

OPINION NO. 65-159**Syllabus:**

The Department of Industrial Relations is authorized by Sections 4107.31 and 4107.32, Revised Code, to inspect county homes and to issue an order to a board of county commissioners specifying the necessary appliances, additions, or alterations which are to be made to such structures.

To: Henry P. Mittelkamp, Putnam County Pros. Atty., Ottawa, Ohio
By: William B. Saxbe, Attorney General, August 25, 1965

Your request for my opinion reads as follows:

"The Division of Factory and Building Inspection, Department of Industrial Relations recently issued an order to the Board of County Commissioners, Putnam County, Ohio stating that certain repairs must be made to the Putnam County Home within ninety (90) days or the Division would write an order based on Section 4107.32 et seq., Revised Code.

"This list of repairs is quite extensive and would involve expenditure of funds which could be raised only through a bond issue. A bond issue could not be passed within the limits set by the Division.

"I have had an inquiry from the Board of County Commissioners as to whether the Divisions of Factory and Building Inspection is authorized to issue such order with regard to a County Home. My research failed to disclose any mention of a County Home in Chapters 3781, 3791 and 4107, Revised Code. Infirmaries are listed but I do not feel that a County Home is an infirmary since the two are treated separately in other sections of the Revised Code. Section 153.37, Revised Code, provides for approval of plans for a County Home by the Board of County Commissioners. Section 307.01, Revised Code, provides that a County Home shall be of such style, dimensions, and expense as the Board of County Commissioners determines.

"Your opinion is therefore respectfully requested as to whether or not the Division of Factory and Building Inspection, Department of Industrial Relations is authorized to order a Board of County Commissioners to repair a County Home; and, upon non-compliance, to issue an order under Section 4107.32 et seq., Revised Code."

The Department of Industrial Relations through its Division of Workshops and Factories is directed to inspect public buildings under Section 4107.31, Revised Code. That statute reads as follows:

"The department of industrial relations shall inspect all schoolhouses, colleges, opera houses, halls, theaters, churches, infirmaries, children's homes, hospitals, medical institutes, asylums, and other buildings used for the assemblage or betterment of people in the state. Such inspection shall be made with special reference to precautions for the prevention of fires, the provisions of fire escapes, exits, emergency exits, hallways, and air space, and such other matters which relate to the health and safety of those occupying or assembled in such structures."

Your inquiry arises because "county homes" are not expressly included within this section.

Before repeal of Chapter 5111, Revised Code, the application of Section 4107.31, Revised Code, to rest homes was questioned and the court determined that it was not applicable, there being a later statute specifically relating to the supervision, control and safety of rest homes. State ex rel. Department of Industrial Relations v. Russell, 48 O.O., 286, 108 N.E. 2d, 122. Section 5155.02, Revised Code, provides for monthly inspections by the county commissioners of the physical and sanitary conditions of the county home buildings. The provision for inspection in Section 5155.02, Re-

vised Code, along with the absence of "county homes" from the enumeration in Section 4107.31, Revised Code, presents a specious argument that the Department of Industrial Relations lacks authority to inspect county homes and to issue orders to a board of county commissioners regarding the condition of the buildings. However, the statute relating to rest homes in State ex rel. Dept. of Industrial Relations v. Russell, supra, which has since been repealed, stated that the Department of Industrial Relations, the Department of Health, and the Fire Marshal should make inspections at the request of the Department of Public Welfare. Section 5155.02, Revised Code, which directs the board of county commissioners to make inspections of the county home, contains no provision for such a request as a prerequisite to inspections by other departments.

The Russell case, supra, stated that the purpose of the inspection of public buildings under Section 4107.31, Revised Code, was to make such buildings safe for their occupants in the event of fire or other disaster. Under Sections 4107.03 and 4107.31, Revised Code, inspectors who are competent and practical mechanics are to give special attention to precautions for the prevention of fires and provisions for egress. The inspection by the board of county commissioners under Section 5155.02, Revised Code, which is to be made unaccompanied by the home superintendent or matron, serves as a continuing check on the operation of the home through monthly appraisals of its physical and sanitary condition. Since there is no requirement that county commissioners be competent and practical mechanics to perform the monthly inspection under Section 5155.02, Revised Code, it would be difficult to explain why school houses, children's homes, and other public buildings should be inspected by competent and practical mechanics but not county homes. Obviously the two inspection provisions are to serve different purposes.

The jurisdiction, powers, and duties of the Department of Industrial Relations as set forth in Sections 4101.02 and 4101.03, Revised Code, are very broad, referring to almost every building or structure where services are being performed. In addition, the express enumeration of the different public buildings in Section 4107.31, Revised Code, includes infirmaries and asylums, and ends with the general phrase "* * *and other buildings used for the assemblage or betterment of people in the state." Applying the "ejusdem generis" rule of statutory construction, county homes would appear to be subject to this provision because they are buildings of the same general kind or class as those specifically mentioned. Indeed homes for the poor have been included in the definition of an asylum. Blitz v. Belvedere Convalescent & Nursing Home, Inc., 217 Md., 248, 142 A. 2d, 826, 828; 4 Words & Phrases, 638 (1940). Furthermore, Section 2419-3 of the General Code of Ohio provided that institutions previously known as "county infirmaries" should be known as "county homes" and that wherever reference to "infirmaries" or "county infirmary" appeared in the statutes such words should be construed to read "county home." Although this General Code section was not included in

the recodification of 1953, it was enacted in 1919 eleven years after the original enactment of General Code Section 1031 (now Section 4107.31, Revised Code) where the word "infirmaries" was used. 99 Ohio Laws, 232; 108 Ohio Laws, 68. In the recodification of 1953 certain sections of the General Code were omitted as obsolete or redundant. I find no indication that Section 2419-3, General Code, was omitted for any other reason.

Section 3791.01, Revised Code, in ordering compliance with the building standards of the state makes the same enumeration of buildings as found in Section 4107.31, Revised Code. Surely it would not be suggested that county homes need not comply with such building standards.

In view of the above, I am of the opinion that the Department of Industrial Relations is authorized by Sections 4107.31 and 4107.32, Revised Code, to inspect county homes and to issue an order to a board of county commissioners specifying the necessary additions or alterations which are to be made to such structure.