d 170 (1945) (syllabus, paragraph four) (setting out the test for conversion to real property); *Teaff v. Hewitt*, 1 Ohio St. 511 (1852). Once a manufactured home ceases to be a manufactured home and is no longer subject to R.C. 4503.06, it becomes subject to this traditional analysis. Thus, it may be taxable either as personal property or as real property, depending on its characteristics after alteration.

a particular property should be taxed as real property or a manufactured home is a factual determination that is made, in the first instance, by the county auditor. 1952 Op. Att'y Gen. No. 1470, p. 391; *accord* Op. No. 77-099; Op. No. 69-128.

Manufactured Homes - Certificates of Title

Pursuant to R.C. 4505.01(A)(2), a manufactured home as defined in R.C. 4501.01(O) is considered a motor vehicle for purposes of R.C. Chapter 4505, governing certificates of title for motor vehicles. Accordingly, a manufactured home cannot be purchased or transferred without a certificate of title, manufacturer's or importer's certificate, or a salvage certificate. *See* R.C. 4505.03-.05; R.C. 4505.18-.19. A security interest in a manufactured home, unless it is being held in inventory, can be perfected only by notation on the certificate of title, not by filing a security interest pursuant to R.C. Chapter 1309 of the Ohio Uniform Commercial Code. R.C. 4505.13. Further, the title to a manufactured home cannot be transferred unless all taxes due under R.C. 4503.06 have been paid. R.C. 4503.061(C); *see also* 1991 Op. Att'y Gen. No. 91-059 at 2-288 to 2-289.

The surrender of certificates of title for motor vehicles, including manufactured homes, is governed by R.C. 4505.11. R.C. 4505.11(A) provides that an owner of a motor vehicle shall surrender the certificate of title to the clerk of the court of common pleas when a motor vehicle is "dismantled, destroyed or changed in such a manner that it loses its character as a motor vehicle, or changed in such a way that it is not the motor vehicle described in the certificate of title...." With the consent of any lien holders, the clerk must then cancel the title.⁴

Relationship of Certificate of Title to Property Status of Manufactured Home

As discussed previously, in order to attain real property status, a manufactured home must be altered in such a way that it loses its character as a manufactured home as defined in R.C. 4501.01(O). Such an alteration would also remove it from the definition of motor vehicle in R.C. 4505.01(A)(2). Pursuant to R.C. 4505.11 and 4505.18, therefore, the owner must surrender the certificate of title of a manufactured home any time that a county auditor determines that the home has been altered sufficiently to classify it as real property. The surrender of the title is the result of the transformation of the manufactured home to real property status and not, as suggested by your question, the cause of the transformation. Nonetheless, the surrender of title is mandatory under Ohio law. This conclusion is reinforced by the fact that transfers, tax liens, and security interests for real property and fixtures on real property must be recorded by entirely different instruments than apply to motor vehicles. *See generally* R.C. 1309.32 (fixture filings); R.C. Chapter 5301 (real property conveyances and encumbrances); R.C. Chapter 5721 (delinquent property taxes). The protection of transferees and both private and public creditors, therefore, requires that if a manufactured home has become real property, the certificate of title documenting it as a motor vehicle must be surrendered.

⁴ Failure to surrender the title is an offense punishable by two hundred dollars and/or ninety days imprisonment. R.C. 4505.18(D); R.C. 4505.99(C). Use of a title that should have been surrendered to "[k]nowingly obtain goods, services, credit or money" is an offense punishable by five thousand dollars and/or imprisonment in the county jail or penitentiary. R.C. 4505.19(D); R.C. 4505.99(D).

Conclusion

It is therefore my opinion and you are hereby advised that, when a manufactured home has been altered in such a way that it no longer meets the definition in R.C. 4501.01(O) of manufactured home and, instead, has become real property as defined by R.C. 5701.02, the altered manufactured home is no longer a motor vehicle under R.C. 4505.01(A); therefore, the provisions of R.C. 4505.11(A) and R.C. 4505.18 require the owner of such an altered manufactured home to surrender the certificate of title.

OPINION NO. 93-079

Syllabus:

1. A juvenile court has no authority pursuant to R.C. 2151.38(B) or (C) to release a child committed to the Department of Youth Services under R.C. 2151.355(A)(4)-(6) for institutional care after expiration of the applicable minimum period of institutionalization. The effect of R.C. 2151.38(A), therefore, is that the juvenile court's jurisdiction to release a child terminates when the child has completed the minimum period of institutionalization.
2. If a request for early release is made pursuant to one of the procedures specified in R.C. 2151.38(B) prior to expiration of the minimum period of institutionalization imposed under R.C. 2151.355(A)(4)-(6), and the hearing is rescheduled or continued beyond the expiration of the minimum period of institutionalization, the juvenile court does not acquire or retain jurisdiction to grant an early release after that date. The court's jurisdiction over releases after the minimum period of confinement is limited to that set out in R.C. 2151.38(C).
3. If a juvenile court schedules an early release hearing pursuant to R.C. 2151.38(B) after expiration of the applicable minimum period of institutionalization imposed under R.C. 2151.355(A)(4)-(6) and orders the Department of Youth Services (DYS) to deliver the child for the hearing and to present a treatment plan for post-institutional care as described in R.C. 2151.38(B)(2)(c), DYS should raise the issue of lack of jurisdiction by motion in that proceeding.

**To: Geno Natalucci-Persichetti, Director, Department of Youth Services,
Columbus, Ohio**

By: Lee Fisher, Attorney General, December 30, 1993

You have requested an opinion regarding the provisions of R.C. 2151.38 governing the early release of children who have been committed to the Department of Youth Services (DYS) for institutionalization pursuant to an adjudication of delinquency. Specifically, you ask:

1. After the minimum period of a committed child's confinement, as set forth in divisions (A)(4), (A)(5), or (A)(6) of R.C. 2151.355, does a juvenile court have jurisdiction to release the child pursuant to R.C. 2151.38(B)?