

## OPINION NO. 70-098

**Syllabus:**

When an adjudged incompetent, other than a ward of the state, who is receiving aid for disabled payments, is sent to a convalescent home in a county other than the one in which he resides or was adjudged incompetent, his burial expenses shall be paid by the municipality or township in which he had his legal residence at the time of death.

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**To: Robert D. Webb, Ashtabula County Pros. Atty., Jefferson, Ohio**  
**By: Paul W. Brown, Attorney General, July 30, 1970**

I have before me your request for my opinion on the following question:

When an adjudged incompetent, other than a ward of the state, who is receiving aid for the disabled payments, is sent to a convalescent home in a different county than his residence, and different county than where he was adjudged an incompetent, who pays the burial expenses when he dies?

Sections 5105.15 and 5105.16, Revised Code, make provision for the state to pay the burial expenses of one receiving aid for the aged payments. No comparable provision, however, was included in Chapter 5106 of the Revised Code and the inference may be drawn that the legislature, by expressly omitting burial provisions from this chapter, did not intend the state to pay the burial expenses of these recipients.

Section 5121.11, Revised Code, provides in pertinent part:

"The state shall bear the expense of the burial of an indigent inmate who dies in a state hospital for the mentally ill, feeble-minded, or epileptic, or in a penal, reformatory, or correctional institution, if the body is not claimed for interment at the expense of friends or relatives, or is not delivered for anatomical purposes or for the study of embalming in accordance with section 1713.34 of the Revised Code."

One sent to a convalescent home is, however, no longer an inmate of a state institution. Furthermore, one of the specific requirements for eligibility for aid under Chapter 5106, *supra*, is that the recipient "/i/s not an inmate of a public institution, other than a medical institution" and "/i/s not a patient in a public or private hospital\* \* \*as a result of\* \* \*mental illness." Section 5106.02, Revised Code. Therefore, recipients of aid to disabled persons would necessarily be excluded from the operation of Section 5121.11, *supra*, and thus ineligible for state monies for burial expenses under that provision.

Section 5113.15, Revised Code, provides for the burial of dead in certain cases and was designed to cover those situations not otherwise provided for in the Revised Code. That section reads:

"When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent, or charitable institution in this state, and such body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:

"(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

"(B) If such person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

"(C) If such person had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county.

"Such official shall provide, at the grave of such person, a stone or concrete marker on which his name and age, if known, and the date of his death shall be inscribed."

Thus, an indigent who dies and does not come within the provisions of Sections 5121.11 or 5105.16, supra, would be included in the provisions of Section 5113.15, supra. It now must be determined which county is the legal residence of such indigent.

If the indigent was receiving aid to disabled payments, he necessarily made application through Section 5105.05, Revised Code. That section provides in part:

"An applicant with legal residence in this state who is living in a public or private institution or in a home subject to licensing by the department of public welfare or the department of mental hygiene and correction shall be considered as residing in the county in which he lived prior to his entrance into such institution or home."

It has been held that "the probate judge upon an inquest

of lunacy obtains jurisdiction of the person of the patient, and that such jurisdiction continues until the patient is finally discharged." Heckman v. Adams, 50 Ohio St. 305, 34 N.E. 155 (1893). This case, read in conjunction with Section 5106.05, supra, clearly indicates that an indigent incompetent's legal residence is in the county in which he resided prior to his commitment to an institution which, in many cases, is the county in which he was adjudicated incompetent.

Therefore, it is my opinion and you are accordingly advised that when an adjudged incompetent, other than a ward of the state, who is receiving aid for disabled payments, is sent to a convalescent home in a county other than the one in which he resides or was adjudged incompetent, his burial expenses shall be paid by the municipality or township in which he had his legal residence at the time of death.