

OPINION NO. 90-011**Syllabus:**

Persons who dwell within a county, as distinguished from mere visitors or transients, are "county residents" or "residents of the county" for purposes of R.C. 5126.05.

To: Phillip J. Brumbaugh, Darke County Prosecuting Attorney, Greenville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 9, 1990

I have before me your opinion request concerning entitlement to services provided by a county board of mental retardation and developmental disabilities (hereinafter "county MR/DD board"). You specifically ask: "What are the jurisdictional eligibility requisites of an individual so as to entitle that individual to receive the services of a particular county Board of Mental Retardation and Developmental Disabilities?" The information accompanying your opinion request indicates that you are not concerned with the provision of services for children or for a person for whom a guardian has been appointed. I am not, therefore, considering either situation in this opinion.

R.C. 5126.02 provides for the creation of a county MR/DD board within each county. The powers and duties of such boards are prescribed by R.C. 5126.05, in part, as follows:

Subject to the rules established by the director of mental retardation and developmental disabilities pursuant to [R.C. Chapter 119] for programs and services offered pursuant to this chapter,¹ and subject to the rules established by the state board of education pursuant to [R.C. Chapter 119] for programs and services offered pursuant to [R.C. Chapter 3323], the county board of mental retardation and developmental disabilities shall:

(A) Administer and operate facilities, programs, and services as provided by [R.C. Chapters 3323 and 5126] and establish policies for their administration and operation;

(B) Assess the facility and service needs of the mentally retarded and the developmentally disabled *residents of the county and of former residents of the county presently residing in state institutions*

¹ Pursuant to R.C. 5126.08(D), the Director of Mental Retardation and Developmental Disabilities is required to adopt rules concerning standards for determining the eligibility of clients for services. I am not aware, however, of any authority for the Director to determine eligibility of "county residents" or "residents of the county," as those terms are used in R.C. Chapter 5126, to be clients of the county MR/DD board.

Your request specifically mentions eligibility for the adult program, *see* 10 Ohio Admin. Code 5123:2-1-06, and supportive home services, *see* 10 Ohio Admin. Code 5123:2-1-07. Neither rule sets forth residency requirements for eligibility to participate in either program. With respect to those programs, however, I note that, by rule, county MR/DD boards are required to have reciprocal eligibility criteria. *See, e.g.*, 10 Ohio Admin. Code 5123:2-1-06(D)(3) (concerning the adult program, states in part: "The determination of eligibility and the completion of enrollment procedures shall be reciprocal between counties and between county board programs and developmental centers"); 10 Ohio Admin. Code 5123:2-1-07(D)(6) (concerning supportive home services, states in part: "The determination of eligibility and the completion of enrollment procedures shall be reciprocal between counties except for children placed by the [local education agency, *see* 10 Ohio Admin. Code 5123:2-1-01(PP)]").

or placed under purchase of service agreements according to [R.C. 5123.18];²

(C) Plan and set priorities based on available resources for the provision of both facilities and services to meet the needs of *county residents with mental retardation or developmental disabilities and of former residents of the county presently residing in state institutions or placed under purchase of service agreements according to [R.C. 5123.18];*

...
(E) Provide early childhood services, supportive home services, and adult services, according to the plan and priorities developed under division (C) of this section.... (Emphasis and footnotes added.)

Pursuant to R.C. 5126.05(E), a county MR/DD board is required to provide, among other things, the supportive home services and adult services about which you ask "according to the plan and priorities developed under division (C) of this section." Your opinion request states that your primary concerns with regard to the assessment and provision of such services relate to the meaning of the term "residents of the county," as used in R.C. 5126.05(B), and the term "county residents," as used in R.C. 5126.05(C). I will, therefore, limit my discussion to only those terms.

R.C. Chapter 5126 provides no definition of either term. Admittedly, as stated in *Kelm v. Carlson*, 473 F.2d 1267, 1271 (6th Cir. 1973), "[t]he word 'resident' has many meanings in the law, largely determined by the statutory context in which it is used." (Citation omitted.) It is a fundamental principle of statutory construction, however, that, unless a word or phrase has acquired a technical or particular meaning, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. The word "resident" is defined in *Webster's New World Dictionary* 1209 (2d college ed. 1978), as meaning in part: "a person who lives in a place, as distinguished from a visitor or transient...." In the case of *In Re Fore*, 168 Ohio St. 363, 371, 155 N.E.2d 194, 199 (1958), the court found the word "resident," as used in a statute authorizing a resident to be appointed a guardian, was to be interpreted according to its ordinary meaning as, "indicating simply a place of dwelling within the state." A similar definition was set forth in *Jackman v. Jackman*, 110 Ohio App. 199, 201, 160 N.E.2d 387, 389-90 (Hamilton County 1959), where the court stated that the term "resident," as used in its popular sense, means, "one who has his place of abode" within a particular place. *Accord Franklin v. Franklin*, 5 Ohio App. 3d 74, 449 N.E.2d 457 (Mahoning County 1981). Thus, giving the word "resident" its common meaning, anyone who lives in a county, *i.e.*, has his place of abode or dwells within a county, qualifies as a resident of the county or a county resident, for purposes of R.C. 5126.05(B) and (C).

You question whether the legislature's definition of the terms "residence" and "legal residence" in R.C. 5123.01 also applies to the term "residents," as used in

² R.C. 5123.18 empowers the Director of Mental Retardation and Developmental Disabilities, in part, to:

(A)(1) Notwithstanding [R.C. Chapter 340 and R.C. 5119.61, 5119.62, 5123.02, 5123.17, 5126.08, and 5126.12]...enter into a written contract with a private organization, a nonprofit corporation, or a local public agency for the provision of services at a reasonable cost, including residence, supervision, and habilitation services, for any mentally retarded person residing in a state-operated facility, or eligible for admission to such a state-operated facility, or for any developmentally disabled person, who is placed by the director in a facility operated by such an organization, corporation, or agency, or for the reasonable costs of beginning the operation of such a facility during a period not to exceed ninety days.

a different chapter of the Revised Code, specifically R.C. Chapter 5126. R.C. 5123.01, however, states in pertinent part:

As used in this chapter:

....
 (O) "Residence" and "legal residence" have the same meaning as "legal settlement," which is acquired by residing in Ohio for a period of one year without receiving general assistance or assistance from a private agency which maintains records of assistance given. A person having a legal settlement in the state shall be considered as having legal settlement in the assistance area in which he resides....*For the purpose of determining the legal settlement of a person who is living in a public or private institution or in a home subject to licensing by the department of human services, the department of mental health, or the department of mental retardation and developmental disabilities, the residence of such person shall be considered as though he were residing in the county in which he was living prior to his entrance into such institution or home.* (Emphasis added.)

In response to your concern, I note that the introductory phrase of R.C. 5123.01 expressly limits the meaning of those definitions to the provisions of R.C. Chapter 5123. Further, in division (P) of R.C. 5123.01, the word "resident," as used in R.C. Chapter 5123, is separately defined as meaning, "a person admitted either voluntarily or involuntarily to an institution or other facility pursuant to [R.C. 2945.40] or this chapter who is under observation or receiving habilitation and care in an institution;" no mention is made of the term "legal settlement" as in R.C. 5123.01(O). Certainly, if any definition set forth in R.C. 5123.01 were intended to be read into the meaning of the word "resident," as used in R.C. Chapter 5126, the definition of the word "resident" in R.C. 5123.01(P), rather than the meaning of the related word "residence," would apply. In addition, had the legislature intended the limitations upon the meaning of "residence," established by R.C. 5123.01(O), to apply to the meaning of the term "residents," as used in R.C. 5126.05, it could easily have included such meaning within R.C. 5126.01, the definitional section provided expressly for terms having a specific meaning as used in R.C. Chapter 5126. *See Lake Shore Electric Ry. Co. v. Public Utilities Commission*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the legislature intended a term to have a certain meaning, "it would not have been difficult to find language which would express that purpose," having used such language in other connections). Thus, I must conclude that the definition of "residency," set forth in R.C. 5123.01(O), has no application to the meaning of the word "residents," as used in R.C. 5126.05.

Further support for this conclusion is found by comparing the language of R.C. 5123.01(O) with that of R.C. 5126.05(B) and (C), where the legislature has expressly included within the group of people entitled to a county MR/DD board's services not only residents, but also "former residents of the county presently residing in state institutions or placed under purchase of service agreements according to [R.C. 5123.18]." In R.C. 5123.01(O), the legislature described the term "residence" as having the same meaning as "legal settlement" which includes the county in which a person lived prior to entrance into certain institutions or homes. In describing the persons to whom a county MR/DD board owes a duty to provide services under R.C. 5126.05, however, the legislature expressly included, among others, former residents of the county presently residing in state institutions. Had the legislature intended the meaning of "residence," as defined in R.C. 5123.01(O), to apply to the persons entitled to services under R.C. 5126.05, it would not have been necessary to include expressly within R.C. 5126.05 the phrase "former county residents currently residing in state institutions," since such persons would be included under the definition in R.C. 5123.01(O). *See generally Metropolitan Securities Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81, 83 (1927) (the legislature, "[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended").

Based on the foregoing, it is my opinion, and you are hereby advised that, persons who dwell within a county, as distinguished from mere visitors or transients, are "county residents" or "residents of the county" for purposes of R.C. 5126.05.