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LEGAL SETTLEMENT IN THIS STATE—PERSON THEREAFTER ACQUIRED LEGAL SETTLEMENT IN ANOTHER STATE—SETTLEMENT STATUS IN OHIO LOST, RETURN WILL NOT REVIVE IT—CONTINUOUS RESIDENCE, ONE YEAR—REQUISITE FOR NEW LEGAL SETTLEMENT—NEITHER SUBJECT NOR DEPENDENTS MAY RECEIVE RELIEF UNDER PROVISIONS OF LAW, OR FROM CHARITABLE ORGANIZATION OR BENEVOLENT ASSOCIATION.

SYLLABUS:

If a person having a legal settlement in this state thereafter acquires a legal settlement in another state her settlement in this state is lost and her return will not revive it. She must obtain a new legal settlement after her return by a continuous residence of one year, during which neither she nor her dependents receive relief under provisions of law for 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.

Columbus, Ohio, May 17, 1946

Hon. William A. Ambrose, Prosecuting Attorney  
Youngstown, Ohio

Dear Sir :

You have requested my opinion as to the legal settlement of one Mrs. B and her two minor children. Attached to your request are copies of several other documents relating to the facts involved in this question, including a long statement of the case prepared by the Welfare Director of Mahoning County. These documents, including the case history, cover several pages and would make this opinion unduly long if they were copied herein. Therefore, the following will suffice as a statement of facts :

Mrs. B and her husband were born in Alabama in 1914 and 1912, respectively, and were married in that state in 1932. In 1936 they came to Youngstown, Mahoning County, Ohio. In September, 1939, Mr. B was admitted to the Mahoning County Tuberculosis Hospital, where he died in February, 1942. Mrs. B had been admitted to the hospital in 1940 and was released in September, 1941. During the entire period from 1936 until the death of Mr. B in February, 1942, this family was dependent on relief with the exception of a period from the middle of 1936 to March, 1938. Two children were born to this couple while they resided in Youngstown, Mahoning County; the first on August 15, 1937 and the second on December 18, 1939. In May of 1940 while Mr. and Mrs. B were both patients in the tuberculosis hospital, these two children were taken to Alabama by the wife of Mrs. B's brother and remained there until July of 1944. During that time the children received no support from relief sources in Alabama, so far as the records submitted by you show. In July of 1942, a few months after the death of her husband, Mrs. B was sent to her brother in Alabama upon his request he having promised to take care of her. Mrs. B remained with her brother in Alabama until July, 1944, during which time she received no public support but was supported entirely by her brother with whom she lived, and another brother. In July, 1944 she returned to Youngstown, Ohio, and on September 1 of that year requested relief in Youngstown. The statement of facts submitted by the Relief Director contains the following statement :

“Under date of September, 1944 we contacted Alabama informing them that Mrs. B appeared at our office requesting assistance. She had now gained legal residence in Jefferson County, Alabama and lost residence in Mahoning County. We received verification and authorization under date of September 26, 1944. On the basis of the authorization from Jefferson County we offered Mrs. B transportation to return to her place of legal settlement, which she refused. We issued temporary assistance on a non-resident basis, which was discontinued after her refusal to return.”

In support of the statement that Mrs. B had gained legal residence in Jefferson County, Alabama, you have submitted a copy of a letter under date of September 26, 1944, from the Public Welfare Department of Jefferson County, Alabama, the last paragraph of which reads:

“We are acknowledging settlement of the family and authorizing their return at your expense.”

The term “legal settlement” is defined in section 3477, General Code, which reads 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.”

There appears to be no question but that the original settlement of Mr. and Mrs. B was in Alabama, nor would there appear to be any question that they gained a legal settlement in Mahoning County, Ohio, because of the residence there from the middle of the year 1936 to March, 1938, when they were not dependent upon relief. Upon the death of Mr. B in February, 1942, the mother became the head of the family and the natural guardian of the children, and the domicile and legal settlement of the mother became also the domicile and legal settlement of the minor children.

It is well settled that a minor cannot himself change his domicile or legal settlement, and, therefore, the fact that the children were taken to Alabama in May, 1940, did not change their legal settlement. However, in April, 1942, Mrs. B, according to the statement of the case presented by the Mahoning County Welfare Department, informed a worker in that department of her desire to go to Alabama to reside permanently with her brother and her children.

Intent to establish a new settlement is one of the prerequisites for the accomplishment of such act. In the case of *Trustees v. Trustees*, 12 O. S. 430, the court said:

“If a person resident in and having a settlement entitling him to relief under the act for the relief of the poor of the state, removes to a sister state with the intention of remaining, and while there exercises the right of suffrage, and acquires a residence and settlement entitling him to relief under the poor laws of that state, his residence and settlement in this state is lost, and his return will not revive it. He must obtain a new settlement after his return, by a continuous residence of one year, in some township in this state.”

That decision was announced in the year 1861 and has been followed in a great many cases since that date. There have, of course, been many amendments to the poor laws of this state since the decision above referred to, and it will be noted that Section 3477 now requires a year's residence in the county as distinguished from a year's residence in the township under the law in effect when the above mentioned case was decided.

I therefore conclude that Mrs. B and her children obtained a legal settlement in Alabama. The question then becomes whether a new legal settlement has been obtained in Mahoning County, Ohio.

With respect to the question of her intent, we have a statement in a letter from the Jefferson County, Alabama, Department of Public Welfare to the effect that the brothers and sister-in-law of Mrs. B. gave her the money to make the trip to Youngstown in July, 1944 and “they thought she was only on a visit and would return in time to enter the older child Daisy in school.” Of course, it is the intent of Mrs. B that controls and not what her brothers and sister-in-law understood her intent to be. Since the information submitted by you gives no further

light on this question I can only discuss it generally and point out that it is one of the factors to be taken into consideration by your county in determining whether Mrs. B and her children are now eligible for poor relief in Mahoning County, having obtained a legal settlement by residing in that county one year without relief under the provisions of law for relief of the poor.

The second matter for consideration is the length of time since Mrs. B received relief in Mahoning County. I refer to the statement quoted above from the case history prepared by the Mahoning County Welfare Department to the effect that temporary assistance on a non-resident basis was discontinued after Mrs. B's refusal to return to Alabama. If Mrs. B has, since the discontinuance of such assistance, supported herself and resided continuously in Mahoning County for twelve consecutive months, then she is entitled to poor relief for herself and her two minor children. I do not have the facts upon which to answer your question directly, but I believe the above discussion will be sufficient for your guidance in determining whether Mrs. B has gained a legal settlement for herself and her children in Mahoning County.

Respectfully,

HUGH S. JENKINS,  
Attorney General