

## OPINION NO. 70-164

**Syllabus:**

1. A "county home" is not necessarily a "nursing home operated by a governmental agency", which would require the licensing of the superintendent as a nursing home administrator, as provided by Chapter 4751, Revised Code.

2. When a county operates a separate facility, or a distinct portion of the county home, as a nursing home, the superintendent or person charged with the general administration of the facility shall be licensed as provided in Chapter 4751, Revised Code.

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**To: Richard B. McQuade, Jr., Fulton County Pros. Atty., Wauseon, Ohio**  
**By: Paul W. Brown, Attorney General, December 16, 1970**

Your request for my opinion asks the following question:

"Is the Superintendent of a County Home a "nursing home administrator" as defined in Section 4751.01, Ohio Revised Code, so as to require the superintendent to receive a license pursuant to said Section?"

You further state:

"The answer to this question has great implications, in that should your opinion be in the affirmative, all county homes must then comply with the various statutory and Board of Health regulations applicable to nursing homes."

Neither county nursing homes which are established as facilities separate and distinct from the county homes and yet are, in fact, a part thereof, nor county homes which generally provide nursing care in a medical unit for their residents requiring such care are construed to be proper subjects of the licensure provisions of Chapter 3721, Revised Code, and are therefore not presently licensed as nursing homes by the Department of Health. The basis for this exclusion is that Section 3721.05, Revised Code, provides in pertinent part as follows:

"No person, firm, partnership, association, or corporation shall:

"(A) Operate a home as defined in section 3721.01 of the Revised Code without obtaining a license from the director of health.

"\* \* \* \* \*"

Section 1.02 (B), Revised Code, defines "person" as follows:

"(B) 'Person' includes a private corporation; and when used to designate the owner of property which is the subject of an offense, includes

not only natural persons but also every other owner of property."

It is therefore obvious that a nursing home operated by a county does not fall within the provisions of Chapter 3721, supra, inasmuch as statutory construction of the words "person, firm, partnership, association, or corporation" has consistently concluded that this phraseology excludes the state or a political subdivision from otherwise operable provisions of statutory law. Inasmuch as county nursing homes are not presently licensed by the Department of Health, I see no reason to conclude that the effect of licensing a county home superintendent as a nursing home administrator would change the present status of a county home and make it a proper subject for licensure under Chapter 3721, supra.

Enactment of Chapter 4751, Revised Code, was necessitated by recent amendments to the Social Security Act. The State of Ohio participates in two programs which are partially funded by the federal government through which vendor payments are made to nursing homes for nursing care provided to certain public welfare recipients; under either Title XI or Title XIX of the Social Security Act. Although most of the nursing homes in Ohio, which participate in these programs, are privately owned, several counties have qualified their county nursing homes to provide skilled nursing care under Title XIX. Inasmuch as it is now a federal requirement that nursing home administrators must be licensed for the nursing home to continue to receive vendor payments under Title XIX, it is clear that those county nursing homes which are presently participating in this program must license their administrators to maintain their eligibility.

The amendments to the Social Security Act provide that all states who participate in these programs must set standards for and license the administrators of nursing homes in order to continue to receive federal funds for these programs. Chapter 4751, supra, was enacted to fulfill this federal requirement.

Section 4751.01, Revised Code, sets out the following pertinent definitions:

"(A) 'Nursing home administrator' means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more individuals.

\* \* \* \* \*

"(D) 'Nursing home' means a nursing home as defined by or under the authority of divisions (A), (C), and (D) of section 3721.01 of the Revised Code, or a nursing home operated by a governmental agency."

(Emphasis added.)

Although there is no statutory definition of a county home, I find it difficult to conclude that a county home necessarily fits the definition of a county nursing home. However, if a county operates a facility, or a distinct portion of a county home facility, for the express purpose of providing nursing care, as opposed

to a unit which provides nursing care to residents as required, or calls the facility, or portion thereof, a nursing home and accepts persons into the facility for the express purpose of providing nursing care, then that facility clearly becomes "a nursing home operated by a governmental agency."

I, therefore, must conclude that it is a question of fact which must be determined through an appraisal of the operation of each county home to determine whether the county home, or distinct portion thereof, is, and is held out to be, a "nursing home."

Therefore, it is my opinion, and you are hereby advised:

1. A "county home" is not necessarily a "nursing home operated by a governmental agency", which would require the licensing of the superintendent as a nursing home administrator, as provided by Chapter 4751, Revised Code.

2. When a county operates a separate facility, or a distinct portion of the county home, as a nursing home, the superintendent or person charged with the general administration of the facility shall be licensed as provided in Chapter 4751, Revised Code.