

2921

REST HOME, CONVALESCENT HOME OR BOARDING HOME
—AGED OR MENTALLY OR PHYSICALLY INFIRM—CON-
DUCTED AND MAINTAINED BY PERSON, FIRM, PARTNER-
SHIP, ASSOCIATION OR CORPORATION—PROFIT OR NOT
FOR PROFIT—WHERE CONSIDERATION DEMANDED AND
ACCEPTED FROM OR ON BEHALF OF ANY OR ALL IN-
MATES OF HOME—MUST BE LICENSED—SECTION 6289-2
ET SEQ., G. C.

SYLLABUS:

A rest home, convalescent home or boarding home for the aged or mentally or physically infirm, which is conducted and maintained by a person, firm, partnership, association or corporation, whether the latter be organized for profit or not for profit, must, if consideration is demanded and accepted from or on behalf of any or all of the inmates of such home, be licensed in accordance with the provisions of Section 6289-2 et seq., General Code.

Columbus, Ohio, March 18, 1948

Hon. Karl R. Babb, Chief, Division of Aid for the Aged
Department of Public Welfare, Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your letter requesting my opinion on the question whether rest or convalescent "homes incorporated not for profit" come within the definition of Section 6289-1, General Code, so as to require a license.

This request, as you have suggested, concerns the interpretation of the intent of the 94th General Assembly by its enactment of the chapter "Licensing of Rest Homes," and particularly the construction to be given the term "for a consideration" as used in Section 6289-1, General Code. It is evident by Sections 6289-1 through 6289-11, General Code, that the legislature intended to protect the aged and mentally or physically infirm who reside in rest homes. Various requirements must be met in the above mentioned statutes in order to secure a license to operate a home. Section 6289-4, General Code, reads in part:

"No license shall be granted unless the director of public welfare shall be satisfied that such home is satisfactory in construction, fire prevention and protection, heating, water supply and sanitation, and that it is adequately equipped and maintains a personnel sufficient in number and training to care properly for inmates of such home."

The first section of this chapter, Section 6289-1, General Code, defines the rest homes which must conform to the above requirements and reads:

"A rest home or convalescent home or boarding home for the aged or mentally or physically infirm is defined as any place of abode, building, institution, residence or home used for the reception and care, *for a consideration*, of three or more persons

who, by reason of age or mental or physical infirmities are not capable of properly caring for themselves, or who are sixty-five years of age or upwards.

“Wherever, in this act (General Code Sections 6289-1 to 6289-11), the word ‘home’ is used, it shall be construed to mean rest home or convalescent home or boarding home for the aged or mentally or physically infirm as herein defined.”

(Emphasis added.)

Rest homes which must conform to the requisites of this chapter are by this section limited to homes which provide care “for a consideration.” “Consideration” is the salient word to the answer of your inquiry. Helpful in the interpretation of this word are definitions provided by the legislature, or the manner in which this term is used in modifying and related sections. In the present sections, however, these sign posts of interpretation are not evident. Therefore, the term “consideration” should be interpreted with reference to the object and design of the statute. In regard thereto, it is stated in 37 O. Jur. 657 to 659:

“Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. * * *”

The manifest intention of the legislature herein is protection to the aged and indigent. Consequently, the amount of consideration is immaterial. In your request, you have related various types of homes: church and fraternal; endowed; charitable and semi-charitable; and you have explained that in many instances payments which are required for admission and care are not sufficient for maintenance of the home. These facts have no relation to the interpretation of the term “consideration” and its reference to license requirements. Further, the purpose and object of the statutes are not destroyed if the consideration is not adequate. In order to gain the full meaning which the legislature intended by the use of the term “consideration,” Section 6289-1, General Code, cannot be construed alone. When the remainder of the statutes are read, it is obvious that they are inter-related. Therefore, the term “consideration” should be so construed as to harmonize and reconcile its meaning with the other sections in the chapter. It will be seen that the purpose in these other sections was to protect the inmates of rest homes and not to protect the proprietors of these homes.

The term "consideration" is well defined in the law. Bouvier's Law Dictionary, Third Revision by Rawle at page 612, relates:

"Price, motive, or matter of inducement to a contract; compensation which is paid."

The above definition is the legal interpretation of this word and obviously, the legislature has used it with that meaning. 37 O. Jur. 576, has stated in regard thereto:

"Words and phrases having a special legal signification are ordinarily given such meaning when used in a statute. In such case, it has even been presumed that the legislature used the words in their fixed legal sense. The legislature cannot be presumed to have been dealing with legal terms in a loose popular sense.
* * *"

Further, you have related that "consideration" has been paid to various rest homes in the form of admission fees, transfer of property by will or otherwise, dues and assessments, or monthly payment for board and room. I am able to conceive of only one problem present. If a bequest is granted to a rest home for the benefit of a designated individual **who resides, or thereafter will reside** within such home, the qualification of Section 6289-1, General Code, with reference to "consideration" is fulfilled. However, if a bequest is granted to a rest home, but no provision is provided that the use thereof should be for a certain designated individual, then a gift rather than a "consideration" is evident. Since the General Assembly has not specified the type of "consideration" necessary, I am of the opinion that the above mentioned forms of "consideration" are sufficient.

Within your interrogatory you have referred to "homes incorporated not for profit." Apparently, you have confined your request to this type of home for a definite purpose; however, I am of the opinion that the answer to your inquiry would be the same if the home was incorporated for profit. Section 6289-2, General Code, reads:

"On and after January 1, 1942, it shall be unlawful for any person, persons, firm, partnership, association or *corporation* to open, conduct, manage or maintain any home as defined in this act unless such home be licensed annually as hereinafter provided."
(Emphasis added.)

The term "corporation" as used herein is inclusive of a home incorporated not for profit as well as a home incorporated for profit. Since the manifest design of the sections in question was the protection of inmates of the rest homes licensed thereunder, the type of organization which operates such homes is immaterial.

You have also informed me that there are several homes which do not accept or require "consideration." Consequently, these particular homes will be outside the restrictions and inspections required by Section 6289-2, et seq.

In specific answer to your inquiry, you are advised that a rest home or convalescent home or boarding home for the aged or mentally or physically infirm, which is or is not incorporated for profit, is required to obtain a license as provided in Section 6289-2, General Code, if any form and amount of "consideration" is required or accepted for or from any inmate of such home.

Respectfully,

HUGH S. JENKINS,
Attorney General.