

OPINION NO. 70-082**Syllabus:**

A group home, under the jurisdiction of the Ohio Youth Commission, with a capacity of six to ten children, does not constitute a "food service operation" as defined in Section 3732.01, Revised Code.

To: Daniel W. Johnson, Director, Ohio Youth Commission, Columbus, Ohio
By: Paul W. Brown, Attorney General, July 15, 1970

I have your request for my opinion which reads as follows:

"Does a group home, under the jurisdiction of the Ohio Youth Commission, with a capacity of six (6) to ten (10) children, constitute a Food Service Operation as defined in Chapter 3732, Revised Code?"

Section 3732.01, Revised Code, defines "food service operation"

and reads in pertinent part as follows:

"As used in sections 3732.02 to 3732.08, inclusive of the Revised Code:

" (A) A 'food service operation' means:

" (1) Any place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration except:

" (a) Homes containing what is commonly known as the family unit and their non-paying guests;

" (b) Operations serving a meal or a lunch to five or less persons;

" (c) Churches, school, fraternal, or veterans' organizations serving meals or lunches on their premises; provided said meals or lunches are served on no more than seven consecutive days or on no more than fifty-two separate days in any one calendar year;

" * * * * * * * * "

You state that a "group home" is defined by the Ohio Youth Commission as a foster home that provides care for five to ten children. You further state that although foster parents are paid a consideration for the services they provide to children placed in their home, this consideration is not specifically for meals. The consideration is for the overall care and maintenance of children, including lodging, clothing, education, medical and dental care, as well as for meals. You further state that the purpose of the group home is to provide a stable family living experience for children.

The question is primarily whether the group home is maintained for the purpose of serving meals "for a consideration." My predecessor, in Opinion No. 6401, Opinions of the Attorney General for 1956, page 278, considered this question with respect to a county home in which some of the residents contributed toward their maintenance. He concluded that the home was not a place kept or maintained for the purpose of preparing or serving meals or lunches for a consideration. I quote from this opinion, beginning at page 281:

"In the consideration of Section 3732.01, supra, it is my opinion that the section must be given a reasonable construction consistent with the ordinary and usual meaning of the terms. I am therefore led to the conclusion

that the phrase 'preparing or serving meals or lunches for a consideration' comprehends the usual sale transaction in which payment is made or promised conditioned upon the serving of the food." (Emphasis added.)

This opinion was followed in Opinion No. 65-25, Opinions of the Attorney General for 1965. I concur in the reasoning of both these opinions. The consideration paid to foster parents for the care and services they provide to children placed in a group home does not comprehend the usual sale transaction in which payment is made or promised, conditioned upon the serving of the food.

It is, therefore, my opinion and you are advised that a group home, under the jurisdiction of the Ohio Youth Commission, with a capacity of six to ten children, does not constitute a "food service operation" as defined in Section 3732.01, Revised Code.