

**OPINION NO. 80-078****Syllabus:**

1. A "self care facility," as that term is used in R.C. 140.01(E), consists of a facility in which persons who are ill, disabled or otherwise infirm receive some sort of care or treatment while residing in an environment that is equipped in such a way as to enable them to cope with the demands of daily living on an individual basis. Thus, a congregate care facility that satisfies the foregoing definition qualifies as a "hospital facility" as that term is defined by R.C. 140.01(E).
2. Irrespective of whether it qualifies as a "self care facility" as that term is used in R.C. 140.01(E), a congregate care facility that is either used in connection with the operation or maintenance of, or supplements or is otherwise related to the services provided by, a facility providing intermediate care qualifies as a "hospital facility" as that term is defined by R.C. 140.01(E).

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**To: Otho Eyster, Knox County Pros. Atty., Mt. Vernon, Ohio**  
**By: William J. Brown, Attorney General, November 26, 1980**

I have before me your request for an opinion in which you inquire whether a "congregate care facility" may be deemed a "self care facility" as that term is used in R.C. 140.01(E). If it so qualifies, it is a facility for which the board of county commissioners may issue revenue bonds pursuant to R.C. 140.06.

I am given to understand pursuant to information included in your letter of request that a congregate care facility is one in which persons live independently but within that which has been described as a "controlled medical environment." You indicate that this environment, together with the availability of certain health care services, constitutes "a degree of nursing and medical care." Without indicating the precise status of the facility in question, you note that congregate care facilities are "typically" designed to care for the elderly and are frequently operated in conjunction with skilled nursing and intermediate care facilities.

You state that the congregate care facility is designed to provide a "continuum of medical care." Thus, if a resident is unable to remain in the congregate care facility, he would be moved to a facility providing a higher level of care, either intermediate or skilled nursing. When the health of the resident improves, he may be returned to the congregate care facility.

Included among the many features that this facility would provide are a daily meal to insure proper diet, in-room meal service for those unable to use dining facilities, a full physician's suite providing routine medical treatment without the necessity of leaving the facility, the maintenance of medical records for each

resident, and an ongoing preventative health care program. The staff of such a facility would include a licensed nursing home administrator, physician, supervisor of nursing, social worker and recreational therapist. Visiting consultants would include a registered dietitian, a physical therapist, a podiatrist and a psychiatrist.

Whether a county is able to issue revenue bonds for the construction of such a facility turns upon the operation of R.C. 140.01(E). This provision, which defines a "hospital facility" for the purposes of R.C. Chapter 140, provides as follows:

(E) "Hospital facilities" means buildings, structures and other improvements, additions thereto, and extensions thereof, furnishings, equipment, and real estate interests in real estate, used or to be used for or in connection with hospitals, emergency, intensive, intermediate, extended, long term, or self care facilities, diagnostic and treatment and outpatient facilities, facilities related to programs for home health services, clinics, laboratories, public health centers, research facilities, and rehabilitation facilities, for or pertaining to diagnosis, treatment, care, or rehabilitation of sick, ill, injured, infirm, impaired, disabled or handicapped persons, or the prevention detection, and control of disease, and also includes education, training, and food service facilities for health professions personnel, housing facilities for such personnel and their families, and parking and service facilities in connection with any of the foregoing; and includes any one, part of, or any combination of the foregoing; and further includes site improvements, utilities, machinery, facilities, furnishings, and any separate or connected buildings, structures, improvements, sites, utilities, facilities, or equipment to be used in, or in connection with the operation or maintenance of, or supplementing or otherwise related to the services or facilities to be provided by, any one or more of such hospital facilities.

As you correctly state, if a congregate care facility is to qualify as any one of the facilities expressly enumerated in R.C. 140.01(E), it must be one that provides self care. The fact that some of the facilities so enumerated, which might otherwise embrace the concept of congregate care, are specifically defined by statute precludes the possibility of their application in this instance.

A number of the facilities set forth in R.C. 140.01(E) are specifically defined by federal law. See 42 U.S.C. §2910(h) ("long-term care"); 42 U.S.C. §1396 d(c) ("intermediate care"). The pertinence of these federal statutory definitions is established by R.C. 140.02, which provides, inter alia, that the authorizations granted in R.C. Chapter 140 are granted for the purpose of facilitating participation of "hospital agencies in federal financial assistance provided by Title IV of the 'Public Health Service Act,' 60 Stat. 1041 (1946), 42 U.S.C. 291." A detailed discussion of these terms is neither necessary nor relevant to this analysis. It is sufficient to note that by the plain terms of the statutes in question and by your own admission the congregate care facility you describe qualifies as neither a long-term nor skilled nursing care facility.

Although there are no federal or state statutory provisions that specifically define a "hospital," "emergency," or "intensive care" facility for purposes of R.C. 140.01(E), it is, once again, fairly obvious that the General Assembly in using these terms was referring to facilities that offer a higher level of care than the one you have described.

Among the facilities expressly set forth in R.C. 140.01(E), only a self care facility remains undefined. Not only is it undefined as a matter of law, but it is my understanding that it is not a term of art in the medical profession. As a first step in this analysis, therefore, one must determine what is meant by the term "self care facility" as that term is used in R.C. 140.01(E).

In part the meaning of the term is, of course, apparent. It quite obviously

refers to a facility in which one is able to care for oneself. A self care facility must, therefore, include private cooking, bathing and toilet facilities. It is, in other words, a facility that provides, both in terms of spatial arrangements and physical amenities, an environment in which residents are allowed to cope with the normal demands of daily living on an individual basis. Yet, it is clear that a self care facility must be something more than this. Were it not, the facility would be indistinguishable from any apartment building.

An additional dimension to the term's meaning may be gleaned from the language of R.C. 140.01(E) itself. After enumerating the various types of facilities that are deemed hospital facilities for purposes of the Chapter, R.C. 140.01(E) proceeds to state that such facilities are to be "for or pertaining to diagnosis, treatment, care, or rehabilitation of sick, ill, injured, infirm, impaired, disabled, or handicapped persons, or the prevention, detection and control of 'disease.'" From a reading of the foregoing provision, two additional qualifications obtain. First, access to a self care facility must be limited to one who is ill, disabled or otherwise infirm, and second, there must be some sort of treatment or care available to such persons.

I am able to conclude, therefore, that a self care facility, as that term is used in R.C. 140.01(E), consists of a facility in which persons who are ill, disabled, or otherwise infirm receive some sort of care or treatment while residing in an environment that is equipped in such a way as to enable them to cope with the demands of daily living on an individual basis.

Whether a particular facility qualifies as a self care facility under the foregoing definition is, of course, a question of fact. Although the congregate care facility described in your letter of request would certainly seem to so qualify, a definitive determination of this matter can be made only after an examination of all pertinent details.

Although the foregoing definition of a self care facility theoretically enables a hospital agency to construct a congregate care facility pursuant to R.C. Chapter 140, the conclusion may be of limited utility. I have not been asked to determine whether one facility, the nature and features of which are specific and constant, falls within the meaning of a term which is of variable import. Rather, I am confronted with two amorphous terms neither of which has a developed or widely accepted meaning. Although it is possible to construct a skeletal definition of both a congregate and self care facility and to discern between them some common ground upon which an affirmative conclusion may rest, such an approach is not without difficulties. This approach yields a conclusion that is marked by certain residual and irreducible uncertainties that one charged with the mere interpretation of the law is incapable of fully eliminating.

Hence, in attempting to define a congregate care facility you have offered nothing more than a concept for the care of the elderly. In attempting to define a self care facility, I am able to offer nothing more than a concept for the care of the infirm and disabled. Whether an overlap of the concepts embodied in congregate and self care facilities provides an adequate basis for the appropriate

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<sup>1</sup>The clear thrust of R.C. Chapter 140 is the provision of facilities for those who are ill or disabled. It is obvious, therefore, that admission to a self care facility, or any of the other types of facilities expressly identified in R.C. 140.01(E), must be limited to those persons who require, if only on a periodic basis, the type of care and assistance the facility is equipped to offer. In the case of the facility you describe, this qualification is not without relevance. Although a hospital facility may be operated for and populated by the elderly alone, it should be noted that the mere condition of being elderly is not, in and of itself, a sufficient qualification for admission.

hospital agency to conclude that the former always, or ever, falls within the meaning of the latter is an issue that is beyond my province.

It is, however, my opinion that the terms of R.C. 140.01 afford an alternative, and perhaps an ultimately more viable, approach to financing congregate care facilities through the issuance of revenue bonds. This alternative approach, which focuses upon the affiliation of a congregate care facility with an intermediate care facility, will, I believe, allow the appropriate hospital agency to operate with the requisite degree of certainty in determining the permissibility of a particular project.

Your letter of request is somewhat equivocal on the issue of whether a congregate care facility will be operated in conjunction with an intermediate care facility. Without further delineating the precise status of the facility in question, you state simply that a congregate care facility is "frequently" operated in conjunction with skilled nursing and intermediate care facilities. Since I am of the opinion that the existence of this feature is of some consequence, I shall separately consider the status of a congregate care facility that is operated in conjunction with a facility offering intermediate care.

As previously indicated, the definition set forth in R.C. 140.01(E) is quite sweeping in its scope. After enumerating a number of specific facilities, including those providing intermediate care, the statute proceeds to state that a "hospital facility" further includes "any separate or connected buildings, structures, improvements, sites, utilities, facilities, or equipment to be used in, or in connection with the operation or maintenance of, or supplementing or otherwise related to the services or facilities to be provided by, any one or more of such hospital facilities." The plain terms of the statute, then, extend not only to an intermediate care facility, but to any building that is used in connection with the operation or maintenance thereof or any building that supplements or is otherwise related to the services offered thereby. The requisite affiliation with an intermediate care facility is sufficient, therefore, to sustain a congregate care facility, irrespective of whether the congregate care facility would, in and of itself, qualify as one of the facilities expressly enumerated in R.C. 140.01(E).<sup>2</sup>

Despite the apparent simplicity of this conclusion, it is one wholly justified by the express terms of R.C. 140.01(E). In this, no less than every instance of statutory construction, it would be quite easy, and perhaps too facile, to state that if the General Assembly had intended a different result, it could have easily so stated. I would, therefore, be somewhat reluctant to rest this conclusion solely upon either an implicit grant of power or the mere absence of any limiting language in the statute. In this instance, however, the General Assembly has added an entire phrase to a statute that is otherwise complete and it is the addition of that phrase that significantly enlarges the scope of the statute. The purposeful inclusion of the aforementioned phrase expressly and unmistakably transforms the statutory definition into one sufficiently broad to accommodate structures other than those specifically enumerated therein, provided that such structures are used in connection with the operation or maintenance of, or supplement or relate to the services offered by, those facilities that are expressly enumerated.

This conclusion is, moreover, in complete accord with the broad purpose to be served by the enactment of R.C. Chapter 140. In R.C. 140.02, the General Assembly has declared the public interest in the public financing of nonprofit hospital facilities to be as follows:

The authorizations quoted in Chapter 140. . . of the Revised Code are granted for the public purpose of better providing for the health and welfare of the people of the state by enhancing the availability,

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<sup>2</sup>Because an "intermediate care facility" is defined by federal law, 42 U.S.C. 1396d(c), the determination of whether a facility qualifies as such is a comparatively simple matter.

efficiency, and economy of hospital facilities and the services rendered thereby. . . .

The conclusion that R.C. 140.01(E) extends to an entire project, part of which consists of one of the structures expressly enumerated therein and part of which consists of facilities affiliated therewith, comports fully with this broad public purpose.

In seeking to increase the availability of such facilities by enhancing their efficiency and economy, the General Assembly obviously intended to vest in a particular hospital agency a wide range of options. See State ex rel. Taft v. Campanella, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977) (a public hospital agency may issue first-mortgage revenue bonds to acquire existing hospital facilities, as defined in R.C. 140.01, free and clear of all encumbrances by using a portion of the proceeds from the sale of revenue bonds to retire any outstanding debt). It is my opinion that the financing of an entire project only part of which qualifies as one of the facilities expressly identified in R.C. 140.01(E) falls within that range of permissible options. If, for instance, the addition of rooms providing intermediate care is contingent upon, or if the economic feasibility of rooms providing such care is merely enhanced by, their affiliation with a larger multi-purpose facility, the financing of such a multi-purpose facility through the issuance of revenue bonds is entirely consistent with the terms and purpose of R.C. Chapter 140.

Thus, I must conclude that whether or not it qualifies as a self care facility, a congregate care facility that is to be used in connection with the operation or maintenance of, or supplements or is otherwise related to the services provided by, a facility providing intermediate care qualifies as a "hospital facility" as that term is defined by R.C. 140.01(E).

In conclusion it is my opinion, and you are hereby advised, that:

1. A "self care facility," as that term is used in R.C. 140.01(E), consists of a facility in which persons who are ill, disabled or otherwise infirm receive some sort of care or treatment while residing in an environment that is equipped in such a way as to enable them to cope with the demands of daily living on an individual basis. Thus, a congregate care facility that satisfies the foregoing definition qualifies as a "hospital facility" as that term is defined by R.C. 140.01(E).
2. Irrespective of whether it qualifies as a "self care facility" as that term is used in R.C. 140.01(E), a congregate care facility that is either used in connection with the operation or maintenance of, or supplements or is otherwise related to the services provided by, a facility providing intermediate care qualifies as a "hospital facility" as that term is defined by R.C. 140.01(E).