April 18, 1996

OPINION NO. 96-026

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402

Dear Prosecutor Mayberry:

I am in receipt of your letter of September 20, 1995, which asks essentially the following:

1. Does a township have any responsibility to pay burial expenses where an indigent establishes residency with a relative in a village in that township?

2. If an indigent requires nursing home placement and the appropriate placement is outside the State of Ohio, is the political subdivision of the person's Ohio residence responsible for burial expenses if the person was receiving public assistance in an adjoining state?

You have requested that I address the responsibilities of villages and townships to pay the costs of burial pursuant to R.C. 5101.521.

From your letter and a conversation with a member of your staff, it appears that your questions were prompted by a situation in which an itinerant eighty-year-old man lived with his brother for approximately two to four months in a village located within a township in Ohio. The man then was placed in a nursing home in an adjacent Ohio county. In a short time, the nursing home determined that the man needed care unavailable at its facility and the man was transferred to a nursing home in Indiana, which received Medicaid payments for his care. The man died two years later.

After the man's death, his relatives in Ohio claimed his body and had it transported to a funeral home in Ohio. The funeral home sought burial expenses from the township in which the man had lived before he was placed in the Ohio nursing home. Representatives of the village in which the man had lived agreed that the burial expenses should be paid by the township. The

township, however, took the position that it was not required to pay burial expenses in that situation.

According to a member of your staff, the dispute was resolved when burial funds were received from a source in Indiana. You have asked for an opinion analyzing the provisions of law that are applicable to this situation, and particularly to circumstances involving out-of-state nursing home placement, so that disagreements and confusion can be avoided.

In order to determine when a township has a duty to pay burial expenses of an indigent person who has lived within its boundaries, it is necessary to examine the provisions of R.C. 5101.521. That statute provides for the public payment of burial expenses when the following factors are present: (1) the body of a dead person is found in a township or municipal corporation; (2) the deceased person was not an inmate of a correctional, benevolent, or charitable institution of Ohio; (3) the body is not claimed by any person for private interment at the claimant's expense; (4) the body is not delivered for the purpose of medical or surgical study or dissection in accordance with R.C. 1713.34; and (5) the deceased person was not eligible for burial assistance under R.C. 5101.52. When all these factors are present, the body of the dead person must be disposed of by the appropriate governmental entity, as follows:

> (A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.
> (B) If the person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.
> (C) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, had no legal residence in the state, or his legal residence is unknown, the superintendent shall cause him to be buried at the expense of the county.

R.C. 5101.521.

Your first question regarding the application of this statute is whether a township has any responsibility to pay burial expenses if an indigent person has established residency in a village within that township. If the factors set forth in R.C. 5101.521 are present with respect to a particular deceased person and the deceased person was a resident of a village located within a township, then the obligation to pay for the burial of the body rests with the "township or municipal corporation in which [the deceased] had a legal residence at the time of his death." R.C. 5101.521(A), (B). This language does not specify, as between a township and a municipal corporation located within the township, which should bear the cost. The statutory provision has long been construed, however, to mean that, if the deceased person was a legal resident of a municipal corporation within a township, the body should be buried at the expense of the municipal corporation, rather than the township. *See*

1921 Op. Att'y Gen. No. 2018, vol. I, p. 332. This construction was adopted because it provides a workable reading of the statute and a clear statement of duty, *id.* at 334, and I concur in this construction.

I conclude, therefore, that under R.C. 5101.521, the obligation to pay burial expenses for the resident of a municipal corporation located within a township rests with the municipal corporation, rather than the township. Since both cities and villages are municipal corporations, *see* Ohio Const. art. XVIII, §1; R.C. 703.01, the obligation imposed by R.C. 5101.521 to pay burial expenses for the resident of a village located within a township rests with the village, rather than the township. *See* 1977 Op. Att'y Gen. No. 77-056.[1] Therefore, a township has no responsibility pursuant to R.C. 5101.521 to pay for the burial of a deceased person whose legal residence at the time of death was in a village.

As provided above, the application of R.C. 5101.521 to a particular situation depends upon the legal residence of the decedent. A determination of legal residence involves questions of fact that cannot be decided by means of an opinion of the Attorney General. To assist you in applying the provisions of R.C. 5101.521, however, it is helpful to examine the relevant legal principles governing the establishment of legal residence.

The term "legal residence" is not defined for purposes of R.C. 5101.521. As used in that context, however, it has been found to mean a physical presence in a particular location coupled with the choice to make that place home, or the place with which a person is most intimately connected. *See* 1962 Op. Att'y Gen. No. 2920, p. 243. *See generally, e.g.*, 1993 Op. Att'y Gen. No. 93-077; 1993 Op. Att'y Gen. No. 93-055. It is certainly possible to retain a legal residence in one's hometown when hospitalized or in a nursing home, since the legal residence changes only if there is an intention that the hospital or nursing home become the permanent residence. *See, e.g. Estate of Lutes v. Somerset Township*, No. 89-B-15 (Ct. App. Belmont County Sept. 12, 1990); 12 Ohio Admin. Code 5101:1-39-54. Whether the necessary intent to establish a new legal residence is present in a particular case, however, is a question of fact and is largely a subjective determination. *See, e.g., Hager v. Hager*, 79 Ohio App. 3d 239, 607 N.E.2d 63 (Greene County 1992).

The facts that you have presented do not define the legal residence of the decedent. It is not clear whether the individual in question established legal residence with his brother in the village in Ohio, in the nursing home in the adjacent Ohio county, in the nursing home in Indiana, or in some other location. You have indicated that the Indiana nursing home received Medicaid payments for

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[1] Under earlier statutory provisions, there was some question as to whether the term "municipal corporation" included a village for purposes of providing burial benefits. *See Maham v. Township of Williamsburg*, 2 Ohio Op. 191 (C.P. Clermont County), *aff'd*, 4 Ohio Op. 451, 32 N.E.2d 451 (Ct. App. Clermont County 1935); 1936 Op. Att'y Gen. No. 5135, vol. I, p. 115. Statutory amendments resolved that ambiguity, and 1977 Op. Att'y Gen. No. 77-056 concluded, under statutes that are in all relevant respects analogous to those under consideration in this opinion, that villages are included as municipal corporations for purposes of paying burial expenses.

the man's care, but you have not specified whether the payments were made through the Indiana program or as out-of-state payments under Ohio's program. *See, e.g.*, 12 Ohio Admin. Code 5101:1-39-54. A determination of the residence of the deceased person at the time of death for Medicaid purposes, *see* 12 Ohio Admin. Code 5101:1-39-54, might be helpful in determining the individual's legal residence, but there is no provision of law making a Medicaid determination conclusive for purposes of R.C. 5101.521. *See, e.g.*, 1962 Op. Att'y Gen. No. 2920, p. 243 (individual was resident of county for burial purposes even though he received poor relief from another county).

For purposes of your first question, it is sufficient to conclude that, if the legal residence of the decedent was in the Ohio village in which he had lived with his brother, the township in which that village is located had no duty to pay his burial expenses. Instead, if the man's legal residence was in the Ohio village and if all the factors set forth in R.C. 5101.521 were present, then that village was required to pay the burial expenses pursuant to R.C. 5101.521(A).

Your second question is whether, when an indigent person requires nursing home placement and the appropriate placement is outside the State of Ohio, the political subdivision of the person's Ohio residence is responsible for the person's burial expenses if the person was receiving public assistance in an adjoining state. The situation that you have described involves several questions of fact that cannot be determined by means of an opinion of the Attorney General. Since the matter has been settled, it is not necessary to resolve all questions raised in that case. In order to provide you with assistance in dealing with similar situations in the future, however, I will discuss the general matters at issue.

It is important to note, initially, that R.C. 5101.521 does not impose upon a municipal corporation or township the general obligation to pay for the burial of all its residents. Instead, the duty to pay burial expenses pursuant to R.C. 5101.521 exists only when all the factors set forth in R.C. 5101.521 are present. In the situation that you have described, it appears that the individual in question was not an inmate of a correctional, benevolent, or charitable institution of Ohio and that the body was not delivered for medical or surgical study or dissection,[2] so that those two requirements were satisfied. Since you have inquired about the obligation of a political subdivision to pay burial expenses pursuant to R.C. 5101.521, it must be assumed that the deceased person was not eligible for burial assistance under R.C. 5101.52.[3] The other factors -- being "found" in a

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[2] R.C. 1713.34 requires certain public officials who are in possession of bodies that are not claimed or identified or that must be buried at the expense of the state, county, or township to notify a professor of anatomy or the secretary of the board of embalmers and funeral directors of the fact that the bodies are being held. Subject to limited exceptions, the bodies must be delivered for study or dissection upon the written application of the professor or secretary, if they remain unclaimed after thirty-six hours. R.C. 1713.34, .38; *see also* R.C. 1713.35-.37.

[3] By its terms, R.C. 5101.521 applies only to a person who was not eligible for burial assistance under R.C. 5101.52. R.C. 5101.52 provides for burial expense payments to be made by the Ohio Department of Human Services, in certain circumstances, upon the death of a recipient of aid under R.C. 5107 (aid to dependent children) or R.C. 5115 (disability assistance), any person who

township or municipal corporation and being "claimed" for private interment at the claimant's expense -- are issues raised by your question and are discussed below.

R.C. 5101.521 provides for burial at public expense only if the body whose burial is sought "is not claimed by any person for private interment at [the claimant's] own expense." The final paragraph of R.C. 5101.521 states that "[a] political subdivision is not relieved of its duty to bury a person at its expense under this section when the body is claimed by an indigent person." This provision is discussed in detail in 1995 Op. Att'y Gen. No. 95-012. It does not impose upon a municipal corporation, township, or county the duty to pay for the burial of all indigents or all relatives of indigents, but simply provides that, if the municipal corporation, township, or county has the duty under R.C. 5101.521 to bury a person at its expense, that duty continues even though an indigent person claims the dead body as a loved one. In performing its duty of burial, the political subdivision may cooperate with an indigent person who claims the body of a loved one, but the political subdivision is not required to pay for a private funeral arranged independently by the person claiming the body. *See* 1995 Op. Att'y Gen. No. 95-012.

On the facts that you have presented, it appears that the family claimed the body of the deceased from the appropriate officials in Indiana. It is not clear precisely what actions were taken or what legal consequences resulted.[4] There may be a question of fact as to whether the family members claimed the body for burial at their expense for purposes of R.C. 5101.521 and whether their actions obligated them to pay burial expenses. Based on communications with your staff, however, it is my understanding that, once the body was in the funeral home in Ohio, the family members took the position that they were not claiming it for private interment at their expense.

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received certain types of assistance for the month of December of 1973, and any person who received aid under Title XVI of the Social Security Act (supplemental security income for the aged, blind, or disabled), *see* 42 U.S.C.A. §§301, 1381-1383d, or who would have been eligible for such aid except that the person was a resident of a county home. *See* 12 Ohio Admin. Code Chapter 5101:1-33. Individuals who are eligible for burial assistance under R.C. 5101.52 may also have received benefits under Medicaid. *See* 42 U.S.C.A. §§1396-1396v; R.C. 5111.01; 12 Ohio Admin. Code Chapter 5101:1-39. The receipt of Medicaid benefits in itself, however, does not make a person eligible for burial payments under R.C. 5101.52. *See* R.C. 5101.52.

[4] You have not asked whether any public entity is required to pay the expense of transporting a deceased person into Ohio and this opinion does not address that question. Your representative has indicated that some or all of the burial expenses were ultimately borne by a source in Indiana but has not indicated precisely which source was involved or whether there was a legal obligation to make the payment. This opinion does not consider whether there might be any obligation on the part of an out-of-state source to pay burial expenses and does not address the possibility of seeking reimbursement.

Instead, they sought to have the body buried at public expense pursuant to R.C. 5101.521, in accordance with the procedures and cost limitations usually applied in such situations.[5]

I consider now what it means for the body of a dead person to be "found in a township or municipal corporation" for purposes of R.C. 5101.521. While it appears that the statutory language may have been directed toward itinerants or homeless individuals who were found dead in public places, it has been read to include also persons who die within a household, when there is no one who is willing and able to provide payment for their interment. *See, e.g.,* 1934 Op. Att'y Gen. No. 3637, vol. III, p. 1787; 1927 Op. Att'y Gen. No. 562, vol. II, p. 938 at 945; 1917 Op. Att'y Gen. No. 72, vol. I, p. 168; 1912 Op. Att'y Gen. No. 435, vol. II, p. 1356.

It seems unlikely that the General Assembly enacted R.C. 5101.521 for the purpose of permitting friends or relatives to bring to Ohio, for burial at public expense, persons who die outside the state. In those instances, it might be assumed that the persons who claim and transport the body are claiming it for burial at their own expense. If they are unable to pay for burial, it could be argued that the body should be buried in accordance with the law in effect where the death occurred, even as R.C. 5101.521 requires a political subdivision of Ohio to pay for the burial of a body that is found in Ohio and is not claimed for interment at the expense of a private person.

Nonetheless, both the language and the general intent of R.C. 5101.521 are broad enough to support the conclusion that, if for any reason the body of a dead person is located in Ohio and the other factors prescribed by R.C. 5101.521 are present, the body will be buried at public expense. The responsibility of a public entity to pay for burial pursuant to R.C. 5101.521 does not depend upon the place of death or the means by which a dead body arrives in a township or municipal corporation of this state. In order to protect the public health and to preserve public sensibilities with respect to the burial of the dead, the word "found," as used in R.C. 5101.521, must be construed to

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[5] As discussed in 1995 Op. Att'y Gen. No. 95-012, there is no authority for relatives to plan and carry out a funeral and simply bill the township for whatever costs are incurred. Instead, burial at the cost of a public entity under R.C. 5101.521 is provided in the manner and within the financial limitations determined by that public entity.

Your request letter does not indicate whether the family members who claimed the body of the indigent man are themselves indigent, and the analysis contained in this opinion does not turn on that distinction. Under Ohio law, there is a statutory duty of support, including the payment of reasonable funeral and burial expenses, for a spouse or a minor child. *See* R.C. 3103.03; *Davis-Turner Funeral Home, Inc. v. Chaney*, 61 Ohio Misc. 2d 82, 573 N.E.2d 1242 (Wilmington Mun. Ct. 1991). No statute imposes upon any other relative the duty to pay for burial. In the instant case, the decedent was not a minor and there does not appear to be a spouse. Indigency of the family is relevant in that, under the final sentence of R.C. 5101.521, an indigent person may claim a body without relieving a political subdivision of the duty to bury the body. *See* 1995 Op. Att'y Gen. No. 95-012. Assets of the deceased person may be applied to the funeral and burial expenses as provided in R.C. 2117.25.

include a dead body that has been transported into Ohio *See, e.g.*, 1973 Op. Att'y Gen. No. 73-073 (modified in part on other grounds by 1995 Op. Att'y Gen. No. 95-012). *See generally Evans v. Evans*, 12 Ohio N.P. (n.s.) 619 (C.P. Hamilton County 1912).

For the reasons discussed above, it must be concluded that there are circumstances in which a person who dies outside Ohio may be buried at public expense pursuant to R.C. 5101.521. The person's indigency, placement in a nursing home outside of Ohio, or receipt of public assistance outside of Ohio are not determinative of the question whether R.C. 5101.521 applies. Instead, the relevant determination is whether all the factors set forth in R.C. 5101.521 are present. Indigency, placement in an out-of-state nursing home, or receipt of public assistance may be relevant to a determination as to whether certain of the factors are present, such as whether the body is claimed for private interment at the claimant's expense or whether the person is eligible for burial assistance under R.C. 5101.52. If it is determined on particular facts that all the relevant factors are present, however, it follows that the responsibility of burying the body rests with the appropriate public entity pursuant to R.C. 5101.521. Which entity is responsible for paying burial expenses depends upon the legal residence of the deceased person, as set forth in R.C. 5101.521(A), (B), and (C), quoted above.

In order to apply R.C. 5101.521 to a particular situation, it is necessary to determine whether the individual in question was a legal resident of Ohio. If that is the case, and if the other factors in R.C. 5101.521 are present, then the township or municipal corporation of legal residence must pay for the burial pursuant to R.C. 5101.521(A) or (B). On the other hand, if the necessary factors are present but the individual was not a legal resident of Ohio, then the cost of burial must be borne by the county pursuant to R.C. 5101.521(C).[6]

In specific response to your question, I conclude that, regardless of where death occurred, if the body of a dead person is located in Ohio, if the person was not an inmate of a correctional, benevolent, or charitable institution of Ohio, if the body is not claimed by any person for private interment at the claimant's expense and is not delivered for medical or surgical study or dissection in accordance with R.C. 1713.34, and if the decedent is not eligible for burial assistance under R.C. 5101.52, then the decedent's body must be buried at public expense pursuant to R.C. 5101.521. If the decedent was a legal resident of Ohio, the municipal corporation or township of legal residence must pay the burial expenses pursuant to R.C. 5101.521(A) or (B). If the decedent was not a legal resident of Ohio, then the county must pay the burial expenses pursuant to R.C. 5101.521(C).

For the reasons discussed above, it is my opinion, and you are so advised, as follows:

1. Under R.C. 5101.521, the obligation to pay burial expenses for the resident of a municipal corporation located within a township rests with the municipal corporation, rather than the township.

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[6] *See* note 4, *supra*.

2.R.C. 5101.521 does not impose upon a municipal corporation or township the general obligation to pay for the burial of all its residents. Instead, the duty to pay burial expenses pursuant to R.C. 5101.521 exists only when all the factors set forth in R.C. 5101.521 are present.

3.Regardless of where death occurred, if the body of a dead person is located in Ohio, if the person was not an inmate of a correctional, benevolent, or charitable institution of Ohio, if the body is not claimed by any person for private interment at the claimant's expense and is not delivered for medical or surgical study or dissection in accordance with R.C. 1713.34, and if the decedent is not eligible for burial assistance under R.C. 5101.52, then the decedent's body must be buried at public expense pursuant to R.C. 5101.521. If the decedent was a legal resident of Ohio, the municipal corporation or township of legal residence must pay the burial expenses pursuant to R.C. 5101.521(A) or (B). If the decedent was not a legal resident of Ohio, then the county must pay the burial expenses pursuant to R.C. 5101.521(C).

Respectfully,

BETTY D. MONTGOMERY
Attorney General

April 18, 1996

The Honorable Alan R. Mayberry
Wood County Prosecuting Attorney
One Courthouse Square
Bowling Green, Ohio 43402

SYLLABUS: 96-026

1.Under R.C. 5101.521, the obligation to pay burial expenses for the resident of a municipal corporation located within a township rests with the municipal corporation, rather than the township.

2.R.C. 5101.521 does not impose upon a municipal corporation or township the general obligation to pay for the burial of all its residents. Instead, the duty to pay burial expenses pursuant to R.C. 5101.521 exists only when all the factors set forth in R.C. 5101.521 are present.

3.Regardless of where death occurred, if the body of a dead person is located in Ohio, if the person was not an inmate of a correctional, benevolent, or charitable institution of Ohio, if the body is not claimed by any person for private interment at the claimant's expense and is not delivered for medical or surgical study or dissection in accordance with R.C. 1713.34, and if the decedent is not eligible for burial assistance under R.C. 5101.52, then the decedent's body must be buried at public expense pursuant to R.C. 5101.521. If the decedent was a legal resident of Ohio, the municipal corporation or township of legal residence must pay the burial expenses pursuant to R.C. 5101.521(A) or (B). If the decedent was not a legal resident of Ohio, then the county must pay the burial expenses pursuant to R.C. 5101.521(C).