

OPINION NO. 90-003**Syllabus:**

For purposes of R.C. 5122.01(S), the residence of a student enrolled in an institution of higher education may be the county in which the student lives while attending school, provided that the student is physically present in the county and intends to remain there.

To: David W. Norris, Portage County Prosecuting Attorney, Ravenna, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990

I have before me your request for my opinion concerning the determination of the "residence" of a person receiving mental health services. Specifically, you have asked whether "a student enrolled at a university...who resides...within the county" is a resident of the county for purposes of the definition set forth in R.C. 5122.01(S).

Any meaningful discussion of "residency" in the context of the delivery of mental health services in Ohio requires that I briefly discuss the system of providing mental health services at the local level. To do so requires that I initially review several statutes, some of which were recently affected by Sub. S.B. 156, 117th Gen. A. (1988) (eff. June 29, 1988, but various sections therein have delayed effective dates) and Am. Sub. H.B. 317, 118th Gen. A. (1989) (eff. Oct. 10, 1989). Sub. S.B. 156 substantially reorganized the provision of mental health services in Ohio by amending numerous sections in R.C. Chapters 340, 5119 and 5122. Am. Sub. H.B. 317 reorganized the provision of alcohol and drug addiction services and affected the operation of community mental health boards.

Mental health services in Ohio are provided largely by community mental health boards.¹ R.C. 340.011; R.C. 340.03. In fact, the community mental health

¹ Am. Sub. H.B. 317, 118th Gen. A. (1989) (eff. Oct. 10, 1989) provided boards of county commissioners with the option of designating the community mental health board as a "board of alcohol, drug addiction, and mental health services" to provide alcohol and drug addiction services. If the board of

board "has the primary responsibility for the mental health program in its county." *Greene County Guidance Center, Inc. v. Greene-Clinton Community Mental Health Bd.*, 19 Ohio App. 3d 1, 4, 482 N.E.2d 982, 986 (Greene County 1984). Each county having a population of at least fifty thousand must establish an alcohol, drug addiction, and mental health service district administered by a community mental health board consisting of eighteen members, but counties with smaller populations may join with another county to establish a joint-county district. R.C. 340.01; R.C. 340.02. It is the community mental health board which determines the specific community mental health services to be provided within its district by adopting a community mental health plan. R.C. 340.03.

Such a plan must list the services to be provided or purchased which include, *inter alia*, inpatient and outpatient services, rehabilitation, and preventive services. R.C. 340.03; R.C. 340.09. A community mental health plan must comply with criteria adopted by the director of mental health. R.C. 5119.61(L). One of the factors that the director considers is "[t]he mental health needs of *all persons residing within the board's service district*." R.C. 5119.61(L)(1) (emphasis added). Among other requirements, a community mental health plan "[s]hall be based on the needs of the *residents* of the community for mental health...services and facilities." 10 Ohio Admin. Code 5122:2-1-09(G) (emphasis added).

Residency determinations are also important for funding purposes. While funding of community mental health districts is provided by a variety of sources, *see, e.g.*, R.C. 340.03(A)(5) (public and private sources); R.C. 340.03(C) (gifts, grants, bequests and devises); R.C. 340.07 (county funds); R.C. 340.09 (state assistance); R.C. 5119.63 (federal funds), state payments pursuant to R.C. 5119.62 are a significant funding source. R.C. 5119.62(A) provides that "the director of mental health shall authorize the payment of funds to a [community mental health board] from funds appropriated for such purpose by the general assembly." The funding authorized by R.C. 5119.62(A) is requested by the submission of a community mental health plan, which constitutes an application for such funds. R.C. 340.08. The director of mental health is required to devise a formula for allocating such funds to community mental health boards. The formula shall include as a factor "the number of severely mentally disabled persons *residing in each community mental health service district*." R.C. 5119.62(B) (emphasis added). *See also* R.C. 5119.62(B)(3)(a) (financial responsibility for utilization of state hospitals by residents); R.C. 5119.62(E) (department of mental health risk fund used to assist boards according to formula with residency as a factor). Residency, therefore, has a direct effect upon the funding of community mental health districts.

R.C. 5122.01(S) provides, in pertinent part, that:

"Residence" means a person's physical presence in a county with intent to remain there, except that if a person (1) is receiving a mental health service at a facility that includes nighttime sleeping accommodations, residence means that county in which the person maintained his primary place of residence at the time he entered the facility, or (2) is

county commissioners instead establishes an "alcohol and drug addiction services board" to provide alcohol and drug addiction services, the community mental health board continues to exist and has "all the powers, duties, and obligations of a board of alcohol, drug addiction, and mental health services with regard to mental health services." Alcohol and drug addiction services are then provided by an "alcohol and drug addiction services board." As a convenience, this opinion shall use the term "community mental health board" to mean both a community mental health board providing only mental health services and a "board of alcohol, drug addiction, and mental health services." Inasmuch as your request concerns residency only in the context of the provision of mental health services, this opinion is limited to the use of the term "residency" as it relates to such services as provided by community mental health boards and boards of alcohol, drug addiction, and mental health services.

committed pursuant to sections 2945.38 or 2945.40 of the Revised Code, residence means the county where the criminal charges were filed.²

Thus, "residence" is based on the intention of the person, except when the filing of criminal charges in a particular county results in a defendant being found incompetent to stand trial by reason of mental illness or being found not guilty by reason of insanity.

Words that have acquired a particular meaning by statutory definition are construed accordingly. R.C. 1.42; *see also 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"); *State ex rel. Kaplan v. Kuhn*, 8 Ohio N.P. 197, 200 (C.P. Hamilton County 1901) ("[r]esidence' is the favorite term employed by the American legislator to express the connection between person and place, its exact signification being left to construction to be determined from the context"). The statutory context provided by R.C. 5122.01(S) is an express definition. "Residence" must, therefore, be construed as defined. Inasmuch as R.C. 5122.01(S) uses plain and straightforward language, there is no ambiguity in the definition of the term. Being unambiguous, there is no need to resort to any rule of construction beyond giving effect to the statutory language as written. *See Stewart v. Trumbull County Bd. of Elections*, 34 Ohio St. 2d 129, 296 N.E.2d 676 (1973); *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927); *State ex rel. Hamilton Gas & Coke Co. v. City of Hamilton*, 47 Ohio St. 52, 23 N.E. 935 (1890). The statutory language of R.C. 5122.01(S) requires that residency be determined based on two factors: the person's physical presence in the county and the person's intent to remain there.

Whether a person is found to be a resident is generally a question of fact. *Sturgeon v. Korte*, 34 Ohio St. 525 (1878); 1973 Op. Att'y Gen. No. 73-080. Factual determinations are not properly made by the Attorney General. 1988 Op. Att'y Gen. No. 88-008, 1983 Op. Att'y Gen. No. 83-057. Instead, that function is properly served by the office responsible for exercising its discretion in a particular situation. *See* 1989 Op. Att'y Gen. No. 89-018. Although 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, *see Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984), 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. Further, if the community mental health board's determination of a person's

² I note that the definition of "residence" in R.C. 5122.01(S) is restricted by the phrase "as used in this chapter [5122] and Chapter 5119 of the Revised Code." R.C. 5122.01. However, because of the extensive regulatory and supervisory duties of the department of mental health concerning community mental health districts and boards, R.C. 5122.01(S) necessarily applies to R.C. Chapter 340. *See, e.g.,* R.C. 340.011 (R.C. Chapter 340 shall be interpreted to accomplish the establishment of a unified system of treatment for mentally ill persons); R.C. 340.02 (the director of mental health shall appoint four of the members of a community mental health board); R.C. 340.03 (the department of mental health shall approve or disapprove a community mental health plan pursuant to criteria adopted under R.C. 5119.61); R.C. 5119.01(F) (director of mental health shall "[e]xercise the powers and perform the duties relating to mental health facilities and services that are assigned to him under this chapter [5119] and Chapter 340. of the Revised Code"); R.C. 5119.61(A) (the director of mental health shall "[m]ake such rules...as may be necessary to carry out the purposes of Chapter 340...of the Revised Code"); R.C. 5119.62 (the director of mental health shall allocate state funds to community mental health boards); R.C. 5119.63 (the director of mental health may reimburse community mental health boards from available federal funds).

residence is disputed, the matter of residence shall be referred to the department of mental health for investigation and final determination. R.C. 5122.01(S).

Ohio law does not provide a special rule for determining the residence of students. The same rules used to determine the residence of other persons also apply to students. *Wickham v. Coyner*, 12 Ohio C.C. (n.s.) 433 (Delaware County 1902). Therefore, pursuant to the test set forth in R.C. 5122.01(S), it is the intention of the student to remain in the county that is paramount to the residency determination. A student who comes into a county for the purpose of pursuing an education is not presumed to be a non-resident when the evidence indicates that his intent was to change his residence. 1974 Op. Att'y Gen. No. 74-093. If, however, the relocation to attend school is only temporary and a return to the county of origin is contemplated, the presumption is that residence remains in the prior county of residence. *Id.*

The status of the student as a temporary sojourner for school purposes or a permanent resident turns on the critical element of intent. *Kelm*, 437 F.2d at 1271. In order to determine a student's intent, the totality of the circumstances was examined by the court in *State ex rel. Kaplan v. Kuhn*. There, the court looked to "the acts and declarations, family relations, business pursuit and vocation in life, mode of life, means, fortune, earning capacity, conduct, habits, disposition, age, prospects, residence, lapse of time, voting and payment of taxes, and read these facts in the light of their own declarations." *Kuhn*, 8 Ohio N.P. at 202. Some of these factors also were examined in the Portage County case of *State ex rel. May v. Jones*, 16 Ohio App. 2d 140, 242 N.E.2d 672 (Portage County 1968). When he enrolled at the main campus of Kent State University, May, a student from Tuscarawas County, Ohio, moved to Kent, Ohio. His intent to change his residence to Kent was evidenced by him moving his house trailer, marrying, moving his new family in with him, obtaining employment in Kent and paying taxes there.

A determination whether a student has as his residence a particular county for purposes of R.C. 5122.01(S) requires an examination of the totality of circumstances of the student's physical presence in the county. From these circumstances, evidence of an intent to remain may be gathered.

Based on the foregoing, it is my opinion, and you are hereby advised that, for purposes of R.C. 5122.01(S), the residence of a student enrolled in an institution of higher education may be the county in which the student lives while attending school, provided that the student is physically present in the county and intends to remain there.