

OPINION NO. 76-051

Syllabus:

1. An occupied apartment building qualifies as a residence under R.C. 5553.02.
2. Each individually occupied apartment is a private residence for purposes of R.C. 5553.02.

To: Michael Nolan, Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, July 26, 1976

You have requested my opinion on the following questions:

- (1) Is an apartment building a private residence within the meaning of R.C. 5553.02?
- (2) Is each individual apartment a private residence?

The Athens County Board of Commissioners are considering establishing a road which begins at a township road and terminates at a one-family house approximately 700 feet from the beginning of the proposed road. The first 500 feet of such road would service three apartment buildings, each with several residences.

R.C. 5553.02 deals with establishing roads and reads as follows:

"The board of county commissioners may locate, establish, alter, widen, straighten, vacate, or change the direction of roads as provided in sections 5553.03 to 5553.16 of the Revised Code. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had. However, no public road shall be located or established, by the board of county commissioners, unless the location or establishment begins on a public road and terminates on a public road, or begins on a public road and services a public park, a state supported educational institution, public aviation area, or a public recreation area, or begins on a public road and services at least three private residences or businesses in the first five hundred feet and one private residence or business in each two hundred feet thereafter." (Emphasis added.)

The last sentence of the statute was added in 1963 to insure that a road is established only upon need. In 1965 Op. Att'y. Gen. No. 65-5 my predecessor recognized this purpose, and held that a residence must meet the literal requirements of the statute. That opinion is applicable here in that "residence" should be interpreted in such a manner that if three individual housekeeping apartments are occupied, on other than a temporary basis, then the need factor will be met, even if only one apartment building is present within the first 500 feet.

"Residence" refers to the use or mode of occupancy, and not to the type of building, and is used in contradistinction to "business." Hunt v. Held, 90 Ohio St. 280, 283 (1914). No building, apartment or otherwise, can qualify as a residence unless it is occupied as such. However, once occupied it would qualify.

The premise, upon which the general assembly based the statute, is that three residential units will create a certain need for service by roads. The need for the road is the same whether the residences are in one building or are in three buildings.

Therefore, it is my opinion and you are so advised that:

1. An occupied apartment building qualifies as a residence under R.C. 5553.02.
2. Each individually occupied apartment is a private residence for purposes of R.C. 5553.02.