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1. TUBERCULOSIS HOSPITAL—EXPENSE OF TREATMENT OF AN INDIGENT—SHOULD BE PAID BY COUNTY OF LEGAL RESIDENCE—HOSPITALIZATION AT COUNTY EXPENSE OF TUBERCULAR PERSON NOT POOR RELIEF WITHIN MEANING OF SECTIONS 3139 TO 3139-22 G. C.
2. ARMED SERVICES OF UNITED STATES—PHYSICAL ABSENCE FROM COUNTY OF PERSON IN SUCH SERVICE—DOES NOT TOLL THE RUNNING OF TWELVE MONTH PERIOD TO ESTABLISH LEGAL SETTLEMENT UNDER SECTION 3477 G. C.

SYLLABUS:

1. The expense of treatment of an indigent in the hospital for tuberculosis should be paid by the county of legal residence under Sections 3139 to 3139-22 General Code. Hospitalization at county expense of a tubercular person is not poor relief within the meaning of Section 3477, General Code.

2. Physical absence from the county of a person who is serving in the Armed Services of the United States does not toll the running of the twelve month period for establishing a legal settlement under the provisions of Section 3477, General Code,

Columbus, Ohio, October 2, 1945

Hon. Harold K. Bostwick, Prosecuting Attorney
Chardon, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion upon the following facts and questions :

"Mr. O. was born in Cuyahoga County about 1913 and lived there until his marriage on August 21, 1941. Following his marriage he moved into the home of his wife's parents in Geauga County and remained there until his induction into the Army September 4, 1941. His wife and her two children by a former marriage continued on in her parent's home.

The wife was admitted to Sunny Acres Sanatorium on January 13, 1942, and was discharged 3-4-42. She returned to her parents' home.

On May 21, 1943, Mr. O. was discharged from the Army and returned to the home of his parents-in-law where he remained until July 31, 1943, when he, his wife, and her two children moved to Cuyahoga County and established a home. In January, 1944, the family moved to Lake County, where they have remained since.

Mrs. O. was hospitalized for tuberculosis from May 19, 1944, to June 5, 1945. Of this period May 19, 1944, to July 15, 1944, and August 1, 1944, to June 5, 1945, covered care at Sunny Acres in Cuyahoga County and July 15, 1944, to August 1, 1944, at Lowman Pavilion, Cleveland City Hospital. Care at Sunny Acres was given at Cuyahoga County expense.

On July 31, 1945, Mrs. O. was again hospitalized for tuberculosis, this time in Lake County Memorial Hospital. The question arises as to who shall finance this care if Mr. O. is unable to do so.

Other questions we would like answered are :

1. Can a service man establish settlement in a county by reason of his wife living with her parents in that county during his service in the Army?
2. Is care received by a tubercular patient at county expense considered relief as far as establishing settlement is concerned?"

While it is incidental to the main problem for consideration, I will first discuss the effect of service in the Armed Forces upon legal settlement.

A careful review of cases decided by Ohio courts and those of many other states and also the opinions of the Attorneys General has failed to disclose a determination of this particular question. However, it seems that there can be but one conclusion, which may be easily resolved.

It appears from the facts related in your request that the soldier in question was born in Cuyahoga County, and from such facts it may be assumed that Cuyahoga County was the county of his legal settlement until he acquired a new legal settlement. The first act toward acquiring a new legal settlement was the marriage and concurrent removal to Geauga County on August 21, 1941. He resided with his wife, and her two children by a former marriage, in the home of her parents in Geauga County until his induction into the Army on September 4, 1941. Upon his discharge from the Army on May 21, 1943, he returned to Geauga County to again reside with his wife and her children in the home of her parents until July 31, 1943, when he removed his family to Cuyahoga County. The fact that the soldier returned to Geauga County upon his discharge from the Army would appear to be sufficient indication of the necessary animus menendi which has been held by various courts to be a competent factor in determining legal settlement, although not necessarily the controlling factor. In view of the conclusions to be reached later in this opinion, it is not necessary to pursue this line of discussion further, but it will suffice to state that in my opinion, and for the reasons stated above, the legal settlement of this family was in Geauga County until July 31, 1943. In reaching this conclusion, I am not unmindful of the fact that the soldier was actually personally in residence there for only a relatively short time at the beginning of the period and again at the end of said period, but, in my opinion, such physical absence while in the service would not toll the running of the necessary period of twelve months.

Section 3477, General Code of Ohio, defines legal settlement 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 law in this state is that the legal settlement of a married woman is that of her husband. See 31 O. J. 102 and annotations thereto.

It will be noted from a statement of facts given in your request that it was the wife who was a patient in the tuberculosis hospital, and, therefore, we must consider whether relief granted to a member of the family for support of which a person is responsible, would constitute poor relief to that person under the provisions of Section 3477, General Code.

Only in one instance has the question been considered by the courts of this state. In the case of *Stoecklein v. Priddy, et al.*, 31 N.P. (n.s.) 369, the Probate Court of Montgomery County had under consideration the following facts: A father was adjudged insane by the Probate Court of Preble County and committed to the Dayton State Hospital. At the time of the commitment he had a legal settlement in Preble County. Thereafter his wife and children moved to Montgomery County where they obtained relief at various times from the local authorities until a dependency proceedings against such children was filed in the Juvenile Court of Montgomery County, at which time the children were adjudged dependent and ordered committed to the Children's Home of Preble County. The children were maintained in the Children's Home of Preble County for approximately two years and upon their release returned to Montgomery County in the care and custody of the mother. Less than one year thereafter the mother and children were placed on relief in Montgomery County. The question for the court to determine was whether or not the care, maintenance and support of her minor children as dependents, in the Preble County Children's Home, constituted such public support and relief under the statutes of Ohio as would bar the mother from establishing a legal settlement in Montgomery County during the period that the children were in the Preble County Home. This ques-

tion was resolved by the court in the affirmative, and in the course of the opinion the conclusions are announced as follows:

“This court is of the opinion that the charity extended by Preble county in caring for and maintaining the children in Preble County Children’s Home constituted public support and relief within the meaning of the law for the relief of the poor.

The court is also of the opinion that Preble county in extending public support and relief to the children of Eva Priddy, was extending public support and relief to Eva Priddy, herself, since she was the head and sole support of the family.”

The decision reached by the court in the case of *Stoecklein v. Priddy*, supra, is well reasoned and must be considered sufficient authority for the proposition that relief furnished to the wife of the soldier in question constituted the extending of public support and relief to the soldier, himself, under the provisions of Section 3477, General Code, if, in fact, care received by a tubercular patient at county expense is poor relief.

In an opinion rendered by one of my predecessors and found in 1937 Opinions of the Attorney General at page 58, it was held:

“The granting of hospitalization for tuberculosis by a board of county commissioners is not relief under the provisions of law for the relief of the poor, such as is provided under Section 3479, General Code, and a resident of one township removing to another township within the county and receiving such hospitalization becomes a legal resident of the township to which he removed, upon residing in said township three months, although he has received such hospitalization.”

The opinion just referred to calls attention to a previous opinion of this office appearing in Opinions of the Attorney General for 1934, Vol. III, page 1664. The first branch of the syllabus of that opinion reads:

“The county of legal residence of persons afflicted with tuberculosis should hospitalize such residents. Legal settlement of such persons within the county is not a necessary requirement. The expense of treatment in the hospital for tuberculosis should be paid by the county of legal residence if such person is indigent.”

Considerable emphasis was placed upon Sections 3140, 3143, 3144 and 3145 of the General Code, as then in effect. Those sections concerned district tuberculosis hospitals and in several of them reference was made

to "residents of the county". Those sections have been repealed but there now appear upon the statute books Sections 3139 to 3139-22, General Code, concerning tuberculosis hospitals and clinics. These sections likewise refer to "residents". Attention is particularly directed to Section 3139-2, General Code, reading as follows:

"The district hospital for tuberculosis shall be devoted to the care and treatment of those persons afflicted with tuberculosis who are residents of the district and who are in need of hospital care and treatment, provided that if facilities are available and not used by such residents, trustees of such hospital may contract for the care of patients from counties not included in the district."

It would, therefore, appear that there has been no change in the statutes which would in any way alter the conclusion reached by the Attorney General in the 1934 opinion.

Returning, then, to the statement of facts recited in your request, we direct your attention to the statement that the family moved from Cuyahoga County to Lake County in January, 1944. No statement appears which would imply any other intention than that Lake County should be the residence and legal settlement of the family, and, therefore, such is presumed to be the fact. After residing in Lake County for some five and one-half months the wife became a patient in the tuberculosis hospital where she remained approximately eleven months. During this time it would appear that her husband and children resided in Lake County, and the statement is made that upon her discharge from the hospital she returned to Lake County. There seems, therefore, to be no question but that a legal settlement has been established by this family in Lake County, because I have concluded, as stated above, that the granting of hospitalization for tuberculosis does not constitute poor relief and, therefore, is not a bar to the establishment of a legal settlement.

It is likewise quite clear that regardless of the county of legal settlement, Lake County would be responsible for the hospitalization of the tubercular residents of that county who are indigent.

In specific answer to your questions, therefore, you are advised that in my opinion Lake County is responsible for the care of Mrs. O. in the tuberculosis hospital or in the Lake County Memorial Hospital, where

she is now hospitalized for tuberculosis, in the event Mr. O. is unable to pay for such care.

I am also of the opinion that physical absence from the county of a person who is serving in the Armed Services of the United States does not toll the running of the twelve month period for establishing a legal settlement under the provisions of Section 3477, General Code.

It is my opinion that hospitalization at county expense of a tubercular person is not poor relief within the meaning of Section 3477, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General