

OPINION NO. 809**Syllabus:**

The streets on the grounds of the Cambridge State Hospital are included in the definition of "private road or driveway" as defined in Section 4511.01, Revised Code, and as used in Chapter 4511, Revised Code, and are not within the definition of "street or highway" as defined in Section 4511.01, Revised Code.

To: Thomas L. Tribbie, Guernsey County Pros. Atty., Cambridge, Ohio
By: William B. Saxbe, Attorney General, January 20, 1964

I have before me your request for my opinion in which you ask the following question:

"* * *The Cambridge State Hospital is a hospital for the mentally ill under the supervision of the Department of Mental Hygiene and Correction of the State of Ohio.

"A question has arisen as to the application of Chapter 4511 of the Revised Code to the streets and highways upon the grounds of the Cambridge State Hospital.

"Street or highway as defined in Chapter 4511 means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for the purposes of vehicular travel.

"I would like your opinion on the following question:

"Does Chapter 4511 of the Revised Code apply to the streets on the grounds of the Cambridge State Hospital?"

While you refer in your letter to Chapter 4511 of the Revised Code, I believe that only certain sections in that Chapter need be reviewed in the discussion of your question.

The terms "street or highway" and "private road or driveway" as used in Chapter 4511, Revised Code, are defined in Section 4511.01, Revised Code, as follows:

* * * * *

"(Z) 'Street or highway' means the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel."

* * * * *

"(BB) 'Private road or driveway' means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons."

* * * * *

It must first be determined whether the "streets" on the grounds of the Cambridge State Hospital are "open to the use of the public as a thoroughfare for purposes of vehicular travel" or are instead ways, "in private ownership used for vehicular travel by the owner and those having * * * permission from the owner but not by other persons."

The Supreme Court of Ohio in State v. Root, 132 Ohio St., 229, in discussing an accident that occurred upon a driveway or roadway located upon the ground of Longview Hospital, a state institution for the care of the mentally ill in Hamilton County, said at page 233:

"We are obliged to conclude, therefore,

that where a driveway, leading into and located wholly upon state hospital grounds, is built, maintained and controlled by the hospital for its own use and the public having business therewith, and where such driveway was never dedicated or legally accepted as a public thoroughfare, it does not come within the purview of 'roads or highways' as found in Section 12404-1, General Code, defining manslaughter in the second degree."

I have assumed in this opinion that the roadways in question were in fact never dedicated or legally accepted as a public thoroughfare, but are only a part of the grounds of the state hospital.

The Court of Appeals of Franklin County, Ohio in Kitchens v. Duffield, 83 Ohio App., 41, said at page 48:

"* * * * *"

"In a general way, roads, highways or driveways may be classified in at least four classes with respect to the expense of construction and use, as follows, (1) constructed at public expense for unrestricted use of the public, (2) constructed at public expense for limited or restricted use by persons given express or implied permission by the owner, (3) constructed at private expense for public purpose, and (4) constructed at private expense for private purpose.

"In our judgment a public road, highway or driveway may be defined as a way open to the public at large without distinction, discrimination or restriction, except such as is incident to regulations calculated to secure to the general public the largest practical benefit therefrom and enjoyment thereof. The prime essential of a public highway is the right to travel on it by all the world, and not the actual exercise of the right. The proper test is the use to which such roadways or driveways are put. In our opinion when the proper test is applied to the facts in this case, the roadways or driveways at Lockbourne Army Air base do not properly fall in either class 1, 3 or 4, but in class 2 as stated above. In our considered opinion such roadways or driveways are private roadways or driveways and not public highways.

"* * * * *"

In Opinion No. 1073, Opinions of the Attorney General for 1949, it is said in the first syllabus that:

"'Streets or highways' as used in Section

6307-20, General Code, do not include private roads and streets."

It should be pointed out that in that 1949 opinion the Attorney General discussed the identical statutory definitions for "streets or highways" and "private road or driveway" as are in effect now in the form of Section 4511.01 (Z) and (BB), Revised Code.

The cited authorities clearly establish the differentiation between "street or highway" and a "private road or driveway." It also seems clear where public funds have been expended for roads or driveways for limited or restricted use by persons given express or implied permission by the owner that these roads or driveways are to be considered as private roads or driveways under the definitions specified in Section 4511.01, Revised Code.

Section 5123.03, Revised Code, specifies the powers and duties of the Director of Mental Hygiene and Correction and the Commissioner of Mental Hygiene; these powers and duties include the following:

"The director of mental hygiene and correction, with the assistance of the commissioner of mental hygiene, shall administer the laws relative to persons in institutions under the division of mental hygiene, and shall prepare rules and regulations governing such division, the institutions it controls, manages, and supervises, and employes thereof. The director and the commissioner shall provide for efficient, economical, and humane management and shall establish bylaws and regulations for the government of all institutions within their respective jurisdictions. * * *"

Inasmuch as the Cambridge State Hospital is under the supervision of the Department of Mental Hygiene, the powers and duties cited apply to the grounds of the said hospital, including all roadways and driveways. The Director of Mental Hygiene, being directly responsible for the governing and management of the Cambridge State Hospital, stands in the position of the "owner" of the hospital grounds and all persons who use the grounds, including the roadways, do so through his express or implied permission.

In direct response to your query, it is my opinion that the streets on the grounds of the Cambridge State Hospital are included in the definition of "private road or driveway" as defined in Section 4511.01, Revised Code, and as used in Chapter 4511, Revised Code, and are not within the definition of "street or highway" as defined in Section 4511.01, Revised Code.