

OPINION NO. 69-128**Syllabus:**

1. A house trailer can cease to be an item of personal property and can instead become a part of real property under the law of fixtures.

2. Whether a house trailer has in fact become a part of the real property is a question of fact in each case, depending upon the temporal as well as the physical character of the foundation upon which the house trailer rests.

3. The term "dwelling" as used in Sections 5520.01 to 5520.07, inclusive, of the Revised Code does not exclude house trailers from consideration as replacement housing except where the term "comparable dwelling" is used, in which case a house trailer would be excluded as a replacement dwelling when the property appropriated was improved with a dwelling which was not and had never been a house trailer.

To: P. E. Masheter, Director of Highways, Columbus, Ohio
By: Paul W. Brown, Attorney General, September 26, 1969

I have before me your request for my opinion, which request reads as follows:

"We have been requested by the Bureau of Public Roads to secure a legal opinion from your office as to the conditions under which mobile homes would be considered as real property and as to whether under Ohio law a mobile home can be considered as replacement housing under the provisions of recently enacted House Bill No. 475."

House Bill No. 475, to which you refer in your request, was enacted by the 108th General Assembly. That bill enacted Sections 5520.01 to 5520.07, inclusive, Revised Code, and repealed Section 5519.06, Revised Code, relating to relocation assistance payments and assistance in connection with state highway projects. The provisions of that bill in pertinent part are as follows:

"Sec. 5520.01. As used in Sections 5520.01 to 5520.07, inclusive, of the Revised Code:

"* * * * *

"(C) 'Displaced person' means any person who moved from real property on or after the effective date of Sections 5520.01 to 5520.07, inclusive, of the Revised Code as a result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for a state highway or federal-aid highway project, or as the result of the acquisition for a state highway or federal-aid highway project of other real property on which such person conducts a business or farm operation.

"* * * * *

"Sec. 5520.02. (A) Upon application approved by the Department of Highways, a person displaced by any state highway or federal-aid highway project may elect to receive actual reasonable expenses in moving himself, his family, his business, or his farm operation, including personal property, for a reasonable distance not to exceed fifty miles.

"(B) Any displaced person who moves from a dwelling who elects to accept the payments authorized by this division in lieu of the payments authorized by division (A) of this section may receive:

* * * * *

"Sec. 5520.03. (A) In addition to amounts otherwise authorized by Sections 5520.01 to 5520.07, inclusive, of the Revised Code, the Department of Highways shall make a payment to the owner of real property acquired for a project which is improved by a single, two, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment not to exceed five thousand dollars, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the Director of Highways, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market. Such payment shall be made only to a displaced owner who purchases and occupies a dwelling within one year subsequent to the date on which he is required to move from the dwelling acquired for the project. * * *

"(B) In addition to amounts otherwise authorized by Sections 5520.01 to 5520.07, inclusive, of the Revised Code, the Department of Highways shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under Division (A) of this section which dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the initiation of negotiations for acquisition of such property. Such payment, not to exceed one thousand five hundred dollars, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed two years; or to make the down payment on the purchase of, a decent, safe, and sanitary dwelling of standards adequate to accommodate

such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

"Section 5520.04. In addition to amounts otherwise authorized by Sections 5520.01, to 5520.07, inclusive, of the Revised Code, the Department of Highways shall reimburse the owner of real property acquired for a project for reasonable and necessary expenses incurred for recording fees, and similar expenses incidental to conveying such property, and any penalty costs for repayment of any mortgage entered into in good faith encumbering such real property if such mortgage is on record or has been filed for record on the date of final approval by the state of the location of such project.

"Section 5520.05. The Department of Highways shall provide a relocation advisory assistance program which shall include such measures, facilities, or services as may be necessary or appropriate in order:

* * * * *

"(B) To assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, housing meeting the standards established by the Director of Highways for decent, safe, and sanitary dwellings, equal in number to the number of, and available to, such displaced families and individuals and reasonably accessible to their places of employment;

* * * * *

Your first question concerns the conditions under which mobile homes would be considered as real property. The answer to that question requires an examination of the term "real property" in relation to a mobile home or house trailer. (For the purposes of this opinion, the term "house trailer" will be used exclusively hereafter.)

The terms "property", "real property", and "real estate"

are variously defined in different sections of the Revised Code of Ohio. For example, in Section 701.01, Revised Code, the term "property" is defined for the purposes of its use in Title 7 of the Revised Code (Municipal Corporations). In Section 1775.01, Revised Code, the term "real property" is defined for the purposes of its use in Chapter 1775, Revised Code (Uniform Partnership Law).

The term "real estate" is defined in Section 4735.01, Revised Code, as it will be used in Chapter 4735 of the Revised Code (Real Estate Brokers). The terms "real property" and "land" are defined in Section 5701.02, Revised Code, for purposes of use in Title 57 of the Revised Code (Taxation). The latter section contains, perhaps, the most comprehensive definition and provides as follows:

"As used in Title LVII 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."

While that particular definition is not controlling for the purposes of this opinion, it is nevertheless helpful as a starting point. Clearly, a house trailer begins its existence as a chattel, or an item of personal property, as opposed to real property. The Ohio Revised Code refers to house trailers in several sections. Section 4501.01 (I), Revised Code, defines house trailer thusly:

"(I) 'House trailer' means any self-propelled and non self-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."

Section 4503.06, Revised Code, provides for a special tax on house trailers. Section 4503.061, Revised Code, provides for the registration of house trailers with the county auditor. These three sections are, of course, parts of Title 45 of the Revised Code, which deals with motor vehicles, aeronautics, and water craft. Moreover, Section 4503.06, Revised Code, provides

that a house trailer is not subject to the tax provided for in that section when it is taxable as personal property pursuant to Section 5709.01, Revised Code. Thus initially a house trailer is, in the eyes of Ohio law, an item of personal property or chattel as opposed to real property.

However, through the law of fixtures, a chattel can be transformed into part of the real estate. Fortman vs. Goepper, 14 Ohio St. 558 (1863). A fixture is an article which was a chattel but which by being affixed to the realty has become accessory to it and parcel of it. Teaff vs. Hewitt, 1 Ohio St. 511 (1852). The question of when a house trailer ceases to be an item of personal property and becomes, in the eyes of Ohio law, a part of the real estate has been previously discussed in Opinion No. 1445, Opinions of the Attorney General for 1964. In that Opinion my predecessor, referring to Opinion No. 1470, Opinions of the Attorney General for 1952, said as follows:

"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.

* * * * *

"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."

Your second question asks whether, under Ohio law, a mobile home can be considered as replacement housing under the provisions of House Bill No. 475. House Bill No. 475 enacted Sections 5520.01 to 5520.07, inclusive, of the Revised

Code. Nowhere in those sections are the terms "real property" or "dwelling" defined. Your question as to replacement housing concerns in particular Sections 5520.03 and 5520.05 (B), supra, which in pertinent part provide as follows:

"Sec. 5520.03. (A) In addition to amounts otherwise authorized by Sections 5520.01 to 5520.07, inclusive, of the Revised Code, the Department of Highways shall make a payment to the owner of real property acquired for a project which is improved by a single, two, or three-family dwelling actually owned and occupied by the owner for not less than one year prior to the initiation of negotiations for the acquisition of such property. Such payment not to exceed five thousand dollars, shall be the amount, if any, which, when added to the acquisition payment, equals the average price required for a comparable dwelling determined, in accordance with standards established by the Director of Highways, to be a decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on a private market. * * *

"(B) In addition to amounts other wise authorized by Sections 5520.01 to 5520.07, inclusive, of the Revised Code, the Department of Highways shall make a payment to any individual or family displaced from any dwelling not eligible to receive a payment under division (A) of this section which dwelling was actually and lawfully occupied by such individual or family for not less than ninety days prior to the initiation of negotiations for acquisition of such property. Such payment, not to exceed one thousand five hundred dollars, shall be the amount which is necessary to enable such person to lease or rent for a period not to exceed two years; or to make the down payment on the purchase of, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities.

* * * * * * * * *

"Sec. 5520.05. The Department of Highways shall provide a relocation advisory assistance program which shall include such measures, facilities, or services as may be necessary or appropriate in order:

"* * * * * * * * *"

"(B) To assure that, within a reasonable period of time, prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, housing meeting the standards established by the Director of Highways for decent, safe, and sanitary dwellings, equal in number to the number of, and available to such displaced families and individuals and reasonably accessible to their places of employment;

"* * * * * * * * *"

It will be noted that nowhere in the above sections is the term "dwelling" defined. Webster's New International Dictionary (Second Edition Unabridged) defines dwelling as "habitation; abode; residence; domicile." With that definition in mind, and in view of the fact that the term "dwelling" is not defined or limited in the statutes involved, there would seem to be no legal basis for excluding house trailers from being considered as dwellings within the meaning of the statute cited above. However, the ultimate determination must be made by you as Director of Highways under the provisions of House Bill No. 475 authorizing you to establish standards by which to determine what is a "decent, safe, and sanitary dwelling adequate to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market." In exercising the authority granted to you by House Bill No. 475, you are not prohibited by the terms of that Bill or by any other provisions of Ohio law from considering house trailers to be included within the term "dwelling", with one exception to be discussed below.

In Section 5520.03 (A), Revised Code, the term "comparable dwelling" is used. This is the only place in House Bill No. 475 where that term is used. It must be presumed that the General Assembly in enacting House Bill No. 475 used the term "comparable dwelling" in this particular section for a specific reason. That reason seems clear from the purpose of Section 5520.03 (A), supra. That section is an attempt to guarantee that the owner of property acquired for a highway project will receive enough money to be able to replace what has been taken from him with a comparable dwelling. It is my opinion that the use of the term "comparable" in this section would exclude a house trailer as a replacement dwelling when the property appropriated by the Department of Highways was improved with a dwelling which was not and had not been a house trailer.

Therefore, it is my opinion and you are hereby advised that a house trailer can cease to be an item of personal property and can instead become a part of real property under the law of fixtures, and it is a question of fact in each case, depending upon the temporal as well as the physical character of the foundation upon which the house trailer rests; and that the term "dwelling" as used in House Bill No. 475 (Sections 5520.01, to 5520.07, inclusive, of the Revised Code) does not exclude house trailers from consideration as replacement housing, except where the term "comparable dwelling" is used, in which case a house trailer would be excluded as a replacement dwelling when the property appropriated was improved with a dwelling which was not and had never been a house trailer.