

## OPINION NO. 87-035

## Syllabus:

1. A board of county commissioners may close a county nursing home no longer needed for public use and may sell the real property pursuant to R.C. 307.09, notwithstanding the expiration of the six month period provided for the sale of a home under R.C. 5155.31(D).
2. A board of county commissioners may close a county nursing home pursuant to R.C. 5155.31 and may enter into a contract with the purchaser to provide nursing care if the purchaser operates the facility as a home licensed under R.C. Chapter 3721.

---

To: Jeffrey M. Welbaum, Miami County Prosecuting Attorney, Troy, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, May 29, 1987

I have before me your request for my opinion regarding the authority of a board of county commissioners to sell a county nursing home. You have indicated that R.C. 5155.31(D) provided for a six-month window of opportunity during which a county nursing home could be sold and that the six month period expired December 31, 1983. R.C. 5155.31 now provides only that a county nursing home may be leased, see R.C. 5155.31(C); however, since R.C. 307.09 provides that a board of county commissioners may sell any real property not needed for public use, you have inquired whether the language of R.C. 5155.31 or any other law restricts the authority of a board of county commissioners from selling the county nursing home under R.C. 307.09. In addition, you have inquired whether the board of county commissioners may provide county nursing care by contracting for services with the buyer of the county nursing home. You have also asked whether the board of county commissioners may "contract with a profit or non-profit hospital or other entity to staff and administer operation of a county nursing home without the employees thereof being county employees under civil service laws or other laws applicable to county employees."

In response to your first question regarding the authority to sell a county nursing home,<sup>1</sup> I note that R.C. 5155.31(D) provides:

Whenever the board of county commissioners determines that a county home or a county nursing home is unsuitable for habitation or its operation is economically unfeasible, the board may sell or lease

---

<sup>1</sup> County nursing homes have been described as facilities separate and distinct from county homes yet, a part thereof. 1970 Op. Att'y Gen. No. 70-164. Neither a county home nor a county nursing home must be licensed under R.C. Chapter 3721, see 1974 Op. Att'y Gen. No. 74-008, but, if a home elects to receive federal Medicaid funding, it must be licensed and certified in order to enter into a provider agreement with the Ohio Department of Human Services. See generally 1981 Op. Att'y Gen. No. 81-064.

the home together with all of its contents of personal property used in connection with and incidental to its operation, as a single unit, to an individual, partnership, firm, association, or corporation for the establishment of a home licensed under Chapter 3721. of the Revised Code.<sup>2</sup> Any lease granted under this division and renewals thereof shall not be for a period longer than five years. The form of any such lease shall be approved by the prosecuting attorney. No sale or lease shall be made under this division unless it is authorized by a resolution passed by a majority of the members of the board of county commissioners. No sale shall be made under this division until the board receives an appraisal of the value of the real and personal property to be sold, as determined by one or more competent appraisers. When a sale or lease is authorized, a deed or lease shall be made by the board to the highest responsible bidder after the advertisement, once a week for four consecutive weeks, in a newspaper of general circulation within the county. The board may reject any bids and readvertise until such time as the home and its contents used in connection with and incidental to its operation are sold or leased. This division applies only to a sale or lease executed prior to December 31, 1983. (Emphasis and footnote added.)

Pursuant to this section a board of county commissioners had an opportunity to sell or lease the real and personal property constituting the home, as a single unit, if such sale or lease was executed prior to December 31, 1983. That opportunity has passed.

R.C. 307.09 provides, in part: "[i]f the interests of the county so require, the board of county commissioners may sell any real property belonging to the county and not needed for public use." (Emphasis added.) Your question, therefore, raises the issue of whether a board of county commissioners may sell a county nursing home after December 31, 1983 under the authority conferred by R.C. 307.09.

As a creature of statute, a board of county commissioners has only those powers which are expressly granted by statute or necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Although a board of county commissioners has no duty to operate a county home, see Seran v. Biddle, 86 Ohio App. 1, 89 N.E.2d 669 (Stark Co. 1949), when it undertakes to do so, R.C. Chapter 5155 defines the board's authority. R.C. 5155.31 specifically addresses both a county home and a county nursing home. That section defines a "county nursing home" as "a facility that is owned and operated by the county and used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal assistance, as 'mental impairment,' 'skilled nursing care,' and 'personal assistance'".

---

<sup>2</sup> R.C. Chapter 3721 provides for the licensing and regulation of nursing homes, rest homes, and homes for the aging.

are defined in [R.C. 3721.01]".<sup>3</sup> R.C. 5155.31(B) authorizes a board of county commissioners to close a county home or county nursing home and to provide alternate care for eligible residents. It is clear that R.C. 5155.31(B) and (C) contemplate closing the facility and ceasing operation,<sup>4</sup> while R.C. 5155.31(D) refers to selling or leasing the facility "together with all of its contents of personal property used in connection with and incidental to its operation, as a single unit, to an individual, partnership, firm, association, or corporation for the establishment of a home licensed under [R.C. Chapter 3721]." (Emphasis added.) Although it is not clear from the language used in R.C. 5155.31, it appears that section was enacted to authorize the sale of the facility as an ongoing operation. In an uncodified section of R.C. 5155.31, it is stated that the necessity for enacting the six month window of opportunity as an emergency measure "lies in the fact that this act must be effective at the earliest possible date so that boards of county commissioners can, prior to June 30, 1983, dispose of those county homes whose provider agreements with the Ohio Department of [Human Services]<sup>5</sup> expire on June

<sup>3</sup> R.C. 3721.01(D) defines "skilled nursing care" as:

procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated, including, without limitation, procedures such as:

(1) Irrigations, catheterizations, application of dressings, and supervision of special diets;

(2) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;

(3) Special procedures contributing to rehabilitation;

(4) Administration of medication by any method ordered by a physician such as hypodermically, rectally, or orally;

(5) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.

R.C. 3721.01(E) defines "personal assistance" as, "supervision as required and services including help in walking, bathing, dressing, feeding, or getting in and out of bed."

<sup>4</sup> R.C. 5155.31(B) refers to closing the home and providing alternate care for the residents. Similarly, R.C. 5155.31(C) provides for leasing the facility after it has been closed pursuant to R.C. 5155.31(B).

<sup>5</sup> Only those county homes having appropriate licensure under R.C. Chapter 3721 and certification to enter into provider agreements may participate in the Medicaid program. See generally 1981 Op. Att'y Gen. No. 81-064. See also 1977 Op. Att'y Gen. No. 77-050 (Medicaid reimbursements cease upon the expiration of a provider agreement).

30, 1983." 1983-1984 Ohio Laws, Part I, 1943 (Am. H.B. 102, eff. May 25, 1983; section 3, uncodified). To prevent the termination of Medicaid reimbursements upon expiration of a provider agreement, see generally 1981 Op. Att'y Gen. No. 81-064, R.C. 5155.31(D) authorized the sale of an ongoing operation at one point in time without the need for closing the facility under R.C. 5155.31(B) or (C) and without the need for separate bidding procedures. Cf. R.C. 307.09 and R.C. 307.12 (authorizing separately the sale of real and personal property no longer needed for public use). The authorization set forth in R.C. 5155.31(D) was limited to a six month period of time; from the effective date of the provision, May 25, 1983, to December 31, 1983. Since this period has expired and no similar legislation has been enacted, it is evident that the sale or lease of a county home or county nursing home "together with all of its contents of personal property used in connection with and incidental to its operation, as a single unit" is no longer authorized by statute.

R.C. 307.09, however, authorizes the board of county commissioners to "sell any real property belonging to the county and not needed for public use." (Emphasis added.) When the board, in its discretion, determines that the county nursing home is not needed for public use, see Seran v. Biddle, 86 Ohio App. 1, 89 N.E.2d 669 (Stark Co. 1949), it may sell the real property pursuant to this provision, notwithstanding the expiration of the six month window of opportunity to sell the home as a single operating unit under R.C. 5155.31(D). Since R.C. 5155.31(D) and R.C. 307.09 provide authority for distinct and separate acts, the former being the sale of real and personal property as a single unit and the latter being the sale of realty only, I do not view the passage of the six month period created by R.C. 5155.31(D) as limiting the general authority conferred by R.C. 307.09. Thus, a board of county commissioners may close a county nursing home no longer needed for public use and sell the real property pursuant to R.C. 307.09. See also R.C. 307.092 (expressly authorizing a board of county commissioners to "sell, lease, or transfer any real property belonging to the county and not needed for public use to a nonprofit senior citizens' organization to be used for public purposes...").

Your second question concerns the authority of a board of county commissioners to provide county nursing care by contracting with the buyer of the former county nursing home. Under R.C. 5155.31 it is evident that once a county home or county nursing home is closed, the county may provide alternative care for the residents. R.C. 5155.31(B) provides:

Whenever the buildings of a county home or a county nursing home have become unsuitable for habitation, or whenever the population of such a home is too small for economical and efficient operation, or for any other reason made of record, the board of county commissioners may close such home and provide for the care of the residents thereof, and of other persons afterwards determined eligible for county care, by housing them in another county home, or a home licensed under Chapter 3721. of the Revised Code, or in such private homes within the county as the board considers proper, and upon such terms as may be agreed upon by the boards of the respective counties. (Emphasis added.)

Thus, a county may close its county nursing home, sell the facility, and enter into an agreement with another county to provide for the residents in another county home or county nursing home. Alternatively, the county may agree to provide for such residents in private homes or in homes licensed under R.C. Chapter 3721.<sup>6</sup> Since R.C. 5155.31(B) authorizes the board to provide for residents by placing them with a home licensed under R.C. Chapter 3721, if the purchaser of the county nursing home facility is fully licensed the county could provide for the residents by allowing them to remain in the facility.<sup>7</sup>

I turn now to your third question in which you ask whether the board of county commissioners may "contract with a profit or non-profit hospital or other entity to staff and administer operation of a county nursing home without the employees thereof being county employees under civil service laws or other laws applicable to county employees." R.C. 5155.01 provides that each county home is to be operated under the direction of a superintendent or administrator appointed by the board of county commissioners. The superintendent is also empowered by that section to appoint additional employees. There is no express provision in R.C. Chapter 5155 which specifically authorizes either the superintendent of a county home, or the board of county commissioners, to hire an independent contractor to staff and administer the county home. But see Local 4501 v. Ohio State University, 24 Ohio St. 3d 191, 494 N.E.2d 1082 (1986); State ex rel. Sigall v. Aetna, 45 Ohio St. 2d 308, 345 N.E.2d 61 (1976). However, it appears that in Miami County it was judicially determined that such an arrangement for the operation of this facility is permissible. Cook v. Trustees of Dettmer Hospital, Inc., Case No. 73-376 (C.P. Miami Co. 1973) (unreported). In that case it was decided, in a declaratory judgment action brought by the board of county commissioners, that the board could contract with a private corporation to "staff and administer" the facility.

---

<sup>6</sup> See note 1, supra.

<sup>7</sup> R.C. 339.11 provides additional authority to contract for nursing care of the indigent sick and disabled by authorizing a board of county commissioners to:

enter [into] an agreement with one or more [nonsectarian] corporations or associations organized for charitable purposes or for the purpose of maintaining and operating a hospital in any county in which such hospital has been established, for the care of the indigent sick and disabled... upon such terms as are agreed upon between the board and such corporations or associations. (Emphasis added.)

Traditionally, county homes were known as poor houses and were created to care for county indigents. See generally 1970 Op. Att'y Gen. No. 70-138. Those residents of a county nursing home who qualify as indigent sick and disabled may be provided for, pursuant to R.C. 339.11, after the sale of a county nursing home. See generally 1986 Op. Att'y Gen. No. 86-053. See also R.C. 307.694 ("[t]he board of county commissioners may spend money for the support of senior citizens services or facilities").

While the court did not set forth its authority for this conclusion, the case seems to clearly answer your question. It would, therefore, be inappropriate for me to render an opinion on this issue, and accordingly I decline to do so.

In conclusion, it is my opinion and you are advised that:

1. A board of county commissioners may close a county nursing home no longer needed for public use and may sell the real property pursuant to R.C. 307.09, notwithstanding the expiration of the six month period provided for the sale of the nursing home as a single unit under R.C. 5155.31(D).
2. A board of county commissioners may close a county nursing home pursuant to R.C. 5155.31 and may enter into a contract with the purchaser to provide nursing care if the purchaser operates the facility as a home licensed under R.C. Chapter 3721.