

OPINION NO. 66-143**Syllabus:**

1. All or part of the institution known as the Montgomery County Chronic Hospital may be transferred to the control of the Montgomery County Welfare Department pursuant to an agreement between the board of county commissioners and the agency formerly in charge of the administration of the institution and with the consent of the superintendent of the county home, according to the provisions of Section 329.05, Revised Code.

2. The residents of the Montgomery County Nursing Home are not persons "living in a county home," although the nursing home is located on the same grounds as the Montgomery County Home, and although there may be some interrelation in the administration of the two institutions. The persons living in the nursing home are therefore not disqualified from receiving poor relief by reason of their residence therein, according to Section 5113.01, Revised Code. If poor relief is lawfully granted to such residents, the county is eligible for reimbursements for such payments under Section 5101.16 (B), Revised Code.

To: Denver L. White, Director, Department of Public Welfare, Columbus, Ohio
By: William B. Saxbe, Attorney General, August 25, 1966

Your request for my opinion states the following:

"The Montgomery County commissioners have notified the Department of Welfare that the county hospital, formerly a part of the county home, has been transferred to the county welfare department and changed in name to the Montgomery County Nursing Home. The commissioners are asking that the expense of operating this institution be charged to poor relief and made eligible for state reimbursement as provided in section 5101.16 (B) of the Revised Code.

"Section 5113.01 of the Revised Code defines poor relief and provides in part that poor relief may not be given to persons living in a county home. In view of the language of this section, can all or part of the county home be transferred to the county welfare department and under a new name be considered as a part of poor relief in determining state reimbursement?"

Information received from the Montgomery County Prosecuting Attorney describes the nature of the institution in question:

" * * * * * * * * * * * * * * *

"The Montgomery County Chronic Hospital has never been a hospital as defined in O.R.C. Chapter 339 because it has never had full hospital facilities or services and the Montgomery County Commissioners have not appointed a board of trustees to govern the Chronic Hospital, but rather have always maintained control of the administration of the Chronic Hospital themselves. * * *

" * * * * * * * * * * * * * * *

"It is our further understanding that some question has been raised as to whether this facility, known as the Chronic Hospital, has actually been part of our County Home. We can understand why someone might get this erroneous idea because of the fact that the County Home and the Chronic Hospital are located next to each other on the same 200 acre tract which is owned by the County. * * *

"The only other connection that could be made in the past between the County Home and the Chronic Hospital was that the Administrator of the County Home, Mrs. Mae Boren, has determined who would be admitted to the Chronic Hospital because Mr. Marshall was not always present at the Chronic Hospital since he is also the Administrator of the local TB hospital."

Sections 329.04 and 329.05, Revised Code, describe the powers and duties of a county welfare department. There is no specific provision permitting the county department of welfare to run a "nursing home." Section 329.05, *supra*, however, provides that the welfare department may make agreements with the county commissioners to administer any state or local welfare activity although not specifically enumerated in the prior section. Such activity would include poor relief programs, but this section specifically states:

"This section does not permit a county department of welfare to manage or control county or district tuberculosis or other hospitals * * *."

(Emphasis added)

While the Montgomery County institution in question is not a "hospital" within the scope of Chapter 339, Revised Code, it is not clear that "hospital" as used in Section 329.05, *supra*, refers only to a Chapter 339 institution. The term "hospital" is not defined in either Chapter 339, *supra*, or in Section 329.05, *supra*. Section 3701.07, Revised Code, states that "the director of health may define and classify hospitals and dispensaries."

The most recent definition pursuant to this section was

released in 1955 and states that a "hospital" is any establishment or place in which:

" * * * * *"

"2. Services offered are more intensive than those required for room, board, personal services, and general nursing care.

" * * * * *"

"8. Surgical or obstetrical facilities, and/or diagnostic and treatment facilities for medical patients are available at the hospital.

" * * * * *"

Although it is not clear that "hospital" as used in Chapter 339, or in Section 329.05, *supra*, is limited to this definition, it is my opinion that at least these two elements of the definition quoted above are essential in distinguishing a "hospital" from another institution. It is my understanding that neither element applies to the Montgomery County institution, and it is therefore not a "hospital" as described in Section 329.05.

Since the "Nursing Home" is not a "hospital," the Montgomery County Department of Welfare could control and manage the institution if an agreement is made between the board of county commissioners and the agency previously charged with the administration of the "hospital," pursuant to Section 329.05, *supra*, in the form of a resolution filed with the county auditor, together with the consent of the superintendent of the institution. See Syllabus 2 of Opinion No. 6552, Opinions of the Attorney General for 1943, page 696.

Once the Montgomery County Department of Welfare has taken over the management and control of the "nursing home," the institution may be eligible for state reimbursement for poor relief. Section 5113.01, Revised Code, describes poor relief and provides:

"'Poor relief' means food, clothing, public or private shelter, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency.

"* * * Poor relief may be given to persons living in their own homes or other suitable quarters, but not to persons living in a county home * * *."

(Emphasis added)

In light of the information received from the Montgomery County Prosecutor, quoted above, your attention is directed to Opinion No. 1586, Opinions of the Attorney General for

1950, where the following question was asked:

"The Franklin County Department of Welfare * * * raised a question about payment for relief recipients at Alum Crest Hospital. This hospital is on the grounds of the County Home and is under the supervision of the County Home superintendent. * * *

"In the light of section 3391-13 of the General Code (now Section 5113.01, Revised Code), which provides that poor relief may not be given to persons living in a county home, would it be legal for the Franklin County Department of Welfare to pay for hospitalization at Alum Creek and for the state to match on such expenditures?"

The answer to this request included the following:

"* * * Of course, if a person is a lawfully admitted inmate of a county home, he is not entitled to hospitalization under this section of the Code. However, there is no showing in this instance that the persons in question are living in a county home. Further, from the facts before me, I do not believe that a person admitted to Alum Crest Hospital could be classified as 'living in a county home' * * * "

Although your request describes the Montgomery County institution as "formerly a part of the County home," the residents of the "nursing home" are not to be described as "living in the county home," and are thus eligible for poor relief, according to the reasoning of Opinion No. 1586, supra.

Therefore it is my opinion that:

1. All or part of the institution known as the Montgomery County Chronic Hospital may be transferred to the control of the Montgomery County Welfare Department pursuant to an agreement between the board of county commissioners and the agency formerly in charge of the administration of the institution and with the consent of the superintendent of the county home, according to the provisions of Section 329.05, Revised Code.

2. The residents of the Montgomery County Nursing Home are not persons "living in a county home," although the nursing home is located on the same grounds as the Montgomery County Home, and although there may be some interrelation in the administration of the two institutions. The persons living in the nursing home are therefore not disqualified from receiving poor relief by reason of their residence therein, according to Section 5113.01, Revised Code. If poor relief is lawfully granted to such residents, the county is eligible for reimbursements for such payments under Section 5101.16 (B), Revised Code.