

Note from the Attorney General's Office:

1976 Op. Att'y Gen. No. 76-025 was overruled by
1977 Op. Att'y Gen. No. 77-099.

OPINION NO. 76-025

Syllabus:

A structure on wheels which is drawn by a vehicle to a site and placed on a foundation after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to the like structure so as to make the combined structure watertight is:

1. Not a "house trailer" as defined by R.C. 4501.01 (H) when so assembled and placed; and
2. Is "real property" as defined by R.C. 5701.02 for purposes of taxation.

To: Norman P. Smith, Shelby County Pros. Atty., Sidney, Ohio
By: William J. Brown, Attorney General, March 25, 1976

Your letter of February 24, 1976, requesting my opinion reads as follows:

"In 1975, the Shelby County Auditor assessed as real estate a modular home in a house trailer park. The Board of Health continues to inspect this modular home as if the same were a house trailer.

". . . .

"We, therefore, would like your opinion on the following questions:

"1. Is a structure on wheels, which is drawn by a vehicle to a site where it is to be connected to a like structure, by removing from one side a covering temporarily used during transit, bolting that side to the exposed side of the other like structure, and making both units water-tight, and placing the same in a trailer park, a house trailer as the same is defined by Section 4501.01(I)?

"2. Is a structure similar to the one described in question number one when placed on land outside a trailer park to be taxed as real estate or a house trailer?"

It is my understanding that the subject structures are drawn to the site with wheels and axles attached to them, and that upon arrival at the trailer park site, the tongues used to draw the structures are removed, and the structures themselves are placed upon foundations so that the wheels are not in contact with the ground.

Two recent decisions of the Supreme Court of Ohio are determinative of the issue of characterization of property for purposes of taxation. In Shutter Bug, Inc. v. Kosydar, 40 Ohio St. 2d 99 (1974), the Court held in its syllabus:

"Even if a structure or building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of 'real property' as that term is defined in R.C. 5701.02, unless the General Assembly has otherwise specified. (Paragraph three of the syllabus in Reed v. Board of Revision, 152 Ohio St. 207, approved and followed.)"

That case involved small structures placed in shopping center parking lots for operation of a business selling photographic film, equipment and services. The Court's opinion was short and dealt solely with the definition of "real property" contained in R.C. 5701.02. The Court stated:

"R.C. 5701.02, reads:

"'As used in Title LVII [57] of the Revised Code, 'real property' and 'land' include land itself, whether laid out in town lots or otherwise, all growing crops, including deciduous and evergreen trees, plants, and shrubs, with all things contained therein, and, unless otherwise specified, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto.'

"The objects of taxation in this case are plainly 'buildings' and 'structures,' and appellant recognized them as such. Also, these objects are not mentioned in any other section of R.C. Title 57 within the meaning of the phrase 'unless otherwise specified.'

"This court recognizes that in other legal contexts a decision might be required as to whether these objects are personal or real property.

"However, in construing G.C. 5322, the predecessor of R.C. 5701.02, this court held, in paragraph three of the syllabus in Reed v. Board of Revision, 152 Ohio St. 207 (1949):

"'Even if a structure of building located on land is personal property, such structure or building will, for purposes of taxation, be included within the definition of "real property"

as that term is defined in Section 5322, General Code, unless the General Assembly has otherwise specified.'

"We hold that the Reed decision clearly applies to this case, and that appellant has not suggested adequate reasons for us to depart from that principle." (Emphasis in original.)

The Court very recently reaffirmed the principles it enunciated in Shutter Bug, supra, in Bobb Bros. v. Board of Revision, 45 Ohio St. 2d 81 (1976). There the Court held that although the grain buildings at issue were personal property according to the law of fixtures, they were nonetheless taxable as real property by virtue of the definition of "real property" contained in R.C. 5701.02.

Given this existing state of the law, it does not matter whether the subject structures are "house trailers" as that term is defined in R.C. 4501.01(I). The only definition which is relevant for purposes of taxation is R.C. 5701.02, the definition of "real property" applicable to all Sections of R.C. Title 57 - Taxation.

The subject structures are indeed "buildings" or "structures" as those terms are commonly understood. Your characterization of them as "structures" in your request appears to be warranted given their characteristics. They are drawn to a site, placed upon foundations, and they are attached to like structures to form single units. They are "structures" or "buildings" of whatever kind upon the land. As such, they are "real property" as that term is defined in R.C. 5701.02. Therefore, they are to be placed on the real property tax list and duplicate in the county where located since they are not "otherwise specified" by the General Assembly in any other provision contained in R.C. Title 57 - Taxation.

There have been past opinions of my predecessors relating to the statutory definition of "house trailer" and the classification of such property for purposes of taxation. In 1952 Op. Att'y Gen. No. 1470, the law of fixtures was applied to a situation similar to the one described in your request. That opinion was followed with regard to a similar issue in 1969 Op. Att'y Gen. No. 128. Any language in those two Opinions which is inconsistent with the decisions of the Supreme Court of Ohio in Shutter Bug, supra, and Bobb Bros, supra, is of no effect.

In 1970 Op. Att'y Gen. No. 70-013, my predecessor dealt solely with the issue of whether structures similar to those described in your request were "house trailers" in accordance with the statutory definition contained in R.C. 4501.01(I). In that opinion, it was stated that structures similar to those described in your request were not "house trailers" as that term is defined in R.C. 4501.01(I) prior to their attachment to like structures. That opinion contains the following language at pages 2-26 and 2-27:

"The resolution of your question involves the interpretation of Section 4501.01(A) and (I), Revised Code. These two paragraphs read:

"(A) "Vehicles" means everything on wheels or runners except vehicles operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles belonging to any police department, municipal fire department, or salvage company organized under the laws of this state or used by such department or company in the discharge of its functions.

". . . .

"(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.
(Emphasis added.)

"The definition of 'house trailer' in this section was considered in Opinion No. 1470, Opinions of the Attorney General for 1952. In that opinion, it is stated:

"This language prescribes the following tests in the determination of whether a particular structure falls within the classification defined:

"1. The structure must constitute a vehicle.

"2. It must be so designed, constructed, etc., as to permit use and occupancy for human habitation.

"3. It must be used or so constructed, as to permit its being used as a conveyance upon the public streets or highways.'

"At the outset, we doubt whether anyone seriously contends that the two units so bolted together constitute a house trailer within the terms of Section 4501.01(I), Revised Code. The question then is, whether a single unit, being 50 feet by 12 feet, is to be considered a 'house trailer.'

"From your letter, it appears that the structure you describe has one side which, while in transit, is covered in some manner to protect it from the elements. Your letter also states that

while in transit, the structure is capable of use as a conveyance, but is not suitable for use for human habitation. Apparently something more than merely connecting it to utilities is required, namely, removing the temporary covering on the one side, bolting that side to the exposed side of another unit, and making both units weathertight. A single unit, as you describe it, does not meet the second test quoted above and hence does not fall within the language of Section 4501.01(I), Revised Code." (Emphasis added.)

1970 Op. Att'y Gen. No. 70-013 was involved in a suit in Common Pleas Court of Franklin County: Highland Mobilehomes v. Brown, Case No. 241,539, Common Pleas, Franklin County (1971). Plaintiff sued for a declaratory judgment. Defendant health officials had refused to permit occupancy of attached structures such as those described in your request in trailer parks. The Court held that health regulations applied to such structures once placed in trailer parks no matter what their nomenclature might be. The Court further stated that single units later attached to other units could be "house trailers" as defined in R.C. 4501.01(I) whether or not they were fit for occupancy during transit.

It is nevertheless clear that when the units are attached, they could not meet the definitional requirements of R.C. 4501.01(I). They simply cannot be conveyed "upon the public streets or highways." 1970 Op. Att'y Gen. No. 013, remains unchallenged on that point. However, as I stated previously, R.C. 5701.02 controls the issue of the classification of such property for purposes of taxation. Whether or not the subject structures are "house trailers", they are taxable as real property because they are "buildings" or "structures" of whatever kind upon the land, are not "otherwise specified" by any other provision of R.C. Title 57.

Accordingly, it is my opinion and you are hereby advised that a structure on wheels which is drawn by a vehicle to a site and placed on a foundation after being connected to a like structure by removing a temporary covering used during transit and bolting the exposed side to the like structure so as to make the combined structure watertight is:

1. Not a "house trailer" as defined by R.C. 4501.01(I) when so assembled and placed; and
2. Is "real property" as defined by R.C. 5701.02 for purposes of taxation.