

OPINION NO. 73-080

Syllabus:

Under R.C. 339.40, an indigent alien graduate student may be admitted to a county tuberculosis hospital at public expense if he is a resident of the county. (Opinion No. 4389, Opinions of the Attorney General for 1954, approved and followed.)

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, August 16, 1973

You have asked for my opinion as to whether a board of county commissioners may use public funds for the treatment, in a county tuberculosis sanatorium, of an indigent alien graduate student of a state university. Your letter reads:

I have before me a request from the Portage County Commissioners, as follows:

"The Board of County Commissioners of Portage County, Ohio, have been consulted concerning the admission of an indigent, alien, graduate student of Kent State University to the Edwin Shaw T.B. Sanatorium, Portage County, Ohio."

I respectfully request your opinion as to whether or not the Board of County Commissioners, Portage County, Ohio, may legally admit this person to the T.B. Sanatorium, Portage County, Ohio, and pay from public funds the cost of his maintenance and treatment.

Section 339.40 of the Ohio Revised Code, as amended in 1967, suggests " * * * upon a proper presentation of the facts, and upon the recommendation of the health commissioner of a general health district said health commissioner may order * * *." Your prompt attention would be appreciated.

The Section to which you refer, R.C. 339.40, provides as follows:

The board of health of a city or of a general health district, upon a proper presentation of the facts, and upon the recommendation of the health commissioner of a city or of a general health district may order removed to a municipal, county, or district tuberculosis hospital any person suffering from pulmonary tuberculosis, when, in the opinion of the board such person is a menace to the public health and cannot receive suitable care and treatment at home. If such person leaves the state the health commissioner shall immediately notify the health authorities of the state to which the person

has gone. The expense of removal of such person to a tuberculosis hospital, and for his care, treatment, and maintenance therein shall be paid by such person or by those persons legally responsible for the cost of his care, treatment, and maintenance. Such expense shall be paid by the county in which he has legal residence, if he is unable to provide therefor.

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From this reference I am assuming that the individual suffers from pulmonary tuberculosis, that the board of health has found him a menace to public health, and that he cannot receive suitable care and treatment at home, as required by R.C. 339.40. According to that Section, if the individual is unable to pay for the treatment he receives at the tuberculosis hospital, his expenses shall be paid by the county of his legal residence.

In Opinion No. 4389, Opinions of the Attorney General for 1954, my predecessor held in the syllabus as follows:

Citizenship is no prerequisite to the admission of a tubercular person to a public tuberculosis hospital, and an indigent alien who is a resident of the county is entitled to be admitted to a district tuberculosis hospital and to be there hospitalized at the expense of the county.

That Opinion defined legal residence and distinguished it from legal settlement, at 529, as follows:

The only requirement is legal residence in the state for admission to a state hospital, and residence in the county or district for admission to a county or district hospital. It may be well to point out that residence or legal residence differs from legal settlement. Residence is the place in which a person has fixed his habitation without any present intention of removing therefrom. Legal settlement is the status required under the poor relief laws by a person who resides in a particular locality for a fixed period without receiving poor relief from either a public or private agency. Thus, a person applying for poor relief must establish legal settlement by residence in the county for the period of one year as provided by Section 5113.05, Revised Code, notwithstanding that he has had his permanent residence at such place. The Attorney General has made this distinction in Opinion No. 2928, Opinions of the Attorney General for 1940, page 967, and in Opinion No. 481, Opinions of the Attorney General for 1945, page 614, he held that hospitalization of tubercular persons at county expense was not poor relief. (Emphasis added.)

The fact situation of the Opinion, as stated at 527, involved a political refugee who had been admitted to the United States 2 years before, and gainfully employed within the county since that

time. He had not declared his intention to become a citizen of the United States at the time. My predecessor discussed the construction of the statutes relating to the control of tuberculosis, at 527-528, as follows:

The right of a tubercular person, be he citizen or alien, to admission to a public tuberculosis hospital depends upon the language of the statute under which the institution is established and the regulations adopted pursuant to such statute. Generally, the purpose of such statute is two-fold: to arrest the progress of the disease in the person affected; to isolate the case in order to curb the spread of the disease to the general public. Or, as stated by my predecessor in Opinion No. 3827, Opinions of the Attorney General for 1926, page 493, "from the standpoint of policy and humanitarian interests, it would seem that relief from such disease in any of its forms should be the object of government."

An examination of the statutes relating to the control of tuberculosis will show that the words "person" and "resident" are used, never the word "citizen," as indicating those who may require treatment or isolation. The Ohio Tuberculosis Hospital, for example, is required by Section 3701.63, Revised Code, to be "open to any legal resident of this state having or suspected of having tuberculosis and requiring care and treatment in a tuberculosis hospital."

With respect to county tuberculosis hospitals, Section 339.20, Revised Code, provides that "the department of health shall have general supervision of all sanatoria, hospitals, and other institutions engaged in the maintenance, care and treatment of persons suffering from tuberculosis." It defines the words "maintenance, care and treatment," as meaning "proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, as the medical superintendent of each tuberculosis institution prescribes."

The statute, Sections 339.21 and 339.22, Revised Code, also authorizes several contiguous counties to join in the construction and maintenance of a district hospital for the care and treatment of "persons" having tuberculosis, and provides that such district hospital for tuberculosis "shall be devoted to the care and treatment of those persons affected with tuberculosis who are residents of the district and who are in need of hospital care and treatment."

Thus, there is no set length of time an individual must live in the county before he becomes eligible for the hospital benefits; he need only establish residence.

In general, my predecessors have agreed that legal residence, as used in R.C. 339.40, is that place where a person has a fixed establishment and to which, whenever he is absent, he has an intention of returning. Opinion No. 4389, supra; Opinion No. 3226, Opinions of the Attorney General for 1948; Opinion No. 2892, Opinions of the Attorney General for 1940.

Because this definition of legal residence involves the intent of the individual, it is equivalent to domicile, as distinguished from a simple "residence" which requires only bodily presence as an inhabitant in a place. Present intent to remain indefinitely is the factor which distinguishes domicile from simple residence. In re Stephan's Estate, 5 Ohio Supp. 21, 17 Ohio Op. 361 (1940); Newton v. Mahoning County Commissioners, 100 U.S. 548, 4 Ohio F. Dec. 555 (1879); Davis v. Davis, 57 N.E.2d 703, 42 O.L.A. 105 (1944).

In the present situation the indigent alien is a student, apparently not employed. You have given no indication as to whether the individual intends to remain permanently within the county but it is clear that he is physically present in the county and that he intends to stay at least for the duration of his graduate program.

The question becomes, is a resident at a public institution for the sole purpose of obtaining an education a "resident" within R.C. 339.40?

Courts have generally recognized that attendance at school may be accompanied by an intent to make that place one's new home. In State ex rel. Kaplan v. Kuhn, 11 Ohio Dec. 321, 8 Ohio N.P. 197, 202 (1901), the court states:

It sometimes happens * * * that when study is one of the purposes, or even the main purpose, of residence in a place, there exists the ulterior intention of remaining there permanently after the period of study is at an end. In such case there can be no doubt that domicile is acquired.

Several tests for determining domicile at an educational institution are set forth in Kuhn, supra, at 203:

* * * [I]f having no parent, or, being separated from his father's family, not being maintained or supported by him; or if he has a family of his own, and removes with them to such town; or by purchase or lease takes up his permanent abode there without intending to return to his former domicil; or if he depends on his own property, income, or industry for his support,--these are circumstances more or less conclusive to show a change of domicil and the acquisition of a domicil in the town where the college is situated.

This case was cited with approval in State ex rel. May v. Jones, 16 Ohio App.2d 140,144 (1968), as follows:

Courts have generally recognized a student's right to vote at his college residence when the student's actions and conduct in the school town manifest an intent to make that place his new home. State ex rel. Kaplan v. Kuhn, 11 Ohio Dec. 321, 8 N.P. 197; 98 N.L.R.2d 495.

See also, Anderson v. Brown, 332 F. Supp. 1195 (1971).

I do not have before me facts that would allow me to determine whether the indigent alien in this case is a resident for purposes of R.C. 339.40. That determination is a factual one of intent, vel non, to remain permanently. The tests are those mentioned in Kuhn, supra; see also, Baraket v. Baraket, 2 Ohio Supp. 184, 10 Ohio Op. 395.

It should be noted, however, that where a statute contains language capable of different shades of meaning, such as the word "resident," such statute should be construed broadly and not in a narrow or restricted sense. State v. Ward, 4 Ohio Op. 120, 122 (1935). The exact significance of the term should be determined from the context and apparent object to be attained by the enactment of the statute. Kuhn, supra, at 11 Ohio Dec. 329; R.C. 1.49(A).

The object of the statutes relating to the control of tuberculosis was well discussed by my predecessor in Opinion No. 4389, quoted supra.

In Opinion No. 3827, Opinions of the Attorney General for 1926, my predecessor stated that from the standpoint of policy and humanitarian interests it would seem that relief "from such disease or any of its forms should be the object of government." In Opinion No. 2928, Opinions of the Attorney General for 1940, my predecessor stated:

The legislature being cognizant of the fact that tuberculosis is a disease which will spread unless properly controlled, that if not properly treated will likely prove fatal to the patient, and that many people in this state so afflicted were not receiving proper care and treatment, enacted legislation to control this problem.

Therefore, in making their determination of the student's residence, the board of county commissioners should construe the facts as favorably as possible to a finding of residence, because such a finding would further the statutory purpose to cure tuberculosis and prevent its spread.

In specific answer to your question, it is my opinion and you are so advised, that under R.C. 339.40, an indigent alien graduate student may be admitted to a county tuberculosis hospital at public expense if he is a resident of the county. (Opinion No. 4389, Opinions of the Attorney General for 1954, approved and followed.)