

OPINION NO. 79-094**Syllabus:**

1. A person is a legal resident of this state for purposes of admission to the Ohio State University tuberculosis treatment facility under R.C. 3335.43 if the person possesses an intent to remain in Ohio indefinitely. In determining whether, as a matter of fact, the person possesses the requisite intent, it is appropriate to construe the facts as favorably as possible to a finding of residence because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread.
2. An application for admission to the treatment service provided by the Ohio State University pursuant to R.C. 3335.43 is not legally binding upon the county in which the applicant lives when it has not been approved by the proper county authorities under R.C. 3335.43. Without such approval, the county in which the applicant lives is not liable for the charges for care and treatment of the applicant pursuant to R.C. 3335.44.

To: Murph Knapke, Mercer County Pros. Atty., Celina, Ohio
By: William J. Brown, Attorney General, December 13, 1979

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

1. What is the definition of a "legal resident" under Ohio Revised Code Section 3335.43, and does a migrant worker who resides outside of the State of Ohio qualify as a legal resident as so defined?
2. Is an application for admission to the Treatment Service provided by the Ohio State University under Ohio Revised Code Chapter 3335 legally effective when it has not been approved by the Health Commissioner of the health district in which the applicant lives and has not been approved by the Board of County Commissioners in the county in which the applicant lives?
3. Whether a county of the State of Ohio is liable for a charge for care and treatment of patients of the Tuberculosis Service at the Ohio State University who have been cared for and treated without the recommendation of the County Health Commissioner and without the approval of the Board of Commissioners as required by Ohio Revised Code Section 3335.43?

Turning to your first question, the first paragraph of R.C. 3335.43, in discussing admission for treatment for tuberculosis at the Ohio State University, provides as follows:

The treatment service for tuberculosis shall be open to any legal resident of this state having or suspected of having tuberculosis and requiring care and treatment for tuberculosis.

The definition of "legal resident," was discussed in State ex rel. Kaplan v. Kuhn, 11 Ohio Dec. 321, 329, 8 Ohio N.P. 197, 200 (C.P. Hamilton County 1901), where the Court noted:

"Residence" 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 and the apparent object to be attained by the enactment.

Hence, the definition of "residence" is flexible to accommodate the legislative purpose underlying the enactment in which the residence requirement appears. By application of this reasoning, it readily appears that definitions of residence in contexts other than that at issue are not determinative. For example, it would not be proper to look to R.C. 3503.02, which sets forth "residence" for election purposes, for a definitive analysis of "residence" for purposes of R.C. 3335.43, i.e., admission to a tuberculosis treatment facility.

On the other hand, "residence" has been defined within the context of admission to a public tuberculosis treatment facility as ". . .the place in which a person has fixed his habitation without any present intention of removing therefrom." 1954 Op. Att'y Gen. No. 4389, p. 527, 529.

I had occasion to elaborate upon that definition in 1973 Op. Att'y Gen. No. 73-080, in which I concluded that resident status may extend to an indigent alien graduate student. Although that opinion was primarily concerned with R.C. 339.40, it is analogous to the present issue because both statutes are concerned with admission to tuberculosis treatment facilities.

In that opinion, I stated in discussing the definition of legal residence:

Because this definition of legal residence involves the intent of the

individual, it is equivalent to domicile, as distinguished from a simple "residence" which requires only bodily presence as an inhabitant in a place. Present intent to remain indefinitely is the factor which distinguishes domicile from simple residence.

See also cases cited therein.

Thus, it would appear unlikely that a migrant worker could be determined to be a "resident" because, by definition, a "migrant" ". . . moves from place to place to harvest seasonal crops." Webster's New World Dictionary 900 (2nd college ed. 1976). Consequently, a true migrant would rarely possess the requisite intent to "remain indefinitely" or be found to have "fixed his habitation without any present intention of removing therefrom."

The determination as to whether there is sufficient intent to remain is, however, one of fact. Thus, the facts and circumstances of each individual case must be examined before a final determination can be made. An important legislative purpose underlies tuberculosis-related provisions—namely, a desire not only to provide treatment facilities for the residents of Ohio, but also to prevent the spread of this communicable disease across the state. See 1954 Opinion No. 4389, supra; 1940 Op. Att'y Gen. No. 2928, p. 967; 1926 Op. Att'y Gen. No. 3827, p. 492. In light of this purpose, it remains appropriate, as I noted in Opinion No. 73-080, supra, that:

. . .in making their determination of . . .residence, the board of [county] commissioners should construe the facts as favorably as possible to a finding of residence, because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread.

Your second and third questions can be paraphrased as follows: Is an application for admission to the Ohio State University Tuberculosis Service legally binding upon the county of residence without approval of the board of county commissioners, and will such county be liable for the expense of treatment when the authorization of the proper county officials is not so obtained?

These identical issues were considered by my predecessor in 1951 Op. Att'y Gen. No. 915, p. 734, under the law then in effect. The pertinent part of that opinion reads, at p. 739:

I come now to your question as to the responsibility of a county for the maintenance of a resident patient in the Ohio Tuberculosis Hospital. Provisions relative to admission to such hospital and payment of expense are found in Sections 1236-22 through 1236-26, General Code. Section 1236-25 provides in part:

"* * *Application for admission to said hospital shall be made to the director of health. Such application shall be subject to the recommendations of the health commissioner of the health district in which the applicant lives and the medical superintendent of the approved district, county, or municipal tuberculosis hospital, if any, for the area in which the applicant lives, and the application for admission to said hospital, however, shall be approved by the county commissioners of the county in which the applicant lives." (Emphasis added.)

Section 1236-26, General Code, provides in part:

"The charge for care and treatment of patients admitted to said tuberculosis hospital herein provided for shall be borne by the county in which such patient lives. Such charge shall be at the per diem rate as determined by the director of health. * * *" (Emphasis added.)

Accordingly, it appears clearly that a patient can be admitted to the Ohio Tuberculosis Hospital only with the consent and approval of the county commissioners of the county of his residence, and that when so admitted such county will be liable for the cost of his maintenance.

R.C. 3335.44 and the second paragraph of R.C. 3335.43 are substantially similar to the above General Code provisions. R.C. 3335.43 provides, in pertinent part:

Application for admission to the treatment service shall be made to the Ohio state university hospital. If the patient is diagnosed as having active tuberculosis in need of hospital treatment after his hospital admission, the hospital shall submit an application for payment to the county in which the patient has residence within ten days of the diagnosis of tuberculosis. Such application shall be subject to the recommendation of the health commissioner of the health district in which the applicant lives and shall be approved by the board of county commissioners of the county in which the applicant lives. (Emphasis added.)

R.C. 3335.44 reads:

The charge for care and treatment of patients admitted to the tuberculosis service at the Ohio state university shall be paid to university hospital and shall be borne by the county in which such patient lives to the extent that such charge is not paid or payable by insurance or under other third party agreement.

Had this statutory language been free of previous interpretation, a full discussion of the legislative intent behind the provisions would have been required. However, the fact that the interpretation of my predecessor has long been considered the rule is to be viewed as acceptance of that position. See generally Seeley v. Expert, Inc., 26 Ohio St. 2d 61, 72 (1971); State ex rel. Automobile Machine Company v. Brown, 121 Ohio St. 73, 75-76 (1929); 1979 Op. Att'y Gen. No. 79-025. The reasonableness of this rule is supported by the fact that R.C. 339.20 and succeeding sections authorize the treatment of the tuberculous in municipal, district, or county tuberculosis hospitals, clinics, out-patient departments, or other programs apart from the Ohio State University facility.

Accordingly, I must conclude that admission to the Ohio State University facility remains subject to the authorization of the appropriate county officials, as designated in R.C. 3335.43 and R.C. 3335.44, and that only when an individual is so admitted will such county thereafter be liable for the cost of treatment.

It is my opinion, and you are advised, that:

1. A person is a legal resident of this state for purposes of admission to the Ohio State University tuberculosis treatment facility under R.C. 3335.43 if the person possesses an intent to remain in Ohio indefinitely. In determining whether, as a matter of fact, the person possesses the requisite intent, it is appropriate to construe the facts as favorably as possible to a finding of residence because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread.
2. An application for admission to the treatment service provided by the Ohio State University pursuant to R.C. 3335.43 is not legally binding upon the county in which the applicant lives when it has not been approved by the proper county authorities under R.C. 3335.43. Without such approval, the county in which applicant lives is not liable for the charges for care and treatment of the applicant pursuant to R.C. 3335.44.