

OPINION NO. 66-182**Syllabus:**

A house trailer which has been so reconstructed as to render it unfit for use as a conveyance may be subject to building code regulations adopted by a board of county commissioners pursuant to Section 307.37, Revised Code. The determination of whether a particular house trailer is subject to building code regulations is a matter of fact.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, December 23, 1966

Your request for my opinion asks whether a house trailer which is placed upon a foundation is subject to building code regulations adopted by the county commissioners of Mahoning County.

The authority for county commissioners to promulgate building code regulations is found in Section 307.37, Revised Code, which reads in part as follows:

"The board of county commissioners, in addition to its other powers, may adopt, administer, and enforce regulations pertaining to the erection, construction, repair, alteration, and maintenance of single-family, two-family, and three-family dwellings, within the unincorporated territory of the county
* * *."

Section 307.37, supra, was amended in 1961 (129 Ohio Laws 1571)

to read as quoted above. Prior to the 1961 amendment, the section read in pertinent part as follows:

"The board of county commissioners, in addition to its other powers, may adopt, administer, and enforce regulations pertaining to the erection, construction, repair, alteration, and maintenance of residential buildings, offices, mercantile buildings, workshops, or factories, including public or private garages, within the unincorporated portion of any county."

In Brodnick v. Munger, 64 Ohio Law Abs., 306 (1952), the Court of Appeals for the Second District had occasion to interpret the phrase "residential buildings" in Section 2480, General Code (Section 307.37, Revised Code), as it applied to house trailers. The Court held that a house trailer was not a "residential building" within the meaning of Section 2480, supra, and was therefore not subject to building code regulations adopted by the county commissioners. In its opinion, the Court stated that if house trailers were meant to be included within the scope of the statute, the legislature could have included them in the enumeration of types of structures therein subject to the building code regulations. The 1961 amendment to Section 307.37, supra, deleted the specific list of types of structures and substituted the term "single-family, two-family, and three-family dwellings". The specific answer to your question depends upon whether the term "dwelling" in amended Section 307.37, supra, may be fairly construed to include house trailers. In this context, it is interesting to note that the identical court that decided Brodnick v. Munger, supra, has defined "dwelling" as "a place of residence", State, ex rel. Warner v. McGrath, 116 N.E. 2d 218, 220 (1951).

I have found no Ohio decisions dealing with the subject of whether house trailers are "dwellings" for the purpose of being subject to building code regulations. The prevailing view among other states is that a house trailer is a "dwelling" for purposes of zoning provisions and building code regulations. Annotation: "Use of trailer or similar structure for residential purposes as within limitation of restrictive covenant, zoning provision, or building regulation", 96 A.L.R. 2d, 232, 250. See also 13A Words and Phrases, 583-584.

The court in Brodnick v. Munger, supra, also relied upon the definition of "house trailer" in Section 6290, General Code (now Section 4501.01, Revised Code), wherein a "house trailer" is so defined even though it may rest upon a foundation, and upon the fact that Section 6292-2, General Code (now Section 4503.06, Revised Code) imposed a personal property tax upon house trailers. That definition of house trailer was amended in 1963 by 130 Ohio Laws 1032 by inserting the word "temporary" before "foundation". In Opinion No. 1445, Opinions of the Attorney General for 1964, page 376, the question was posed whether a house trailer placed upon a permanent, as opposed to a temporary, foundation had ceased to be a house trailer and became an improvement to real estate for tax purposes, thereby losing its identity as a house trailer. That opinion was conditioned upon a determination by the county auditor whether a

particular house trailer, as a matter of fact, had ceased to be a house trailer by virtue of being placed upon a permanent foundation. Opinion No. 1470, Opinions of the Attorney General for 1952, page 391, held that 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. As in Opinion No. 1445, supra, the determination of whether a house trailer had lost its statutory classification as such was held to be a question of fact in Opinion No. 1470, supra. If a house trailer may lose its statutory classification as such for taxation purposes, I find nothing in Ohio law which would preclude a similar determination for purposes of requiring compliance with building code regulations adopted by a board of county commissioners.

Therefore it is my opinion and you are hereby advised that a house trailer which has been so reconstructed as to render it unfit for use as a conveyance may be subject to building code regulations adopted by a board of county commissioners pursuant to Section 307.37, Revised Code. The determination of whether a particular house trailer is subject to building code regulations is a matter of fact.