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HOME, COUNTY—NOT A FOOD SERVICE OPERATION—  
FOOD SERVED PRIMARILY FOR PERSONS EMPLOYED OR  
KEPT AT INSTITUTION WITHOUT CONSIDERATION—OAG  
3700, 1954 OAG PAGE 181 MODIFIED—CHAPTER 337., SEC-  
TIONS 307.01, 3732.01 RC.

## SYLLABUS:

A county home, established under authority of Section 307.01, Revised Code, and maintained as provided in Chapter 337., Revised Code, is not a food service operation within the meaning of Section 3732.01, Revised Code, where the food served is primarily for those persons employed or kept at the institution without consideration. (Opinion 3700, Opinions of the Attorney General for 1954, page 181, modified.)

Columbus, Ohio, March 28, 1956

Hon. Mary N. Snyder, Prosecuting Attorney  
Jackson County, Jackson, Ohio

Dear Madam:

I have before me your request for my opinion in regard to whether a county home is a food service operation within the meaning of Section 3732.01, Revised Code, and therefore subject to license requirements and the regulation provided in Chapter 3732., Revised Code. The request indicates that the county home has four persons as wards who receive benefits from the Division of Aid for the Aged as provided by Chapter 5105., Revised Code, and make some monetary contribution to the county home.

Chapter 3732., Revised Code, regulating food service operations, was originally enacted by the One Hundredth General Assembly, in 125 Ohio Laws, 682, 685. The general question as to whether governmental institutions would be subject to such regulation was the subject of Opinion No. 3700, Opinions of the Attorney General for 1954, page 181. Subsequently the One Hundred and First General Assembly in 126 Ohio Laws, Senate Bill 27, effective September 20, 1955, substantially amended the definition of a food service operation found in Section 3732.01, Revised Code. It is therefore required that the holding of the former opinion specifically dealing with a county home or infirmary be reconsidered. See Opinion No. 3700, Opinions of the Attorney General for 1954, page 181, fourth paragraph of the syllabus.

Section 3732.01, Revised Code, defining a food service operation, now reads as follows:

“As used in sections 3732.02 to 3732.08, inclusive, of the Revised Code: A food service operation means any place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration. Provided that sections

3732.02 to 3732.08, inclusive, of the Revised Code, shall not apply to:

“(A) Homes containing what is commonly known as the family unit and their non-paying guests;

“(B) Operations serving a meal or a lunch to five or less persons;

“(C) Churches, school, fraternal or veterans’ organizations serving meals or lunches on their premises; provided said meals or lunches are served on no more than seven consecutive days or on more than fifty-two separate days in any one calendar year;

“(D) Dining or sleeping cars;

“(E) Food-processing and food-manufacturing establishments.

“Licensor means the board of health of any city or general health district.”

In my former opinion concerning Chapter 3732., Revised Code, I held that an operation conducted by a state agency which otherwise was within the definition of a food service operation would be subject to the regulation imposed by the chapter, and was so intended by the specific provisions of that chapter. In regard to a county home, I was also of the opinion that the fact that it was an activity of county government did not take it outside the regulation of the chapter. The conclusion that the county home was not subject to the chapter was predicated upon the language of then Section 3732.01, Revised Code, which defined a food service operation in the following manner: “A food service operation, commonly known as a restaurant, is defined as any structure or building \* \* \* which is kept, maintained, advertised, or held out to the public to be a place where meals or lunches are served for a consideration.” 125 Ohio Laws, 685. It was my understanding at that time that a county home limited its food service to those regularly employed or kept at such institution, and that no representation was made that meals or lunches will be served to the public at large. I also raised the serious question as to whether a county home was preparing or serving meals or lunches for a “consideration” within the ordinary meaning of that term.

With the amendment of Section 3732.01, as indicated above, the precise question is now presented as to whether a county home is a “\* \* \* place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration.”

A county home is provided, pursuant to Section 307.01, Revised Code, by a board of county commissioners when in its judgment the same is necessary. The board of county commissioners has the authority to construct and maintain a county home, and prescribe rules and regulations for its management. Chapter 337., Revised Code. The county home is then maintained for the purpose of caring for the indigent, infirm, or aged persons in the county, and is essentially therefore a charitable institution of the county.

In view of the character and purpose of the county home, it is manifestly not a place which is kept or maintained for the purpose of preparing or serving meals or lunches for a consideration. The purpose of the county home in the preparing and serving of food is in direct opposition to a food service operation as defined in Section 3732.01, *supra*. Such food as is prepared for the persons in the county home is part of the total maintenance required for these indigent or infirm persons, and there is no consideration required to be paid for such food, or a demand for a consideration made upon such persons for the preparation or serving of the meals.

I am advised that there are four persons in the county home who make a contribution toward their maintenance in the county home. However, I do not consider this fact to change the conclusion reached as to the essential character of the county home. The contribution made by these persons is not a payment made as consideration for the meals served, but is an amount which has been agreed upon as a reasonable payment within the means of the person for all the services performed by the home without any specific relation to the meals. In this regard, it must be pointed out that there is no apparent authority in the board of county commissioners to make any charge against a person in the county home except as provided in Section 337.23, Revised Code, when the person is the owner of real or personal property, has an interest therein, or is entitled to a gift, legacy, or bequest. This section merely provides for a civil proceeding for sale of such property and allows the proceeds to be applied to the maintenance of such person.

In the consideration of Section 3732.01, *supra*, it is my opinion that the section must be given a reasonable construction consistent with the ordinary and usual meaning of its terms. I am therefore led to the conclusion that the phrase "preparing or serving meals or lunches for a consideration" comprehends the usual sale transaction in which payment is

made or promised conditioned upon the serving of the food. Any money paid to the county home by persons kept at the home is not a *quid pro quo* for the food served, as consideration is often described, and I must therefore hold that a county home is not a food service operation within the meaning of Section 3732.01, Revised Code.

The conclusion which I have reached does not result in the county home being free from the type of inspection and regulation which was intended by this chapter of the Revised Code regulating food service operations. The board of county commissioners, by Section 337.02, Revised Code, is required every month to make a complete inspection of the physical and sanitary conditions of the county home buildings. The board of health and health commissioner of the city health district or general health district may make frequent inspections of the county home by virtue of Sections 3709.22 and 3709.26, Revised Code. Such inspections should result in requiring those persons in charge of such home to maintain the necessary degree of care for the proper handling of food.

For these reasons, therefore, I am of the opinion that a county home, established under authority of Section 307.01, Revised Code, and maintained as provided in Chapter 337., Revised Code, is not a food service operation within the meaning of Section 3732.01, Revised Code, where the food served is primarily for those persons employed or kept at the institution without consideration. (Opinion No. 3700, Opinions of the Attorney General for 1954, page 181, modified.)

Respectfully,

C. WILLIAM O'NEILL

Attorney General