

OPINION NO. 1445

Syllabus:

1. A "temporary" foundation within the meaning of Section 4501.01 (I), Revised Code, is a foundation which is to serve for a limited period of time.

2. The county auditor must consider those facts and circumstances indicative of the temporal as well as the physical character of the foundation when determining whether a house trailer, resting upon a foundation with footers, has ceased to be a house trailer and has become an improvement to real estate for real estate tax purposes.

To: Donald D. Simmons, Wood County Pros. Atty., Bowling Green, Ohio
 By: William B. Saxbe, Attorney General, October 8, 1964

Your request for my opinion reads in part as follows:

"We have been requested by several county officials, acting conjunctively, to seek your opinion as to whether a certain structure is a house trailer or a house. This structure is moved to a site in two pieces, both of which are mounted upon wheels and axles. Upon arriving at the site, the wheels and axles are removed. The units are bolted together and set upon a permanent foundation with footer, etc. The combination of the two from one unit 19'9" wide by 52 feet long, which unit resembles a small house. We are advised that, should the owner want to move the unit, it would take two men two days to get it ready for travel--again in two pieces.

"The problems involved are manifold. The County Auditor is concerned with tax treatment. The Commissioners are concerned because these structures, if classed as houses, would not comply with local building regulations. The local zoning officials must decide into which category such structures would fall for zoning purposes. In addition, we are informed that the structures are titled in much the same way as are automobiles and that the buyers pay sales tax thereon.

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"Can the county auditor now say that all such structures placed upon permanent, as opposed to temporary, foundations are houses?
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The term "house trailer" is defined in Section 4501.01 (I), Revised Code, as follows:

"(I) 'House trailer' means any self-propelled and nonself-propelled vehicle so designed, constructed, reconstructed, or added to by means of accessories in such manner as will permit the use and occupancy thereof for human habitation, when connected to indicated utilities, whether resting on wheels, jacks, or other temporary foundation and used or so constructed as to permit its being used as a conveyance upon the public streets or highways."

I am assuming, without deciding the question, that the two-unit structure described in your letter of request is initially a house trailer as that term is defined above.

The fact situation that you present in your letter of request is almost identical to the one presented to the then Attorney General in Opinion No. 1470, Opinions of the Attorney

General for 1952. The only apparent difference is that the 1952 letter of inquiry specified that the land upon which the house trailer was located was not owned by the individual who owned the house trailer. However, you will note that this fact was not given any further consideration in the body of that opinion.

The syllabus of the 1952 opinion, supra, states:

"1. A house trailer as defined in Section 6290, General Code, does not lose its classification as such solely by reason of the removal of the chassis as an incident to the mounting of the body on a foundation.

"2. A house trailer loses its statutory classification as such when it has been so reconstructed as to render it unfit for use as a conveyance without further reconstruction; but mere disassembly of the several parts of the structure does not cause such loss of classification.

"3. The question in particular cases of whether a change in the structure of a house trailer is a disassembly or a reconstruction is one of fact, and should be determined in the first instance by the county auditor."

This opinion would appear to be dispositive of your inquiry but for the recent amendment of the house trailer definition which inserted the word "temporary" before the word "foundation."

In light of the recent amendment of the house trailer definition, your question in effect is whether a structure which would otherwise be a house trailer ceases to be a house trailer solely by reason of its being "set upon a permanent foundation with footer, etc."

The language "temporary foundation" is susceptible of two interpretations, to wit: (1) that the foundation is temporary in the sense that the foundation can be removed or disassembled at a moment's notice, or (2) that the foundation is temporary in the sense that the owner of the house trailer, and the owner of the land, if the trailer is upon another's land, do not intend that the house trailer remain on the foundation permanently.

A close examination of the definition of a house trailer, particularly the phrase "whether resting on wheels, jacks or other temporary foundation," convinces me that the term "temporary" refers to the temporal character of the use rather than the physical character of the foundation. This interpretation of the above-quoted phrase is in harmony with the law pertaining to fixtures and gives full consideration to the intention of the owner of the house trailer and also the intention of the owner of the land upon which such a structure might happen to be placed.

The importance of the word "temporary" becomes apparent in a fact situation similar to the one described in your letter of request and the holding in the 1952 opinion, supra.

In that opinion, the sole question was whether a house trailer ceases to be such by reason of a disassembly or reconstruction of the several parts of the structure and the then Attorney General held that disassembly or reconstruction was a question of fact. However, from the standpoint of the law of fixtures, mere reconstruction or disassembly did not provide any guide in determining whether the structure remained personalty or became an improvement to real estate. Consequently, under the 1952 opinion, a house trailer could, under the law of fixtures, become a part of the real estate although it was still a house trailer within the statutory definition. This possible dual character was susceptible of causing many problems for the local taxing officials when it came time to add property to the real estate tax duplicate, particularly when the house trailer and the land upon which it was located were both owned by the same individual.

It appears to me that the legislature inserted the word "temporary" in the definition of house trailers in Section 4501.01, supra, in order to eliminate this duality.

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

1. A "temporary" foundation within the meaning of Section 4501.01 (I), Revised Code, is a foundation which is to serve for a limited period of time.

2. The county auditor must consider those facts and circumstances indicative of the temporal as well as the physical character of the foundation when determining whether a house trailer, resting upon a foundation with footers, has ceased to be a house trailer and has become an improvement to real estate for real estate tax purposes.