It follows that publication of the ordinance of the Village of Cortland may be made in the Cortland Home News if council sees fit to do so, or in any English newspaper of general circulation in the village. That is to say, that inasmuch as there is no English newspaper *printed or published* and of general circulation in the village, and the Cortland Home News is an English newspaper of general circulation in the village, the publication of ordinances may be made in that paper. However, council is not required to publish the ordinances in that paper, but may publish them in any English newspaper of general circulation in the community, and I assume that there are other English newspapers of general circulation in the Village of Cortland, or council may publish ordinances by posting, in the manner prescribed by statute.

Specifically answering your question therefore, I am of the opinion:

First, the law does not require the council of the Village of Cortland to publish their ordinances and other legal notices in the Cortland Home News, but council may publish them in that paper if it desires to do so.

Second, there being no English newspaper published and of general circulation in the Village of Cortland, as the term "published" is defined by Section 6255, General Code, council may publish ordinances and other legal notices in any English newspaper of general circulation in the village, or they may publish the same by posting, in the manner prescribed by statute.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2282.

BLIND—WHO IS NEEDY BLIND PERSON—LIABILITY OF PARENTS FOR SUPPORT OF MINOR CHILDREN, DISCUSSED—SECTION 2965, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *By the terms of Section* 2965, *General Code, before one may be deemed a needy blind person, so as to be entitled to relief authorized by law, he must be a person* (1) *who, by reason of loss of eyesight, is unable to provide himself with the necessities of life and who has not sufficient means of his own to maintain himself and* (2) *who, unless extended the relief authorized by law, would become a charge upon the public or upon those not required by law to support him.*

2. *In Ohio a parent is under legal as well as moral obligation to provide reasonably for the support of his minor child, until the latter is in a condition to provide for his own support.*

3. *Whether or not the parent's duty to support his minor child terminates upon the child's coming of age, where the child is unmarried and living in his father's home and is unable, by reason of physical or mental infirmity, to provide for himself, has never been passed on by the courts of this state; although both reason and the weight of authority support the view that where a child is of weak body or mind and, by reason thereof, unable to care for himself after coming of age, and remains unmarried and living in his father's home, the parental rights and duties remain practically unchanged.*

4. *Whether or not a person is a needy blind person to whom relief should be extended, as authorized by Section* 2965 *and related sections of the General Code, is*

a question of fact to be determined upon the evidence by the county commissioners; and in the absence of fraud or other gross abuse of such discretion the determination of the commissioners is final.

COLUMBUS, OHIO, June 27, 1928.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—I acknowledge receipt of your letter of recent date requesting my opinion, which letter is as follows:

> "I submit the following inquiry:
>
> L. H. R. is a blind young man just past 21 years of age. He is the son of S. and M. R., living in our county, and the father is the owner of real estate, and in fairly good financial circumstances. L. H. R. by his father has made application to the county commissioners for blind pension, and they will not allow him any until we receive an opinion from you.
>
> Please let me have a reply or an opinion as soon as possible."

The sections of the General Code, providing for relief to the needy blind, necessary to be quoted in this opinion are Sections 2965 and 2967, which provide as follows:

> Section 2965. "Any person of either sex who, by reason of loss of eyesight, is unable to provide himself with the necessities of life, who has not sufficient means of his own to maintain himself, and who, unless relieved as authorized by these provisions would become a charge upon the public or upon those not required by law to support him, shall be deemed a needy blind person."
>
> Section 2967. "At least ten days prior to action on any claim for relief hereunder, the person claiming shall file with the board of county commissioners a duly certified statement of the facts bringing him within these provisions. The list of claims shall be filed in a book kept for that purpose in the order of filing, which record shall be open to the public. No certificate for qualification of drawing money hereunder shall be granted until the board of county commissioners shall be satisfied by a certificate from a registered physician stating the extent to which the applicant's vision is impaired, and giving his opinion as to the possibility of correcting the impairment by proper procedure; and from the evidence of at least two reputable residents of the county, that they know the applicant to be blind and that he has the residential qualifications to entitle him to and that he is in need of the relief asked. Such evidence shall be in writing, subscribed to by such witnesses, and be subject to the right of cross-examination by the board of county commissioners or other person. If the board of county commissioners be satisfied that the applicant is entitled to relief hereunder, said board shall issue an order therefor in such sum as said board finds needed, not to exceed four hundred dollars per annum, to be paid quarterly from the funds herein provided on the warrant of the county auditor, and such relief shall be in place of all other relief of a public nature; provided, however, that where a husband and wife are both blind, and both have made application for blind relief as herein provided, the total relief given by

said county commissioners to such husband and wife shall not exceed six hundred dollars per annum, and such relief shall be in place of all other relief of a public nature, to which such husband and wife or either of them, might be entitled as a blind person."

By the terms of Section 2965, supra, before one may be deemed a needy blind person so as to be entitled to the relief authorized by law, he must be a person (1) who, by reason of loss of eyesight is unable to provide himself with the necessities of life and who has not sufficient means of his own to maintain himself, and (2) who, unless extended the relief authorized by law, would become a charge upon the public or upon those not required by law to support him. Section 2967 prescribes the procedure to be followed in obtaining an allowance for a needy blind person and vests in the county commissioners the power and jurisdiction to determine from the evidence to be submitted to them whether or not the facts be such as to entitle the applicant to the relief provided for.

I assume that your question is engendered by the facts that, as stated by you, the father of the blind person here involved, "is the owner of real estate and in fairly good financial circumstances." From your statement I infer that the father is financially able to keep his son, and the question is presented: Is it the duty of a parent to maintain his child after such child becomes of age if, by reason of mental or physical infirmity, such child is unable to care for himself and remains unmarried and living in the father's home?

As to whether or not there is a legal duty on the part of a parent, at common law, to maintain his minor child is a question upon which the authorities are conflicting. In England, and in some of the states of this country, it is held that there is only a moral obligation, in the absence of a statute, and that there is no liability for necessaries unless there be a promise in fact to pay for them, express or implied. Even in these jurisdictions, however, it is usually provided by statute that the public authorities may compel the parent, if he is able to do so, to maintain his child, and in most states it is a crime if the parent fails or neglects to support his minor child. In other states it is held that the obligation is a legal one and that there is a liability for necessaries in case of non-support by the parent, in the absence of any promise in fact, or else that, if the obligation be merely a moral one, it nevertheless is sufficient to create a legal liability. See *Tiffany on Domestic Relations,* page 321, and following, where the author says in part as follows:

"Morally, of course, a parent is bound to support his children, if they are unable to support themselves. In most jurisdictions this moral obligation is expressly made a legal obligation by statute. It is provided by the statute of 43 Eliz. c. 2, that the father and mother, grandfather and grandmother, of poor, old, blind, lame, and impotent persons, shall maintain them, if of sufficient ability, but that no person is bound to provide for his children unless they are impotent, or unable to work, through infancy, disease, or accident, and then that he is only obliged to furnish them with necessaries. Statutes more or less similar to this, and having the same object, have been enacted in many of our states. Even where this is not the case, it would seem that the English statute is to be regarded as in force, for it is old enough to have become a part of our common law, and is applicable to our conditions. * * *

Whether or not, at common law and independently of statutory provision, a parent is under a legal obligation to support and maintain his children, or whether it is merely a natural duty, binding in morals only,

is a question upon which the authorities are conflicting. The later English cases hold that there is only a moral obligation. * * *

In this country the rule is the same in many states. In a number of states it has been expressly held, in accordance with the English cases referred to, that a parent is under no legal obligation to support his children; and that he is not liable, therefore, for necessaries furnished to them, in the absence of any express contract to pay for them, or a contract implied in fact.

The result of these decisions is clearly opposed to every natural sense of justice. If they are sound, the result is that a father can desert a child which, because of its youth or of sickness or other cause, is absolutely helpless, and a stranger who, to save its life, feeds and clothes it, and procures necessary medical attendance, cannot recover his expenditures from the father. * * * Again, it is well settled, both in England and in this country, that a parent who, being able, neglects to provide the necessaries of life, including necessary medical attendance, for a child who is unable to provide for himself, and thereby causes the child's death, is guilty of manslaughter at least; and, if the neglect is willful and malicious, he is guilty of murder. It is equally well settled, as a general principle of law, that to render a person guilty of manslaughter, because of a neglect of duty causing another's death, the duty must be a legal, as distinguished from a merely moral, duty. It is inconsistent, therefore, to hold a parent criminally liable for neglect to support his child, and at the same time to say that he is under no legal obligation to support it. * * *

* * * *The truth is that, in reason and on principle, a parent is legally, as well as morally, bound to support his children, if they are unable to care for themselves, and if he is able to do so; and if he neglects to do so, and another performs the duty for him, even against his wish or directions, he may recover therefor from the father, without regard to any idea of a contract in fact. There are a number of cases, and much dictum, in favor of this view.*"

As authority for the statement above in italics, the writer cites the case of *Pretzinger* vs. *Pretzinger,* 45 O. S. 452. The syllabus in that case reads as follows:

"1. The obligation of the father to provide reasonably for the support of his minor child, until the latter is in a condition to provide for his own support, is not impaired by a decree which divorces the wife *a vinculo,* on account of the husband's misconduct, gives to her the custody, care and nurture of the child, and allows her a sum of money as alimony, but with no provision for the child's support.

2. The mother may recover a reasonable compensation from the father, for necessaries furnished by her to the child after such decree, and may maintain an original action for such compensation against the father, in a court other than that in which the divorce was granted."

In the opinion by Judge Dickman it was said:

"The duty of the father to provide reasonably for the maintenance of his minor children, if he be of ability, is a principle of natural law. And he is under obligation to support them, not only by the laws of nature, but by the laws of the land. As said by Chancellor Kent, 'The wants and

weaknesses of children renders it necessary that some person maintains them, and the voice of nature has pointed out the parent as the most fit and proper person.' 2 Kent's Com. 190*; and see *Trustees Jefferson Tp.* vs. *Trustees Letart Tp.*, 3 Ohio, 100; *Edwards* vs. *Davis,* 16 John. 281.

* * * * * * * * * * * * *

We think it is a sound principle that, if a man abandons his wife and infant children, or forces them from home by severe usage, he becomes liable to the public for their necessaries. The doctrine is stated in *Weeks* vs. *Merrow,* 40 Me. 151, that, if a minor is forced out into the world by the cruelty or improper conduct of the parent, and is in want of necessaries, such necessaries may be supplied, and the value thereof collected of the parent, on an implied contract. See also, the language of Metcalf, J., in *Dennis* vs. *Clark,* 2 Cush. 352; 2 Kent's Com. 193; *Stanton* vs. *Willson,* 3 Day, 37; Lord Eldon, in *Rawlyns* vs. *Vandyke,* 3 Esp. 252; *Fitler* vs. *Fitler,* 33 Pa. St. 50. * * *

* * *

The statute, 43 Eliz., Ch. 2, directs that 'the father and mother, grandfather and grandmother, of poor, impotent persons, shall maintain them, if of sufficient ability, as the quarter-sessions shall direct.' Its provisions have been re-enacted in several of our states; and in view of the special enactment it has been held that, where the husband and wife are divorced, and upon her application the custody and control of their minor children are awarded to her, she cannot, in an action against the father, recover for the entire support of such children furnished by her after the divorce, but only for contribution. But there is no such statute in this state, and in general, after a divorce as well as during coverture, the primary duty of maintaining any minor child of the marriage still remains with the former husband."

From the above case, which was decided on December 13, 1887, it will be seen that the common law rule in Ohio was that the father was under legal obligation to provide reasonably for the support of his minor child, the syllabus in the case stating that this duty continued until the latter was in a condition to provide for his own support. After the decision in the Pretzinger case, supra, Sections 7996 and 7997, General Code, were enacted. These sections read in part as follows:

Section 7996. "The husband is the head of the family. * * * "

Section 7997. "The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able."

This latter section was considered by the Supreme Court of Ohio in the case of *Thiessen* vs. *Moore,* 105 O. S. 401, the second branch of the syllabus in that case reading:

"In a divorce, alimony, custody, support and maintenance proceeding the court is without power to make a decree with reference to the maintenance of minor children beyond the date when such children shall arrive at their majority, and a decree which purposes and attempts to direct the course of the succession to the title of real estate after the death of the

parents is in that respect *ultra vires* and void and may be attacked in a collateral proceeding."

In the opinion by Judge Robinson it was said as follows:

"Section 7997, General Code, provides: 'The husband must support himself, his wife, and his minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able.'

The legal obligation of the parent to support his children extends to but not beyond each child's majority. This court in the case of *West* vs. *West,* 100 Ohio St., 33, approved its former holding in the case of *Marleau* vs. *Marleau,* 95 Ohio St., 162, wherein it declared 'A proceeding for alimony does not invoke the equity powers of the court but is controlled by statute. The court is only authorized to exercise such power as the statute expressly gives, and such as is necessary to make its orders and decrees effective.'

The Legislature having imposed no obligation upon the parent beyond the majority of the children, the court was without power to create such obligation, was without power to do other than provide for the maintenance, care, education and custody of the children during minority, and was without power to make any order with reference to the children which was not for the purpose of maintenance, care, custody and control during minority.

That the order to convey the remainder of the real estate to the children in this case had no reference to maintenance is apparent from the fact that there was reserved, first, a life estate to Henry Moore, Sr., second, a life estate to Ida Moore; and while of course the court could not know that those life estates would not be extinguished during the minority of the children, yet there is no attempt in the order to limit its application and operative effect to such contingency. The effect, and undoubted purpose of the order, was to direct the course of the succession to the title to the real estate after the death of the parents, and not to provide maintenance for the children during minority; it was beyond the jurisdiction of the court in that respect, was absolutely void, and for that reason may be attacked in this or other collateral action."

An examination of the facts in the Thiessen case will show that the court was concerned, among other things, with the order of a Common Pleas Court in a divorce case fixing the property rights of the parties. Moreover, from the facts in that case it appears that the children there involved were normal both mentally and physically, and for these two reasons that case can hardly be said to be authority on the question here to be determined. As said by Chief Justice Marshall in the case of *Cohens* vs. *Virginia,* 6 Wheat. 264, "it is a maxim not to be disregarded that general expressions in every opinion are to be taken in connection with the case in which those expressions are used. If they go beyond the case they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision."

I am inclined to the opinion that Section 7997, supra, as construed by the Supreme Court in the Thiessen case is not dispositive here. I reach this conclusion for two reasons: First, Section 7997 was enacted on March 19, 1887, as the third section of an act "To define the rights and liabilities of husband and wife." The first section of this act, now codified as Section 7995, General Code, reads:

"Husband and wife contract toward each other obligations of mutual respect, fidelity and support."

and both the title and the context of the entire act clearly show that the act was passed for the purpose of fixing the relative rights and obligations of man and wife. In the second place, it seems to me that it may be said that Section 7997 is declaratory of the common law with reference to the duty of a husband and father to support his minor children who are normal physically and mentally and who therefore at the age of majority would be conclusively presumed to be able to care for themselves. No mention is made of children who are mentally incompetent or physically helpless, and I do not feel that it is reasonable to conclude that the Legislature intended to declare or change the common law with reference to adult children in either of these classes.

This brings me to a consideration of the question as to whether or not it is the duty of the parent to support an adult child who is mentally or physically incapable of providing for himself. While the authorities seem to be divided on this question, it seems to me that the better rule and the one supported by both reason and the weight of authority is that it is the duty of a parent, who is able so to do, to support a child who is of weak body or mind and unable to care for himself and remains unmarried and living in the father's home, even after such child becomes of age. In 20 R. C. L. 586, it is said as follows:

"The general rules of the law of parent and child, being based on the child's incapacity, both natural and legal, and its consequent need of protection and care, apply only while the child is under the age of majority. This is a fundamental principle that lies at the very foundation of society, and was intended to support and maintain the exercise of parental authority in the family and the home, and to guard and protect the children of the family until their minds should become sufficiently cultivated, and their judgment sufficiently matured, to enable them to act for themselves. The precise limit of time is fixed by law, and it cannot, in any case, be either enlarged or diminished by evidence, however cogent, or by argument, however persuasive. *But where a child is of weak body or mind, unable to care for himself after coming of age, and remains unmarried and living in the father's home, it has been held that the parental rights and duties remain practically unchanged. The father's duty to support the child continues as before.* He is still entitled to receive the child's services and wages, and the child follows any change of settlement of the father, like a minor child."

In support of the statement above italicized the cases of *Crain* vs. *Mallone,* 130 Ky. 125, 113 S. W. 67, 22 L. R. A. (N. S.) 1165, and *Rowell* vs. *Town of Vershire,* 62 Vt. 405, 19 Atl. 990, 8 L. R. A. 708, are cited. The second and third branches of the headnotes in the case of *Crain* vs. *Mallone,* supra, read as follows:

"One's duty to care for his child does not necessarily terminate when the child becomes an adult, and the parent must support a helpless adult child, if able to do so.

Ky. St. 1903, Section 1407, requiring property given a descendant to be charged against him on a distribution of the undevised estate, does not authorize a charge against a helpless adult child for the value of his support by his parent."

The opinion reads in part as follows:

" * * * The effort here is not to require a helpless adult child to contribute to or pay for his maintenance, but to permit the parent to charge the cost of maintaining as an advancement, and have the same deducted from the child's part of the estate. It is conceded that it is the duty of a parent to care for its infant child, and admitted that, except in rare cases, he will not be permitted to charge for such services (*Hedges* vs. *Hedges,* 73 S. W. 1112, 24 Ky. Law Rep. 2220); but insisted that, when the child arrives at the age of 21, the obligation and duty of the parent ends, and thereafter the child may be charged for the care and attention necessarily bestowed upon him. Based upon this premise is the argument of counsel that Mrs. Mallone had the right to charge J. C. Mallone as an advancement with the value of the services rendered him by her; but the premise is not sound. The duty and obligation of a parent to care for his offspring does not necessarily terminate when the child arrives at age or becomes an adult; nor is it limited to infants and children of tender years. An adult child may from accident or disease be as helpless and incapable of making his support as an infant, and we see no difference in principle between the duty imposed upon the parent to support the infant and the obligation to care for the adult, who is equally, if not more, dependent upon the parent. In either case the natural as well as the legal obligation is the same, if the parent is financially able to furnish the necessary assistance."

The headnotes in the case of *Rowell* vs. *Town of Vershire,* supra, read:

"1. A girl of weak mind, incapable of exercising any choice as to the place of her residence, and suffering from such mental infirmity as makes it necessary that she should remain under the care and control of her parents, and who has never been emancipated, takes the settlement of her father, though acquired after she reached the age of majority, and he is, if able to do so, bound to furnish her with support.

2. The promise of aid by the overseer of the poor to a man who is charged with the duty of supporting his daughter, if he will give her such support, is without consideration, and legally unenforcible."

Ross, J., in delivering the opinion of the court, said in part as follows:

"This is an action of assumpsit, in which the plaintiff seeks to recover for supporting his daughter Lomyra A. on an alleged contract with the overseer of the poor of the defendant. The daughter was twenty-three years old when the suit was brought, and presumably over eighteen years old when the claimed contract was made. It is stated in the exceptions that it appeared that this daughter had, from a child, been of weak mind, and incapable of exercising any choice or intention in regard to the place of her residence, had always lived with the plaintiff as a part of his family, and during all said time was suffering from such mental disability and infirmity as rendered it necessary that she should remain with, and under the care, protection and control of, her parents, and had never been emancipated. On this state of facts, she was incapable of gaining any settlement in her own right. *Rycgate* vs. *Wardsboro,* 30 Vt. 746.

* * * * * * * * * * * *

While *ex necessitate,* she remained a member of the family of the plain-

tiff, he was bound, if of sufficient ability, to support her. When any member of the legally constituted family is in need of support, and the legal head of the family, on whom the duty to support the family legally rests, is unable pecuniarily, to furnish it, the legal head of the family becomes a pauper, and the whole family take their status from him, and the aid furnished to the needy member is legally furnished to him, because on him rests the legal duty of furnishing the support, not only of himself, but of any member of the family. *Newbury* vs. *Brunswick,* 2 Vt. 151; *Gilmanton* vs. *Sanbornton,* 56 N. H. 336; *Croydon* vs. *Sullivan County,* 47 N. H. 179.

In this last case may be found cited a large number of cases from other New England States supporting this doctrine, and applying it to the case of support furnished to an unemancipated child who had passed the years of majority. * * *

* * * * * * * * * * * * *

It was the legal duty of the plaintiff, if of sufficient ability, to support this daughter. He had no right to cast any of it upon the public. If, by the promise of aid, he was induced to make an extra effort to support her, and did so, he did no more than his legal duty. The town received no benefit, and he no detriment, by the discharge of this duty, because he relieved the town from the performance of no legal duty. It owed him no duty to support the daughter, if he could support her. In supporting her, he suffered no legal detriment, because he only discharged his legal duty. If the promise of aid was an inducement to the discharge of this legal duty, it was without consideration, and legally non-enforcible.

* * * * * * * * * * * * *

The principle here announced clearly shows that the promise of the defendant through its overseer of the poor was without consideration, and not enforcible. For this promise the plaintiff promised to support this daughter,—just what and no more than he was legally bound to do without the defendant's promise. That the plaintiff performed his promise adds nothing by way of consideration, because he was legally bound to support the daughter, as much before as after he promised the overseer to do so."

Your attention is further directed to the case of *Mt. Pleasant Overseers* vs. *Wilcox,* 2 Pa. Dist. Reps. 628, the first branch of the headnotes reading:

"When a child reaches the age of 21 years the father's legal liability at common law for its support ceases, unless it is of such feeble and dependent condition, physically or mentally, as to be unable to support itself."

In the opinion the court said:

"When she reached the age of 21 years her father's legal liability at common law for her support ceased, unless she was of such feeble and dependent condition, physically or mentally, as to be unable to support herself, and the burden of showing that condition rests upon him who alleges it. See this matter discussed in 17 Am. and Eng. Enc. of Law, 348, etc. And see *Boyd* vs. *Sappington,* 4 W. 247."

In view of the foregoing authorities, including the statement in the syllabus in the case of *Pretzinger* vs. *Pretzinger,* supra, to the effect that it is the obligation of a father "to provide reasonably for the support of his minor child, *until the*

latter is in a condition to provide for his own support," and especially since such conclusion is in accord with the law of nature and principles of humanity, it is my opinion that where a child who is unmarried and living in his father's home, is unable by reason of physical or mental infirmity to provide for himself, the parent's duty to support such child does not terminate upon the child's coming of age.

As above pointed out, however, authority to the contrary may be found, as for example the statement in *Tiffany on Domestic Relations,* page 326, reading:

> "The obligation on the part of the parent to maintain the child continues until the child is in a condition to provide for its own maintenance, and no further; and in no case does it extend further than to a necessary support. The legal obligation ceases, except under some of the statutes, as soon as the child reaches the age of majority, however helpless he may be, and however wealthy the father may be."

Whether or not the commissioners of your county would be justified in granting relief to the young man here concerned as a "needy blind person" is a question of fact to be determined by such county commissioners. If the commissioners are satisfied that L. H. R. by reason of his loss of eyesight is unable to provide himself with the necessities of life and has not sufficient means of his own to maintain himself, and if they are further satisfied that, unless relief be granted, as authorized by law, he would become a charge upon the public or upon those not required by law to support him, relief should be granted; provided, of course, that the necessary residential qualifications are present. On the other hand, if the commissioners are not satisfied that the above facts exist, they would be justified in not extending relief. In this, as in other matters, the commissioners are vested with a certain discretion, and in the absence of fraud or other gross abuse of such discretion, the determination of the commissioners is final. As set forth in Section 2867, General Code, above quoted, the commissioners are authorized and required to secure evidence in writing, and the persons giving such evidence are "subject to the right of cross-examination by the board of county commissioners or other person."

Obviously, this opinion cannot categorically answer the question presented by you. Nor should this office undertake to usurp the functions vested by law in the county commissioners. In view of the discussion herein contained, however, I feel that the county commissioners, with your assistance, will have no difficulty in determining whether or not relief should be granted in the instant case.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2283.

APPROVAL, BONDS OF THE VILLAGE OF GRANDVIEW HEIGHTS, FRANKLIN COUNTY, OHIO—$2,500.00.

COLUMBUS, OHIO, June 27, 1928.

Industrial Commission of Ohio, Columbus, Ohio.