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1. RELIEF — CRIPPLED CHILDREN — AID FURNISHED BY DEPARTMENT OF PUBLIC WELFARE — CHARGEABLE TO PARENTS — ELEMENT IN DETERMINING LOSS OF ACQUISITION OF LEGAL SETTLEMENT — SECTION 3477 GENERAL CODE.
2. COUNTY OF COMMITMENT PRIMARILY RESPONSIBLE TO DIVISION OF SOCIAL ADMINISTRATION FOR EXPENSE, CARE AND TREATMENT OF CRIPPLED CHILDREN — LEGAL SETTLEMENT — FINANCIAL RESPONSIBILITY OF COUNTY — JURISDICTION, JUDGE OF JUVENILE COURT.

## SYLLABUS:

1. *Aid furnished to crippled children by the Department of Public Welfare constitutes relief within the meaning of Section 3477, General Code. The receipt of such aid by the child is chargeable to the parents and is to be considered in determining the loss or acquisition of legal settlement.*

2. *The county of commitment is primarily responsible to the Board of State Charities, now the Division of Social Administration of the Department of Public Welfare, for the expenses of care and treatment provided for crippled children. Where the committing county is not the*

*county of legal settlement, the latter county may be rendered financially responsible providing the consent of the judge of the juvenile court of the county of legal settlement is first obtained.*

Columbus, Ohio, December 5, 1941.

Hon. Chas. Varner, Prosecuting Attorney,  
Ottawa, Ohio.

Dear Sir:

This will acknowledge receipt of your communication, which reads as follows:

"I would like your opinion on the following question:

It is the case of one J. S. who had been committed to the Crippled Children's Program in Putnam County and had received care through that agency. The family to which James belongs moved to Toledo in May, 1941.

The Crippled Children's Nurse advises that this boy will need further care in the summer of 1942. We would like to know:

- (1) Does assistance through the Crippled Children's Program have anything to do with the loss or establishment of legal settlement where relief is concerned?
- (2) Whose responsibility will this child become if they receive no assistance from any point until they have lived out of the county one year or more?"

"Legal settlement" is defined in Section 3477, General Code, as follows:

"Each person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, without relief under the provisions of law for the relief of the poor, or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief. No adult person coming into this state and having dependents residing in another state, shall obtain a legal settlement in this state so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside."

The legal settlement of a child is discussed in Section 1639-6, General Code, which provides:

“For the purposes of this chapter, a child shall have the same residence or legal settlement as its parents, legal guardian of its person, or his custodian who stands in the relation of loco-parentis. A person shall be presumed to have a legal settlement in any county of the state in which he or she has continuously resided and supported himself or herself for twelve consecutive months without public relief or assistance.”

The last above quoted section of the Code enacts into statutory law the common law rule that a child has the same residence or legal settlement as its parents. The last sentence of Section 1639-6, supra, follows closely the definition of “legal settlement” set forth in Section 3477, supra, and indicates that the Legislature considers public relief and public assistance as synonymous terms.

Since the legal settlement of a child is that of its parents and because of the duty of the parents to provide support, any relief furnished to the child is chargeable to the parents and is to be considered, therefore, in determining whether the parents have acquired a settlement status by continually residing in the county and supporting themselves for one year without relief.

In the instant case, the assistance afforded the child is provided for under Section 1352-8, General Code, which reads as follows:

“In order to provide suitable medical and surgical treatment, and education when necessary, of crippled children whose parents or guardians fail or are financially unable to provide such treatment, the board of state charities is authorized and empowered to receive into its custody such children. Application for such care, treatment, and education, shall first be made to the juvenile court by a parent, guardian or some interested person. If such court is of the opinion that such child is in need of treatment and education, and finds that the parent or guardian fails to provide it, he may make an order to that end; or if the parent or guardian is financially unable to pay all or a part of the expenses of such treatment, the court shall make a proper finding and decree. In either case the court shall at once forward a copy of the decree and a statement of facts to the board of state charities, and such board shall, when able to do so under this act, (G. C. §§1352-8 to 1352-11) accept such child for care as hereinbefore provided. Upon receipt of notice from such board that such child can be given suitable treatment the court shall

then commit such child to such board and provide for its conveyance in charge of a suitable person to the place designated by such board for treatment. The expenses for conveyance shall be paid by the county or by the parent or guardian as the court may direct. Such commitment shall be temporary and shall be only for the period necessary for the treatment of such child."

The expenses incident to the care and treatment of a crippled child are, under the provisions of Section 1352-4, General Code, chargeable to the county from which such child was committed or transferred.

The committing county under the provisions of Section 1639-34, General Code, may order the parent or guardian to pay for the care, maintenance or education of such child or it may seek reimbursement from the county of legal settlement by securing the consent of the judge of the juvenile court of said county before commitment, or it may certify such case to the court of the county of legal settlement for further proceedings.

From the foregoing, it is evident that the county of legal settlement may be ultimately responsible for the care and support of a crippled child. Although the assumption of this responsibility, in view of the discretionary power reposing in the judge of the juvenile court, does not necessarily depend on the inability of the parent to provide said care, it is submitted that such is generally the case.

In the case of *State, ex rel. v. Bristline*, 96 O.S. 581, it was held that the discretion of the juvenile court judge must be exercised in good faith and hence neither the committing county nor the county of legal settlement would be asked to bear the financial burden of caring for crippled children unless it was clearly evident that the parents were unable to do so.

The fact that the expenses incurred in the care and treatment of crippled children may be chargeable to the county of legal settlement is a very strong indication that such costs, when assumed by the county, constitute relief. The term "legal settlement" describes a certain type of residence which, when acquired, establishes the right to relief. The Legislature, therefore, in providing that the county of legal settlement under certain conditions is responsible for costs of care and treatment of crippled children has thereby declared such assistance to be relief. I

know of no instance where the term "legal settlement" is used other than in connection with relief.

It follows, therefore, that the receipt of assistance under the Crippled Children's Program constitutes relief within the meaning of Section 3477, supra.

The conclusion that the treatment and care of crippled children is to be considered as relief is strengthened by Section 3391, General Code, which defines the term "public assistance". Section 3391 provides in part as follows:

" \* \* \* 'Public assistance' includes poor relief and also the following: \* \* \* treatment and care of crippled children as provided by sections 1352-8 to 1352-9, both inclusive of the General Code; \* \* \*."

In view of the provisions of Section 1639-6, supra, wherein the Legislature has indicated that public assistance and public relief should be treated as synonymous with reference to the acquisition of legal settlement, and since by statute the treatment and care of crippled children constitute public assistance, it follows that such care is to be treated as relief within the meaning of the poor relief laws. Assistance through the Crippled Children's program is to be considered, therefore, in determining whether a legal settlement has been established.

With respect to the loss of legal settlement, the receipt of relief or of assistance through the Crippled Children's Program prevents the acquisition of a new settlement during the time that such assistance is received and for twelve consecutive months thereafter. Since a new settlement may not be acquired during this period, the original place of settlement continues in existence for the reason that a legal settlement may only be lost by the acquisition of a new settlement elsewhere. Trustees v. Trustees, 12 O.S. 430; Henrietta Township v. Oxford Township, 2 O.S. 32; 1927 Opinions of the Attorney General, No. 716, page 1214.

Concerning your second question, the committing county is primarily responsible to the Board of State Charities, now the Division of Social Administration of the Department of Public Welfare, for the expenses

of care and treatment provided for crippled children. As stated above, however, where the committing county is not the county of legal settlement, the latter county may be financially responsible providing consent is first obtained.

If the family in question now resides in a county other than that in which it received assistance under the Crippled Children's Program and if it has continually resided in such county for twelve consecutive months without relief under the provisions of law for the relief of the poor, a new legal settlement has been acquired. If the commitment to the Crippled Children's Program takes place within the county where the family now has legal settlement, said county is responsible for the expenses of care and treatment of the crippled child; if the commitment takes place in some other county, then the committing county assumes the primary responsibility.

In specific answer to your inquiry, therefore, it is my opinion that:

1. Aid furnished to crippled children by the Department of Public Welfare constitutes relief within the meaning of Section 3477, General Code. The receipt of such aid by the child is chargeable to the parents and is to be considered in determining the loss or acquisition of legal settlement.

2. The county of commitment is primarily responsible to the Board of State Charities, now the Division of Social Administration of the Department of Public Welfare, for the expenses of care and treatment provided for crippled children. Where the committing county is not the county of legal settlement, the latter county may be rendered financially responsible providing the consent of the judge of the juvenile court of the county of legal settlement is first obtained.

Respectfully,

THOMAS J. HERBERT,

Attorney General.