

Note from the Attorney General's Office:

1982 Op. Att'y Gen. No. 82-023 was overruled by
1983 Op. Att'y Gen. No. 83-065.

OPINION NO. 82-023**Syllabus:**

The Ohio Veterans' Children's Home is an institution or association which is subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103.

To: Kenneth B. Creasy, Director, Department of Public Welfare, Columbus, Ohio
By: William J. Brown, Attorney General, April 23, 1982

I have before me your request for my opinion concerning the responsibility of the Department of Public Welfare to regulate, under Chapter 5103, the activities of the Ohio Veterans' Children's Home (OVCH).

The OVCH is created pursuant to R.C. 5909.01 to "care for and educate children of deceased and disabled veterans and children of Ohio residents who are unable to provide support and education for their children." I note that the board of trustees of the OVCH is empowered by R.C. 5909.02 to "govern, conduct, and care for such home, the property, and the children therein as provided in the laws governing the department of public welfare so far as they are not inconsistent with the laws governing such home." This section, however, concerns only the authority of the board over the children and property under its control and does not deal with the issue of regulation of the OVCH by the Ohio Department of Public Welfare.

The authority of the Department of Public Welfare to regulate institutions and associations which care for children is set forth in R.C. Chapter 5103. R.C. 5103.03 reads, in pertinent part, as follows:

The department of public welfare shall make such rules and regulations as are necessary for the adequate and competent management of institutions or associations as defined in section 5103.02 of the Revised Code. Except for those institutions under the control of the youth commission, places of detention for children established and maintained pursuant to sections 2151.34 to 2151.3415, inclusive, of the Revised Code, and child day-care centers subject to Chapter 5104. of the Revised Code, the department shall annually pass upon the fitness of every benevolent or correctional institution, corporation, and association, public or private, that receives, or desires to receive and care for children, or places children in private homes. . . .

When the department is satisfied as to the care given such children, and that the requirements of the statutes and regulations covering the management of such institutions, corporations, and associations are being complied with, it shall issue to the institution, corporation, or association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the department.

Thus, an institution or association falling within the definition contained in R.C. 5103.02 would be required to be certified by the Department of Public Welfare. See R.C. 5103.99 (a violation of R.C. 5103.03 is subject to a fine of not less than five nor more than five hundred dollars).

The terms "institution" and "association" are defined by R.C. 5103.02, which states that:

As used in sections 5103.03 to 5103.19 of the Revised Code:
"institution" or "association" includes any incorporated or unincorporated organization, society, association, or agency, public or private, which receives or cares for children for two or more

consecutive weeks; any individual who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless he is related to them by blood or marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the appointed guardian of such children; provided, that any organization, society, association, school, agency, child guidance center, or children's clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, the youth commission, the department of mental health, or the department of mental retardation and developmental disabilities, or any individual who provides care for only a single-family group, placed there by their parents or other relative having custody, shall not be considered as being within the purview of these sections. (Emphasis added.)

The OVCH clearly falls within the definition of "institution" or "association" found in R.C. 5103.02 due to the fact that it is a public agency "which receives or cares for children for two or more consecutive weeks." Consequently, the OVCH is an institution subject to the regulatory power of the Department of Public Welfare unless it is otherwise exempted from such regulation. It is my understanding, based on information furnished by the Department of Education, that the OVCH does not fall within the exemption contained in R.C. 5103.02 for agencies regulated by that department. Nor do any of the other exemptions enumerated in R.C. 5103.02 apply to the OVCH. Moreover, the above-quoted provisions contained in R.C. 5103.02 and R.C. 5103.03 do not expressly or impliedly exempt the OVCH from regulation by the Department of Public Welfare.

Therefore, it is my opinion, and you are advised, that the Ohio Veterans' Children's Home is an institution or association which is subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103.