January 21, 2005

Reginald A. Wilkinson, Director
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

SYLLABUS: 2005-001

1. Pursuant to R.C. 2950.031, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may not establish a residence or occupy residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency that is located within 1000 feet of any school premises.

2. Regardless of a person's intentions, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense establishes a residence in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he has a bodily presence as an inhabitant in one of the aforementioned entities.

3. A person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense occupies residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he makes his home, resides, or lives in a dwelling unit for residential use and occupancy in one of the aforementioned entities.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

Opinions Section
30 E. Broad St., 15th Floor
Columbus, OH 43215-3400
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

January 21, 2005

OPINION NO. 2005-001

Reginald A. Wilkinson, Director
Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, Ohio 43229

Dear Director Wilkinson:

You have requested an opinion whether a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may establish a residence or occupy residential premises in a nursing home, adult care facility, residential group home,[1] homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency[2] that is located within 1000 feet of any school premises. Based on the plain language of R.C. 2950.031, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense is prohibited from establishing a residence or occupying residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house,

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[1] A member of your legal staff has informed us that residential group homes are operated by churches, faith-based missions, and other charitable organizations to provide housing to destitute persons.

[2] Your letter states that "[l]ow risk offenders whose primary need is housing may voluntarily utilize the services of an independent housing agency" that has contracted with the Department of Rehabilitation and Correction "to provide housing and some limited monitoring and case management services." Typically, a facility operated by an independent housing agency provides housing to persons who do not have any other housing arrangements available to them. According to a member of your legal staff, these facilities are not licensed by the Division of Parole and Community Services of the Department of Rehabilitation and Correction as suitable facilities for the care and treatment of adult offenders, *see* R.C. 2967.14; *see also* R.C. 5120.10(D)(7); 15 Ohio Admin. Code Chapter 5120:1-3, and, as such, these facilities are not halfway houses for purposes of R.C. Chapter 2950 (imposing certain responsibilities and restraints upon persons convicted of, or pleading guilty to, sexually oriented offenses and child-victim oriented offenses), *see* R.C. 2929.01(P); R.C. 2950.01(AA).

or facility operated by an independent housing agency that is located within 1000 feet of any school premises.

Regardless of a person's intentions, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense establishes a residence in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he has a bodily presence as an inhabitant in one of the aforementioned entities.

A person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense occupies residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he makes his home, resides, or lives in a dwelling unit for residential use and occupancy in one of the aforementioned entities.

Pursuant to R.C. 2950.031(A), a person convicted of, or pleading guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense is prohibited from establishing a residence or occupying residential premises within 1000 feet of any school premises:

> No person who has been convicted of, is convicted of, has pleaded guilty to, or pleads guilty to either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense *shall establish a residence or occupy residential premises* within one thousand feet of any school premises.[3] (Emphasis and footnote added.)

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[3] For purposes of R.C. Chapter 2950, "school premises" has the same meaning as in R.C. 2925.01. R.C. 2950.01(R). R.C. 2925.01(R), in turn, defines "[s]chool premises" as follows:

> "School premises" means either of the following:
>
> (1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;
>
> (2) Any other parcel of real property that is owned or leased by a board of education of a school, the governing authority of a community school established under [R.C. Chapter 3314], or the governing body of a nonpublic school for which the state board of education prescribes minimum standards under [R.C. 3301.07] and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction,

See generally R.C. 5321.051(A) (no tenant of any residential premises located within 1000 feet of any school premises shall allow a person to occupy those residential premises when the person's name appears on the state registry of sex offenders and child-victim offenders maintained under R.C. 2950.13 and the registry indicates that the person was convicted of, or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense).[4]

We will first discuss what constitutes establishing a "residence," followed by what constitutes occupying "residential premises," for purposes of R.C. 2950.031. The word "residence" is not expressly defined for purposes of R.C. Chapter 2950.[5] It is a fundamental

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> extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

[4] R.C. 2950.031(B) provides that an owner or lessee of real property that is located within 1000 feet of any school premises has a cause of action for injunctive relief against a person who violates R.C. 2950.031(A) by establishing a residence or occupying residential premises within 1000 feet of those school premises. In addition, R.C. 5321.03(A)(5) authorizes a landlord to bring an action under R.C. Chapter 1923 (forcible entry and detainer) for possession of residential premises that are located within 1000 feet of any school premises when either the name of the tenant or another occupant who resides in or occupies the premises appears on the state registry of sex offenders and child-victim offenders maintained under R.C. 2950.13 and the registry indicates that the tenant or other occupant was convicted of, or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense. *See* R.C. 1923.02. *See generally* R.C. 5321.051(A)(2) ("[i]f a tenant allows occupancy in violation of [R.C. 5321.051] or a person establishes a residence or occupies residential premises in violation of [R.C. 2950.031], the landlord for the residential premises that are the subject of the rental agreement or other tenancy may terminate the rental agreement or other tenancy of the tenant and all other occupants").

[5] Prior opinions of the Attorneys General have stated that, "[t]he word 'residence' itself is not susceptible of a single definition that would accurately describe its meaning as used throughout the Revised Code and the Ohio Constitution." 1991 Op. Att'y Gen. No. 91-045 at 2-237; *see* 1979 Op. Att'y Gen. No. 79-094 at 2-294. Moreover, because "the definition of 'residence' is flexible to accommodate the legislative purpose underlying the enactment in which the residence requirement appears[,]" statutory definitions of this word "in contexts other than that at issue are not determinative." 1979 Op. Att'y Gen. No. 79-094 at 2-294; *see* 1991 Op. Att'y Gen. No. 91-045 at 2-237; *see also* 1990 Op. Att'y Gen. No. 90-011 at 2-48. *See generally* 2002 Op. Att'y Gen. No. 2002-025 at 2-167 n.4 ("a determination of residence for school admission is not necessarily the same as a determination of residence for voting purposes").

principle of statutory interpretation that, unless a word has acquired a technical or particular meaning, it is to "be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. *Black's Law Dictionary* 1310 (7th ed. 1999) defines "residence" as follows:

> **residence. 1.** The act or fact of living in a given place for some time…. **2.** The place where one actually lives, as distinguished from a domicile…. *Residence* usu. just means bodily presence as an inhabitant in a given place; *domicile* usu. requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously.

The word "residence" thus may be read as meaning bodily presence as an inhabitant in a place, or it may be read as equivalent to domicile, which requires bodily presence as an inhabitant in a place and an intention to make the place one's home. *See* 1982 Op. Att'y Gen. No. 82-106 at 2-291 n.6; 1973 Op. Att'y Gen. No. 73-080 at 2-304; 1962 Op. Att'y Gen. No. 2920, p. 243, at 245; 1940 Op. Att'y Gen. No. 2892, vol. II, p. 927, at 932. *See generally Case v. Case,* 70 Ohio Law Abs. 2, 12, 124 N.E.2d 856 (Prob. Ct. Hamilton County 1955) ("[a]lthough the terms 'domicile' and 'residence,' when used in a technical, legal sense, are not convertible, when used in a loose, general way they may be construed as synonymous" (citation omitted)). *See generally also Fuller v. Hofferbert,* 204 F.2d 592, 597 (6th Cir. 1953) ("[b]ecause 'domicile' and 'residence' are usually in the same place, they are frequently used as if they had the same meaning. 'Domicile,' however, means living in a locality with intent to make it a fixed and permanent home, while 'residence' simply requires bodily presence as an inhabitant in a given place"); *Grant v. Jones,* 39 Ohio St. 506, 515, 1883 Ohio LEXIS 403 (1883) ("[t]here is no substantial difference between the words residence and domicile in regard to these matters, though they are not always synonymous").

The meaning to be accorded to the word "residence" is determined from the context and legislative purpose underlying the enactment in which the residence requirement appears. *Horton v. Horner,* 16 Ohio 145, 148, 1847 Ohio LEXIS 107 (1847); *State v. Ward,* 4 Ohio Op. 120, 121 (C.P. Wood County 1935); *State ex rel. Kaplan v. Kuhn,* 8 Ohio N.P. 197, 200, 11 Ohio Dec. 321 (C.P. Hamilton County 1901); *Case v. Case,* 70 Ohio Law Abs. at 12, 124 N.E.2d 856; 1990 Op. Att'y Gen. No. 90-003 at 2-12; 1982 Op. Att'y Gen. No. 82-106 at 2-291 n.6; 1979 Op. Att'y Gen. No. 79-094 at 2-294; 1962 Op. Att'y Gen. No. 2920, p. 243, at 245; 1940 Op. Att'y Gen. No. 2892, vol. II, p. 927, at 932-34. *See generally Kelm v. Carlson,* 473 F.2d 1267, 1271 (6th Cir. 1973) ("[t]he word 'resident' has many meanings in the law, largely determined by the statutory context in which it is used"); 1973 Op. Att'y Gen. No. 73-080 at 2-305 ("[t]he exact significance of the term ['resident'] should be determined from the context and apparent object to be attained by the enactment of the statute"). *See generally also* R.C. 1.49 ("[i]f a statute is ambiguous, the court, in determining the intention of the legislature, may consider among other matters … [t]he object sought to be attained"). Hence, the meaning of the word "residence," as used in R.C. 2950.031, is determined from the context and legislative purpose underlying the enactment of R.C. 2950.031.

R.C. 2950.031 is part of R.C. Chapter 2950, which sets forth comprehensive provisions pertaining to the registration of persons who have been convicted of, or have pleaded guilty to, a sexually oriented offense or child-victim oriented offense and the public dissemination of such persons' address or addresses of residence, school, institution of higher education, and place of employment. A review of these provisions indicates a legislative intent to protect members of the public, including children, from certain persons who have been convicted of, or have pleaded guilty to, sexually oriented offenses or child-victim oriented offenses. As explained in R.C. 2950.02:

> (A) The general assembly hereby determines and declares that it recognizes and finds all of the following:
>
> (1) If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, *members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention….*
>
> (2) *Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior* even after being released from imprisonment, a prison term, or other confinement or detention, *and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest*.
>
> ….
>
> (B) *The general assembly hereby declares that, in providing in this chapter* for registration regarding offenders and certain delinquent children who have committed sexually oriented offenses that are not registration-exempt sexually oriented offenses or who have committed child-victim oriented offenses and for community notification regarding sexual predators, child-victim predators, habitual sex offenders, and habitual child-victim offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, *it is the general assembly's intent to protect the safety and general welfare of the people of this state*. (Emphasis added.)

Because children are especially vulnerable to becoming victims of sexually abusive behavior, kidnapping, and abduction, and are likely to be present a significant amount of time on or near school premises, the General Assembly has mandated in R.C. 2950.031 that certain persons who have been convicted of, or have pleaded guilty to, a sexually oriented offense or child-victim oriented offense must not establish a residence or occupy residential premises within 1000 feet of any school premises. The General Assembly has deemed such a prohibition necessary in order to protect children from the increased risks posed by these persons. *See* R.C.

2950.02(A)(2), (B). The manifest purpose of R.C. 2950.031 thus is to protect children from certain persons who have been convicted of, or have pleaded guilty to, a sexually oriented offense or child-victim oriented offense.

In light of this purpose, it reasonably follows that the General Assembly intended for R.C. 2950.031's residence restriction to apply in as many instances as possible so as to reduce the likelihood that children will become victims of sexually abuse behavior, kidnapping, and abduction. *See, generally, e.g.,* 1979 Op. Att'y Gen. No. 79-094 (syllabus, paragraph one) (in determining whether a person is a legal resident of this state for purposes of admission to the Ohio State University tuberculosis treatment facility, "it is appropriate to construe the facts as favorably as possible to a finding of residence because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread"); 1973 Op. Att'y Gen. No. 73-080 at 2-305 (when determining whether to admit a student to a county tuberculosis hospital at public expense, a board of county commissioners "should construe the facts as favorably as possible to a finding of residence, because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread").

As stated above, the word "residence," as used in R.C. 2950.031, may be read as meaning bodily presence as an inhabitant in a place, or it may be read as meaning domicile, which requires bodily presence as an inhabitant in a place and an intention to make the place one's home. Under Ohio law, a person may have only one domicile, but may have a bodily presence as an inhabitant in more than one place. *Grant v. Jones,* 39 Ohio St. at 515, 1883 Ohio LEXIS 403; *Bd. of Educ. of City School Dist. of Oakwood v. Dille,* 109 Ohio App. 344, 348, 165 N.E.2d 807 (Montgomery County 1959); *Spires v. Spires,* 7 Ohio Misc. 197, 200, 214 N.E.2d 691 (C.P. Meigs County 1966); *Case v. Case,* 70 Ohio Law Abs. at 12, 124 N.E.2d 856; 1993 Op. Att'y Gen. No. 93-055 at 2-262; 1982 Op. Att'y Gen. No. 82-106 at 2-291 n.6; 1940 Op. Att'y Gen. No. 2892, vol. II, p. 927, at 933; *Black's Law Dictionary* 1310 (7th ed. 1999). Because a person may have a bodily presence as an inhabitant in more than one place, but only one domicile, R.C. 2950.031's residence restriction is applicable in more instances when the term "residence" is construed as meaning bodily presence as an inhabitant in a place. Thus, in order to increase the instances in which the residence restriction of R.C. 2950.031 is applicable, the word "residence" should be interpreted as meaning bodily presence as an inhabitant in a place, rather than domicile. Therefore, the legislative purpose underlying the enactment of R.C. 2950.031 supports interpreting the word "residence" as bodily presence as an inhabitant in a place. *See generally Chesapeake & Ohio Ry. Co. v. W.G. Ward Lumber Co.,* 1 Ohio App. 164, 172, 1913 Ohio App. LEXIS 147 (Lawrence County 1913) (a court may look to the mischief to be prevented when interpreting a statute); 1973 Op. Att'y Gen. No. 73-080 at 2-305 ("[w]here a statute contains language capable of different shades of meaning, such as the word 'resident,' such statute should be construed broadly and not in a narrow or restricted sense").

This interpretation is also supported by the context in which the word "residence" is used. Nothing in the language of R.C. 2950.031 indicates that this term is to be construed as synonymous with "domicile." Unlike other statutes, the General Assembly has not used language in R.C. 2950.031 to qualify the word "residence" so as to indicate an intention that the

word "residence" be read as equivalent to "domicile." *See, e.g.*, R.C. 3503.02(A) ("[t]hat place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning"); R.C. 5122.01(S) (as used in R.C. Chapters 5119 and 5122, "'[r]esidence' means a person's physical presence in a county with intent to remain there"); 1996 Op. Att'y Gen. No. 96-026 at 2-92 (as used in R.C. 5101.521, "legal residence" means "a physical presence in a particular location coupled with the choice to make that place home, or the place with which the person is most intimately connected"); 1991 Op. Att'y Gen. No. 91-045 (syllabus, paragraph four) (for purposes of R.C. 3.15, "a person's 'permanent residence' is his dwelling place or the place where he has established his home on other than a temporary or transient basis"); 1940 Op. Att'y Gen. No. 2892, vol. II, p. 927 (syllabus, paragraph two) (the term "legal residence," as that phrase is used in G.C. 1890-23 and G.C. 1890-33, "should be construed to mean the place where a person has his true, fixed, permanent home and principal establishment, and to which place whenever he is absent, he has an intention of returning, as distinguished from temporary residence which a person intends to leave when the purpose for which he has taken up his abode ceases"). While the absence of such language is not dispositive of legislative intent, such absence does indicate further that the words "residence" and "domicile" are not synonymous for purposes of R.C. 2950.031. *See generally Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the General Assembly intended a term to have a particular meaning, "it would not have been difficult to find language which would express that purpose," having used such language in other connections).

Accordingly, based upon the context and underlying purpose of R.C. 2950.031, the word "residence," as used in R.C. 2950.031, means bodily presence as an inhabitant in a place. Under this definition, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may establish a residence at a place even though he does not have an intention to make the place his home. This means that, regardless of a person's intentions, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense establishes a residence in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he has a bodily presence as an inhabitant in one of the aforementioned entities.

Whether a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense has established a bodily presence as an inhabitant in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency involves questions of fact that cannot be decided by means of an opinion of the Attorney General. *See* 1996 Op. Att'y Gen. No. 96-026 at 2-92; 1993 Op. Att'y Gen. No. 93-055 at 2-262 and 2-263; 1992 Op. Att'y Gen. No. 92-008 at 2-22 n.1; 1991 Op. Att'y Gen. No. 91-045 at 2-237 and 2-238; 1990 Op. Att'y Gen. No. 90-003 at 2-12; 1979 Op. Att'y Gen. No. 79-094 at 2-295. Rather, this determination must be made by the courts on a case-by-case basis since R.C. 2950.031(B) and R.C. 5321.03(A)(5) authorize the removal of

a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from a residence established within 1000 feet of any school premises in violation of R.C. 2950.031. *See* R.C. 1923.02; note four, *supra*; *see also* 1987 Op. Att'y Gen. No. 87-026 at 2-185 ("[b]ecause the legislature has specifically left the determination of school district of residence to the courts, I will not decide which school district is the school district of residence"); 1983 Op. Att'y Gen. No. 83-057 at 2-232 ("[t]his office is not equipped to serve as a fact-finding body; that function may be served by your office or, ultimately, by the judiciary"). *See generally* 1990 Op. Att'y Gen. No. 90-003 at 2-12 ("[a]lthough R.C. 5122.01(S) does not specify the office that is to determine 'residence,' reading R.C. Chapters 340, 5119 and 5122 *in pari materia*, or together and harmoniously, a community mental health board is the office to determine the residence of a person requesting mental health services inasmuch as the community mental health board is the office which provides client services as required by R.C. 340.09 and incorporated by the community mental health plan adopted pursuant to R.C. 340.03 and approved under R.C. 5119.62" (citation omitted)).

Therefore, pursuant to R.C. 2950.031, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may not establish a bodily presence as an inhabitant in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency that is located within 1000 feet of any school premises.

We will now consider what constitutes occupying "residential premises" for purposes of R.C. 2950.031(A). The phrase "residential premises" is defined for purposes of R.C. 2950.031 as follows:

> "Residential premises" means the building in which a *residential unit* is located and the grounds upon which that building stands, extending to the perimeter of the property. "Residential premises" includes any type of structure in which a residential unit is located, including, but not limited to, multi-unit buildings and mobile and manufactured homes. (Emphasis added.)

R.C. 2950.01(W). R.C. 2950.01(X), in turn, defines "residential unit" for purposes of R.C. 2950.01(W) as follows:

> "Residential unit" means *a dwelling unit for residential use and occupancy*, and includes the structure or part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or two or more persons who maintain a common household. "Residential unit" does not

> include a halfway house or a community-based correctional facility.[6] (Emphasis and footnote added.)

Thus, for purposes of R.C. 2950.031, the phrase "residential unit" means a dwelling unit for residential use and occupancy that is not a halfway house or community-based correctional facility. R.C. 2950.031, therefore, prohibits a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from occupying a dwelling unit for residential use and occupancy that is not a halfway house or community-based correctional facility that is located within 1000 feet of any school premises. *See generally* R.C. 5321.051(A) (a tenant of residential premises located within 1000 feet of any school premises may not allow a person to occupy those residential premises when the person's name appears on the state registry of sex offenders and child-victim offenders maintained under R.C. 2950.13 and the registry indicates that the person was convicted of, or pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense in a criminal prosecution and was not sentenced to a serious youthful offender dispositional sentence for that offense).

The word "occupy" is not defined for purposes of R.C. 2950.031. In common parlance, the term "occupy" means, among other things, "**2.** to hold possession of by tenure; specif., *a*) *to dwell in*[.]" *Webster's New World Dictionary* 984 (2nd college ed. 1986) (emphasis added); *see Webster's Third New International Dictionary* 1561 (1993) ("occupy" means, *inter alia*, "to take up residence in"). *See generally* R.C. 1.42 (absent a statutory definition or a technical or particular meaning attributed to a word, a word is to be accorded its common, ordinary meaning). The word "occupy" thus commonly denotes the place where a person dwells. A person "dwells" in the place where he makes a home, resides, or lives. *See generally Webster's New World Dictionary* 436 (2nd college ed. 1986) (the word "dwell" means "to make one's home; reside; live"); *Webster's Third New International Dictionary* 706 (1993) (same). Accordingly, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not

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[6] For purposes of R.C. Chapter 2950, unless the context clearly requires otherwise, "halfway house" and "community-based correctional facility" have the same meaning as in R.C. 2929.01. R.C. 2950.01(AA). R.C. 2929.01 defines these terms as follows:

> (E) "Community-based correctional facility" means a community-based correctional facility and program or district community-based correctional facility and program developed pursuant to [R.C. 2301.51-.56].
>
> ….
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> (P) "Halfway house" means a facility licensed by the division of parole and community services of the department of rehabilitation and correction pursuant to [R.C. 2967.14] as a suitable facility for the care and treatment of adult offenders.

a registration-exempt sexually oriented offense or a child-victim oriented offense occupies residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he makes his home, resides, or lives in a dwelling unit for residential use and occupancy in one of the aforementioned entities. *See generally* R.C. 2950.111(B) (indicating that, for purposes of confirming a residence address, a person who registers under R.C. Chapter 2950 may occupy residential premises in "any public or private residential premises, including, but not limited to, a private residence, a multi-unit residential facility, a halfway house, a homeless shelter, or any other type of residential premises").

Whether a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense makes his home, resides, or lives in a dwelling unit for residential use and occupancy in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency is a question of fact. *See* 1996 Op. Att'y Gen. No. 96-026 at 2-92; 1993 Op. Att'y Gen. No. 93-055 at 2-262 and 2-263; 1992 Op. Att'y Gen. No. 92-008 at 2-22 n.1; 1991 Op. Att'y Gen. No. 91-045 at 2-237 and 2-238; 1990 Op. Att'y Gen. No. 90-003 at 2-12; 1979 Op. Att'y Gen. No. 79-094 at 2-295. Moreover, as explained previously, this question cannot be answered by an opinion of the Attorney General. *See* 1983 Op. Att'y Gen. No. 83-057 at 2-232. Instead, any determination in this regard must be made by the courts on a case-by-case basis since R.C. 2950.031(B) and R.C. 5321.03(A)(5) authorize the removal of a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense from residential premises located within 1000 feet of any school premises in violation of R.C. 2950.031. *See* R.C. 1923.02; note four, *supra*; *see also* 1987 Op. Att'y Gen. No. 87-026 at 2-185. *See generally* 1990 Op. Att'y Gen. No. 90-003 at 2-12.

Therefore, pursuant to R.C. 2950.031, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may not make his home, reside, or live in a dwelling unit for residential use and occupancy in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency that is located within 1000 feet of any school premises.

In conclusion it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 2950.031, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense may not establish a residence or occupy residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an

independent housing agency that is located within 1000 feet of any school premises.

2. Regardless of a person's intentions, a person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense establishes a residence in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he has a bodily presence as an inhabitant in one of the aforementioned entities.

3. A person who has been convicted of, or has pleaded guilty to, either a sexually oriented offense that is not a registration-exempt sexually oriented offense or a child-victim oriented offense occupies residential premises in a nursing home, adult care facility, residential group home, homeless shelter, hotel, motel, boarding house, or facility operated by an independent housing agency whenever he makes his home, resides, or lives in a dwelling unit for residential use and occupancy in one of the aforementioned entities.

Respectfully,

JIM PETRO
Attorney General