

**Note from the Attorney General's Office:**

1970 Op. Att'y Gen. No. 70-138 was questioned by  
1973 Op. Att'y Gen. No. 73-026.

**OPINION NO. 70-138**

**Syllabus:**

1. A county home superintendent may admit persons who are able to pay for their care at a county home.

2. The fact that an applicant, for admission to a county home, is a recipient of Aid for the Aged does not preclude a finding that the applicant should become a public charge in accordance with Section 5155.22, Revised Code.

3. A county home superintendent may refuse to accept eligible applicants because he has no vacancy.

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**To: Henry P. Mittelkamp, Putnam County Pros. Atty., Ottawa, Ohio**  
**By: Paul W. Brown, Attorney General, October 5, 1970**

I have before me your letter which requests my opinion on the following questions involving admissions to county homes:

"1. May a County Home Superintendent admit persons who are able to pay for their care at the county home?

"2. Does the fact that an applicant, for admission to the county home, is a recipient of Aid for the Aged preclude a finding that the applicant should become a public charge in accordance with Section 5155.28, Revised Code?

"3. If the County Home Superintendent may admit persons able to pay for the cost of their care, may he refuse to accept eligible applicants because he has no vacancy?"

In answer to your first question, Section 5155.22, Revised Code, reads:

"In any county having a county home, when a board of township trustees or the proper officers of a municipal corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to such home, they shall forthwith transmit a statement of the facts to the superintendent of the home. If it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown and the superintendent of the home is satisfied that such person should become a county charge, the superintendent shall admit such person as a county charge and shall receive and provide for him in such institution forthwith, or as soon as the physical condition of such person will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the board."

There is nothing in this statute or any other provision of the code which expressly provides that a county home superintendent may admit persons who are able to pay for their care at the county home. Section 5155.23, Revised Code, however, does provide that:

"When a person becomes a county charge or an inmate of a city infirmary, and is possessed of or is the owner of property, real or personal or has an interest in remainder, or is in any manner legally entitled to a gift, legacy, or bequest, the board of county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which the property is located,

and the proceedings for sale, confirmation of sale, and execution of deed by such board or officer of the city infirmary shall, in all respects, be conducted as provided by sections 2127.01 to 2127.43, inclusive, of the Revised Code. The net proceeds of such sale shall be applied in whole or in part, under the special direction of the board or the proper city officer to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary."

Section 5155.26, Revised Code, provides that:

"A board of county commissioners or officers of a city infirmary shall not seek to take charge of property in the manner prescribed by section 5155.-23 of the Revised Code if the guardian, husband, wife, heirs, or persons entitled to the residuary interest in such property give bond to the board or officers to their satisfaction, and if, at such times as the board or officers require, such persons pay into the hands of the superintendent of the county home or city infirmary, an amount sufficient to support the person while he remains a county charge or an inmate of the city infirmary. The probate court may, at the time of hearing a petition for sale, in lieu of an order for sale, order the guardian, husband, wife, heirs, or persons entitled to a residuary interest in the property of such person, to make payments to the superintendent of the county home for the maintenance of such person, and failure to do so shall make any person so ordered punishable by the court as for contempt."

Under these two sections, an inmate of a county home pays for his care through the sale of any real or personal property that he might possess, or in the alternative, his guardian, wife, heirs, or persons entitled to the property pays for his support.

Originally, today's county home was known as a poor house and set up to care for the indigents of the county. The name was later changed to "county infirmary", and then later renamed "county home". Today the county home has evolved from an institution which was set up to care for the indigent exclusively, to a home where less than five percent of the inhabitants are indigent. It is interesting to note, as an example of this, that in the year 1967 the Franklin County Home had three hundred and twenty-nine (329) resident patients, of which only eight had no income or resources of any type. This evolution has developed, at least partially, through the regulatory powers granted the board of county commissioners in Section 5155.01, Revised Code, which reads in part:

"The board of county commissioners\* \* \*shall prescribe rules and regulations for the management and good government of such home\* \* \*."

When an application has been made to the county home, if the superintendent finds that an applicant has met the residency requirements of Section 5155.22, supra, and if he is satisfied that such person should become a county charge, he can admit such person to the county home. It was stated in Opinion No. 928, Opinions of the Attorney General for 1918, and subsequently followed, that the sole discretion in determining whether a person

is qualified to become a county charge vests in the superintendent of the county home.

It is not difficult to envision a situation today in which a person may be able to pay for his care at a county home, but still be financially unable to pay for his care at a nursing home or other private institution for himself. Under the authority quoted above in Sections 5155.23 and 5155.26, supra, an inmate, in effect, is paying for his own care. Therefore, it seems that in accordance with Section 5155.22, supra, a county home superintendent may admit persons who are able to pay for their own care at a county home.

In your second question you state:

"Does the fact that an applicant, for admission to the county home, is a recipient of Aid for the Aged preclude a finding that the applicant should become a public charge in accordance with Section 5155.28, Revised Code?"

Section 5105.05, Revised Code, which sets out the eligibility standards for Aid for the Aged, states that no person is eligible to receive such aid unless he fulfills the following conditions:

\* \* \* \* \*

"(C) Is not an inmate of a public institution, except as a patient in a public medical institution or an inmate of a city or county home.\* \* \*"

Under this section, an inmate of a county home may receive Aid for the Aged, and, as quoted earlier in Section 5155.22, supra, a person may not be admitted to a county home unless he is a county charge. Therefore, it seems that an applicant for admission to a county home would not be precluded from a finding that he is a county charge, because he is receiving Aid for the Aged. Further support is found for this position in Section 5105.29, Revised Code, which states:

"Sections 5105.01 to 5105.24, inclusive, of the Revised Code shall be liberally construed. Such sections shall not repeal any other act or part of an act providing for the poor except in so far as it is plainly inconsistent with sections 5105.01 to 5105.29, inclusive, of the Revised Code, and such sections shall be construed as an additional method of supporting and providing for the aged poor."

There is, therefore, no inconsistency in a finding that an Aid for Aged recipient should be a county charge and admitted to the county home.

Your third question asks, "[i]f the County Home Superintendent may admit persons able to pay for the cost of their care, may he refuse to accept eligible applicants because he has no vacancy?"

As pointed out in my answer to your first question, a person may not be admitted to a county home unless the superintendent of said home is satisfied that the person should become a county charge.

Chapter 5155. Revised Code, sets out only two sections for the removal of inmates placed in a county home. Section 5155.21, Revised Code, deals with the removal of an inmate who has no legal settlement in the state, to the county and state where such person has a legal settlement. Section 5155.31, Revised Code, deals with the closing of county homes and the subsequent care of inmates. Therefore, if a county home has no vacancy, the present inmates of the home, which do not come under Section 5155.21, supra, or Section 5155.31, supra, may not be removed, so the county home superintendent may refuse to accept eligible applicants if he has no vacancy.

In conclusion then, it is my opinion and you are hereby advised that:

1. A county home superintendent may admit persons who are able to pay for their care at a county home.
2. The fact that an applicant, for admission to a county home, is a recipient of Aid for the Aged does not preclude a finding that the applicant should become a public charge in accordance with Section 5155.22, Revised Code.
3. A county home superintendent may refuse to accept eligible applicants because he has no vacancy.