February 5, 1999

OPINION NO. 99-013

Lieutenant Colonel Christine Cook, Director
Ohio Veterans' Home
3416 Columbus Avenue
Sandusky, Ohio 44870

Dear Director Cook:

You have requested an opinion regarding the admission of veterans to the Ohio Veterans' Home. In accordance with a conversation with a member of your staff, we have rephrased your questions as follows:

1. May the term "citizen," as used in R.C. 5907.04 with respect to state citizenship, be construed to mean "resident"?

2. Is a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime eligible for admission to the Ohio Veterans' Home, or must the five consecutive years or more immediately precede his application for admission to the home?

R.C. 5907.04 sets forth the criteria for admission to the Ohio Veterans' Home. This statute provides, in part:

> All members of the armed forces, who served in the regular or volunteer forces of the United States or the Ohio national guard or members of the naval militia during the war with Spain, the Philippine insurrection, the China relief expedition, the Indian war, the Mexican expedition, World War I, World War II, or during the period beginning June 25, 1950 and ending July 19, 1953, said period being known as the Korean conflict, or during the period beginning August 5, 1964, and ending July 1, 1973, said period being known as the Vietnam conflict, or any person who is awarded either the armed forces expeditionary medal established by presidential executive order 10977 dated December 4, 1961, or the Vietnam service medal established by presidential executive order 11231 dated July 8, 1965, who have been honorably discharged or separated under

> honorable conditions therefrom, or any discharged members of the Polish and Czechoslovakian armed forces who served in armed conflict with an enemy of the United States in World War I or World War II who have been citizens of the United States for at least ten years, *provided that the above-mentioned persons have been citizens of Ohio for five consecutive years or more at the date of making application for admission*, are disabled by disease, wounds, or otherwise, and are by reason of such disability incapable of earning their living, and all members of the Ohio national guard or naval militia who have lost an arm or leg, or their sight, or become permanently disabled from any cause, while in the line and discharge of duty, and are not able to support themselves, may be admitted to the Ohio veterans' home under such rules as its board of trustees adopts. (Emphasis added.)

Thus, pursuant to R.C. 5907.04, a veteran must have been a citizen of Ohio for five consecutive years or more at the date of making application for admission to the Ohio Veterans' Home.

No provision within the Revised Code defines the term "citizen" for purposes of R.C. 5907.04. It is a codified rule of statutory interpretation that "[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly." R.C. 1.42; *accord Klemas v. Flynn*, 66 Ohio St. 3d 249, 250, 611 N.E.2d 810, 812 (1993).

As a general matter, the term "citizen" is not a term of exact meaning. *Halaby v. Board of Directors of Univ. of Cincinnati*, 162 Ohio St. 290, 293, 123 N.E.2d 3, 5 (1954); *State ex rel. Owens v. The Trustees of Section 29*, 11 Ohio 24, 27 (1841). However, the Ohio Supreme Court has held that, "[t]he term, 'citizen,' used in legislation wherein United States citizenship has no reasonable relationship to the subject matter or purpose is often applied as meaning 'resident.'" *Halaby v. Board of Directors of Univ. of Cincinnati* (syllabus, paragraph one); *accord State ex rel. Owens v. The Trustees of Section 29*, 11 Ohio at 27. *See generally* U.S. Const. amend. XIV, § 1 ("[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State *wherein they reside*" (emphasis added)); *Boyd v. Nebraska*, 143 U.S. 135, 161 (1892) ("a citizen of the United States, residing in any State of the Union, is a citizen of that State" (quoting *Gassies v. Ballon*, 31 U.S. 761, 762 (1832))). Accordingly, in the interpretation of a statute, the use of the term "citizen" may be construed to mean "resident" unless the context of the statute indicates otherwise.

The express language of R.C. 5907.04 makes it clear that the use of the term "citizen" in the provision of R.C. 5907.04 requiring a veteran to have been a citizen of Ohio for five

consecutive years or more has no relationship to United States citizenship.[1] In addition, there is no indication in R.C. 5907.04 that the General Assembly intended the term "citizen" to mean something other than "resident."

Finally, the board of trustees of the Ohio Veterans' Home has adopted and promulgated 16 Ohio Admin. Code 5907-3-01, which regulates admissions to the Ohio Veterans' Home. *See generally* 1988 Op. Att'y Gen. No. 88-078 at 2-387 ("R.C. 5907.04 clearly permits the board of trustees of the Ohio Veterans' Home to adopt rules governing the admission of veterans to the home"). Rule 5907-3-01 states, in part:

> Admission to the Ohio veterans home shall be subject to the following provisions:
>
> (A) Any person admitted to the Ohio veterans home shall be a resident of the state of Ohio.

The board of trustees of the Ohio Veterans' Home thus has determined that R.C. 5907.04 permits a veteran to be admitted to the Ohio Veterans' Home if he is a resident of the State of Ohio. A properly adopted and promulgated administrative rule is to be given the force and effect of law. *Doyle v. Ohio Bureau of Motor Vehicles*, 51 Ohio St. 3d 46, 554 N.E.2d 97 (1990) (syllabus, paragraph one). *See generally Rose Hill Chapel-Ciriello Funeral Home v. Ohio Bd. of Embalmers & Funeral Directors*, 105 Ohio App. 3d 213, 218, 663 N.E.2d 978, 981 (Summit County 1995) ("[a]n administrative agency's construction of a statute that the agency is empowered to enforce must be accorded due deference. Unless the construction of a statute is unreasonable or impermissible, the construction given to it by the agency should be followed by reviewing courts" (citations omitted)).

In light of the interpretation of the term "citizen" by the Ohio Supreme Court and the construction accorded R.C. 5907.04 by the board of trustees of the Ohio Veterans' Home, it is our conclusion that the term "citizen," as used in R.C. 5907.04, is synonymous with "resident." Therefore, the term "citizen," as used in R.C. 5907.04 with respect to state citizenship, may be construed to mean "resident."

Your second question asks whether a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime is eligible for admission to the Ohio Veterans' Home, or whether the five consecutive years or more must immediately precede his

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[1] There is one specific reference to United States citizenship in R.C. 5907.04. In this regard, R.C. 5907.04 provides that before a veteran of the Polish or Czechoslovakian armed forces who served in armed conflict with an enemy of the United States in World War I or World War II may be admitted to the Ohio Veterans' Home, he must have been a citizen of the United States for at least ten years.

application for admission to the home. R.C. 5907.04 requires a veteran to have been a citizen of Ohio for five consecutive years or more at the date of making application for admission to the Ohio Veterans' Home.

A review of this citizenship requirement discloses that the language of the statute is ambiguous. *See generally Caldwell v. State*, 115 Ohio St. 458, 460, 154 N.E. 792, 792 (1926) ("[a]n ambiguity is defined as doubtfulness or uncertainty; language which is open to various interpretations or having a double meaning; language which is obscure or equivocal"). R.C. 5907.04, as written, is susceptible of the two different interpretations identified in your letter. First, the statute may be read to mean that the five consecutive years or more must immediately precede a veteran's application for admission to the Ohio Veterans' Home in order for the veteran to be admitted. The statute may also be read to mean that a veteran must have been a citizen of Ohio for five consecutive years or more at any time during his lifetime in order for the veteran to be admitted.

Pursuant to R.C. 1.49(F), when the language of a statute is ambiguous, one may consider the administrative construction of the statute in determining the intention of the General Assembly. As stated in *Wadsworth v. Dambach*, 99 Ohio App. 269, 280, 133 N.E.2d 158, 166 (Ottawa County 1954): "Administrative interpretation of a given law, while not conclusive, is, if long continued, to be reckoned with most seriously and is not to be disregarded and set aside unless judicial construction makes it imperative to do so." Accordingly, a construction of R.C. 5907.04 by the board of trustees of the Ohio Veterans' Home should be followed unless the construction is unreasonable or impermissible. *See Rose Hill Chapel-Ciriello Funeral Home v. Ohio Bd. of Embalmers & Funeral Directors*, 105 Ohio App. 3d at 218, 663 N.E.2d at 981.

A member of your staff has informed us that it has been a long-established policy of the board of trustees of the Ohio Veterans' Home to admit a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime. In light of the language of R.C. 5907.04, it appears that this administrative construction of R.C. 5907.04 is neither impermissible nor unreasonable. Moreover, there do not appear to be any judicial decisions or opinions of the Attorneys General that have determined that a veteran must have been a citizen of Ohio for five consecutive years or more immediately prior to his application for admission to the Ohio Veterans' Home. Thus, the policy of the board of trustees of the Ohio Veterans' Home to admit a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime should be followed. Accordingly, pursuant to R.C. 5907.04, a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime is eligible for admission to the Ohio Veterans' Home.[2]

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[2] As explained above, before a veteran may be admitted to the Ohio Veterans' Home, he must be a resident of the State of Ohio. 16 Ohio Admin. Code 5907-3-01(A). Thus, although a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his

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

1. The term "citizen," as used in R.C. 5907.04 with respect to state citizenship, may be construed to mean "resident."

2. Pursuant to R.C. 5907.04, a veteran who has been a citizen of Ohio for five consecutive years or more at any time during his lifetime is eligible for admission to the Ohio Veterans' Home.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

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lifetime is eligible for admission to the Ohio Veterans' Home, he may not be admitted into the Ohio Veterans' Home unless he is a resident of the State of Ohio at the time of his admission.

February 5, 1999

Lieutenant Colonel Christine Cook, Director
Ohio Veterans' Home
3416 Columbus Avenue
Sandusky, Ohio 44870

SYLLABUS: 99-013

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