

2903.

NEEDY BLIND PERSON — WHERE REQUIREMENTS SECTIONS 2965-1 (a) AND 2965-1 (b) G. C. MET, ENTITLED TO RELIEF UNDER SECTION 2965-1 (a) G. C. — COUNTY TO FURNISH RELIEF WHERE PARTY RESIDED THEREIN ONE YEAR OR MORE WHEN NOT VOLUNTARILY AND CONTINUOUSLY ABSENT FOR ONE YEAR — STATUS NOT CHANGED WHERE PARTY RESIDED IN COUNTY YEAR IMMEDIATELY PRECEDING DATE OF APPLICATION FOR RELIEF — SPECIFIC CASE DISCUSSED.

SYLLABUS:

A needy blind person who meets the requirements of Sections 2965-1 (a) and 2965-1 (b), General Code, is, under the provisions of Section 2965-1 (c), General Code, entitled to relief to be furnished by the county in which he has resided one year or more and from which thereafter he has not been absent voluntarily and continuously for one year regardless of whether or not such person has resided in and been an inhabitant of such county for the year immediately preceding the date of his application for such relief. Specific case discussed.

Columbus, Ohio, October 16, 1940.

Mr. Walter Schmitt,
Member, Ohio Commission for the Blind,
Atlas Bank Building,
Cincinnati, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

“The Commission has pending before it for decision an appeal under Section 2967-2 (pension for the blind law) by an applicant whose application was denied by the County Commissioners of Summit County on the ground that the applicant did not meet the qualifications of residence under Section 2965-1.

Before passing upon the appeal, the Commission believes that it needs an interpretation of Section 2965-1 as to the meaning of these residential requirements.

It appears from the record, that the applicant was born and reared in Summit County. He is what might be termed an itinerant blind person, that is, he travels from place to place, playing an accordion on public streets and in other places.

During the period from 1930 until November 30, 1939, the date of his application for the pension, the applicant resided at various places in the City of Akron, Summit County. During this same period, he was absent from Akron for extended periods, going as far west as the Pacific Coast and as far east as New York. For instance, the record shows that he was absent from the fall of 1932 until September, 1933. Again, from the latter part of 1933 until some time in 1934. He was also away three months during the fall of 1934. Also from November, 1938 to August 1, 1939, always returning, however, to Akron where he resided at different locations.

The legal question is whether or not at the time of his application he was a resident of Summit County within the meaning of the above mentioned section, particularly under sub-paragraph (c) of that section, which requires that the applicant shall have resided in and been an inhabitant of the county in which application is made for at least one year immediately preceding the date of the application, or has a legal settlement in the county in which the application is made.

You will note that the same section in the last sentence defines a legal settlement to be one where a person has resided one year or more in any county of this state, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom.

There is nothing in the record to indicate that while absent from the city, he intended to take up his legal residence outside of Ohio, nor is there anything to indicate an intention to reside anywhere except Akron, Ohio.

We would, therefore, appreciate your advice on this question as to whether or not under the facts above mentioned the applicant was or was not a resident within the meaning of sub-paragraph (c)."

Section 2965-1, General Code, to which you refer in your inquiry reads as follows:

"Relief shall be given under this act to any needy blind person who: (a) is not less than 18 nor more than 65 years of age; and (b) lost his eyesight while a resident of the state or shall have resided in the state for a period of five years during the nine years immediately preceding the filing of the application for assistance, the last year of which shall be continuous and immediately precede such application; and (c) has resided in and been an inhabitant of the county in which application is made for at least one year immediately preceding the date of the application, or has a legal settlement in the county in which the application is made; provided, how-

ever, that any person otherwise qualified who has no legal settlement in the county in which he makes application, shall file his application in the county in which he is residing, and relief if granted, shall be paid entirely from state funds until he can qualify as having a legal settlement in that county. For the purpose of this act, every person who has resided one year or more in any county of this state shall thereby acquire a legal settlement in such county, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom."

In substance this section sets forth certain requirements which must be met by a needy blind person in order to become eligible for relief under the act in question. You fail to state the age of the applicant under consideration. Therefore, in answering your request I shall assume that said applicant comes within the age limitations contained in Section 2965-1 (a), supra. Moreover, you do not point out whether the applicant lost his eyesight while residing in Ohio, other than to say that he was born and reared in Summit County, Ohio. It, therefore, appears that no question is being raised as to the applicant's eligibility by reason of the requirements of Section 2965-1 (b), supra. In view of the above, your request resolves itself into a consideration of Section 2965-1 (c), supra, as regards the applicant in question.

The requirement contained in Section 2965-1 (c), supra, is set out in the alternative; that is to say, in order to qualify under this sub-section a needy blind person must show (1) he "has resided in and been an inhabitant of the county in which application is made for at least one year immediately preceding the date of the application", or (2) he "has a legal settlement in the county in which the application is made".

Let us first consider whether this individual has a "legal settlement" in Summit County. The last sentence of Section 2965-1, supra, defines "legal settlement" as follows:

"For the purpose of this act, every person who has resided one year or more in any county of this state shall thereby acquire a legal settlement in such county, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom."

The facts which you present in your letter warrant the conclusion that the applicant has obtained a legal settlement in Summit County in that he has resided therein more than one year and there is nothing in your letter to indicate the acquisition of a legal settlement elsewhere or a voluntary and

continuous absence from said county for a period of one year since the acquisition of such settlement. A temporary absence of less than one year's duration with intention of returning to Summit County would not terminate the legal settlement already acquired therein.

In view of the conclusion which has been reached, for the purposes of this opinion it is not necessary to determine whether or not the applicant "has resided in and been an inhabitant of the county in which application is made for at least one year immediately preceeding the date of the application". As pointed out above the requirements of Section 2965-1 (c) are in the alternative and compliance with either is, therefore, sufficient.

Before concluding, I desire to call your attention to Opinions of the Attorney General for 1937, Vol. II, page 1540, wherein at page 1549 my predecessor, in discussing Section 2965-1 (c), observed as follows:

"It must also be further noted that Section 2965-1 (c), provides a method for temporary blind relief to those needy persons who are otherwise qualified but have no legal settlement in the county in which such application is made. It provides such person 'shall file his application in the county in which he is residing, and relief if granted, shall be paid entirely from state funds until he can qualify as having a legal settlement in that county.' In other words, any needy blind person is entitled to some kind of relief, if needed, and the matter of 'legal settlement' is to be no bar thereto."

In view of the facts you have submitted concerning the applicant about whom you inquire and in line with the foregoing discussion, it is my opinion that said applicant has a legal settlement in Summit County, Ohio, within the meaning of that term as it is used in Section 2965-1 (c), General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.