

1737.

FEEBLE-MINDED CHILD—RESIDING IN OHIO FOR OVER A YEAR BUT NOT HAVING LEGAL SETTLEMENT IN ANY COUNTY—JURISDICTION OF COUNTY WHERE CHILD NOW RESIDES TO ORDER COMMITMENT TO FEEBLE-MINDED INSTITUTION—WHERE MAINTENANCE OF SUCH CHILD CHARGEABLE.

SYLLABUS:

1. *Where a feeble-minded child has resided in Ohio for more than a year it may be legally committed to an institution for the feeble-minded from the county in which it resides at the time of the application, with the consent of the Department of Public Welfare, notwithstanding said child has not a legal settlement in any county of the State.*

2. *When so committed the cost of maintaining said child in such institution shall be paid by the county from which it is committed.*

COLUMBUS, OHIO, April 5, 1930.

HON. J. F. KUHN, *Prosecuting Attorney, New Philadelphia, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“We have, in our county, a girl by the name of Bessie Moorhouse, aged 11 years, who was regularly admitted through the port of Boston, from England, on October 1st, 1923, at which time she accompanied her mother, Florence, and three brothers and one sister, destined to her father, Lumb Moorhouse, at Kimball, W. Va.

After being a short time at Kimball, W. Va., the family moved to Baltimore, Maryland, and after living there a short time, they again moved to West Virginia. The father deserted his family in West Virginia, and the mother secured a divorce from him on that ground in the State of West Virginia.

After having lived in West Virginia for several years, the mother and her children moved to Carroll County, Ohio, about December, 1928. They resided there continuously until June 1, 1929, when they moved to Mineral City, Tuscarawas County, Ohio, where they are now residing. Tuscarawas and Carroll Counties are adjoining counties.

The child, Bessie Moorhouse, is hopelessly feeble-minded, and has been so for several years, if not from birth, and her feeble-mindedness did not occur in this State. Application has been made to the Probate Court of this county to have her committed to the Institution for Feeble-Minded.

The Probate Judge objects to making the commitment on the ground that, under the poor laws, she has no legal residence in Tuscarawas County, and if committed from this county, the cost of maintaining her in the Institution for Feeble-Minded will be charged to Tuscarawas County at the rate of \$5.50 per week.

The Bureau of Immigration holds that since she has been in the United States for more than five years, and not having been declared a public charge within five years from date of entry, she is not subject to deportation.

The Department of Public Welfare holds that if she is committed from Tuscarawas County, they will hold the county liable for her support.

The whereabouts of the father is unknown.

The question, should the Probate Court of this County take charge of

this case, and commit the child, is one that puzzles us. Your answer to this question will be appreciated very much.

If the court should take care of this case, and commit the child, should Tuscarawas County pay the expenses of the child in the institution?

General Code Sections 1815-12; 1817, 1893 and 1950 may assist in arriving at an answer to these questions."

The statutes relating to the Institution for the Feeble-Minded appear in Chapter 3, Division II, Title V, embracing Sections 1891 et seq. of the General Code. Section 1893, General Code, which relates to the admission of persons to the Institution for the Feeble-Minded, reads:

"Feeble-minded persons of any age, whether public charges or not, shall be admitted to the institutions for the feeble-minded, provided such persons are of such inoffensive habits as to make them, in the judgment of the board of administration, proper subjects for care and discipline. Such persons shall be committed to the board of administration and admitted to the institutions for the feeble-minded in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane; and the provisions of Chapter 7, Division II, Title V, part first of the General Code governing and regulating the admission and commitment to, and conveyance and escort to and from the state hospitals for the insane, the clothing, traveling expenses, care and maintenance of persons adjudged insane, the arrest and return of escaped insane patients, the release of insane patients from the hospitals for the insane on *habeas corpus*, and the record of inquests of lunacy to be made and kept by the probate judge, shall apply to and govern the commitment, custody, care, support, maintenance and release of the feeble-minded, and the same fees, costs and expenses that are allowed and paid in lunacy cases shall be allowed, taxed and paid for similar services in all proceedings related to feeble-minded persons. Provided, however, that the medical certificates mentioned in Section 1957 of the General Code shall not, when the same relate to feeble-minded persons, be void after ten days, as stated in said section. When they relate to feeble-minded persons, said certificates shall be valid for an indefinite period."

Section 1894, General Code, which relates to feeble-minded children who are delinquent or dependent, provides:

"In the reception of feeble-minded persons into the institutions for the feeble-minded, preference and priority, so far as practicable shall be given to feeble-minded children who are delinquent or dependent, as defined in Sections 1644 and 1645, respectively, of the General Code. No prior or separate proceedings under the Juvenile Court Act as provided in Chapter 8, Title IV, part first of the General Code shall be necessary, however, to the institution of proceedings and commitment to the board of administration for admission to the institutions for the feeble-minded, of a delinquent or dependent feeble-minded child under the age of eighteen years."

A reading of the sections above quoted will disclose it to be necessary to examine the provisions of Chapter 7, Division II, Title V, in order to determine the method of procedure with reference to the admission and commitment of feeble-minded persons to an institution. In other words, feeble-minded persons are committed to institutions in the same manner and by like proceedings as are provided for the commitment and admission of insane persons.

Section 1950, as amended, 113 O. L., 87, and which relates to the admission of insane persons to hospitals, provides :

“Any insane person who has a legal residence in the State of Ohio and whose insanity has occurred during the time of his or her residence in said state shall be entitled to admission into a state hospital for the insane. Within the meaning of this section, no person shall be considered a legal resident who has not resided in the state for one year next preceding the date of his or her application for admission to a state hospital. No person who is not a legal resident of this state shall be admitted to a state benevolent institution except upon the order of the Department of Public Welfare as provided by law.”

Section 1950-1, as enacted in 113 O. L., 88, provides :

“Any insane person having a legal residence in the State of Ohio, but who may be temporarily residing or detained in a county other than that of his legal residence, may be legally committed to a state hospital by the probate judge of the county in which such person is temporarily residing or detained. The Department of Public Welfare shall at once be notified of such commitment, and, through its secretary, or other officer, shall immediately notify the probate judge of the county in which such person has a legal residence, of such commitment. The regular Probate Court fees incident to commitment and the expenses of clothing and incidentals furnished such patient in a state hospital to which he or she has been committed, shall be charged against the county of his or her legal residence. The Department of Public Welfare may at its discretion direct the transfer of such patient to another state hospital.”

Section 1953 of the General Code, as amended by the 88th General Assembly, 113 O. L., 88, provides :

“For the admission of a patient to a state hospital for the insane, the following proceedings shall be had. A resident citizen of the county in which an insane person has a legal residence, or in which he may be temporarily residing or detained, must file with the probate judge of said county an affidavit substantially as follows :

The State of Ohio, _____ County, ss; _____ the undersigned, a citizen of _____ County, Ohio, being sworn, says that he believes _____ to be insane and in need of hospital care and treatment, and that the said _____ has a legal settlement in _____ Township in _____ County, or that the legal settlement is unknown. Dated this _____ day of _____, A. D. _____.

Information shall also be furnished to the probate judge as to whether or not it will be proper to bring such insane person into court, and as to whether or not by reason of such insanity, his being at large is dangerous to the community.”

Section 1953, General Code, was under consideration by the Attorney General in an opinion found in the Opinions of the Attorney General for the year 1920, page 265. The then Attorney General concluded that, under the terms of the section, the Probate Court would not have jurisdiction in insanity cases where the residence of the alleged insane person was known except in the county in which the patient had a legal settlement. In other words, the effect of the opinion above mentioned is that

it is necessary to set forth the legal settlement of the applicant in the affidavit. Section 1953, supra, as amended, still contains the same provision that it contained when said opinion was rendered. Said opinion, however, pointed out that in cases where the person was a non-resident or his residence was unknown jurisdiction could be taken under Sections 1819 and 1820 of the General Code, for the purposes contemplated therein. While the enactment of the supplemental Section 1950-1 makes it possible for a person to be committed to an insane hospital from a county in which he is temporarily residing, said section, if it applies to feeble-minded persons under any circumstances, would have no application to the case you present for the reason that, in view of the facts stated, the girl under consideration is a permanent resident of Tuscarawas County notwithstanding she does not have a legal settlement therein. It further appears that she has no legal settlement in any other county in Ohio although she has been a resident of the state for more than one year.

It is believed pertinent to consider in connection with your inquiry, Section 1817 of the General Code which was amended by the 88th General Assembly, 113 O. L. 87, and provides:

"A person not a legal resident of the state shall not be admitted to a benevolent institution, but, after investigation as hereinafter provided, the Department of Public Welfare may authorize the reception of such person into an institution, if the legal residence cannot be ascertained or the peculiar circumstances of the case constitute, in its judgment, a sufficient reason therefor. No insane, epileptic or feeble-minded person shall be permitted to establish a legal residence in this state for the purpose of gaining admittance to a state benevolent institution, but whenever the parents or other responsible relatives of a dependent insane, epileptic or feeble-minded person shall have established a bona fide legal residence in the State of Ohio such dependent insane, epileptic or feeble-minded person shall be considered eligible for admission into a state institution for the insane, epileptic or feeble-minded, when approved by the Department of Public Welfare."

The section last quoted clearly authorizes the commitment of the feeble-minded person to an institution, notwithstanding he is a non-resident or his legal residence cannot be ascertained, if the peculiar circumstances of the case satisfy the Department of Public Welfare there is sufficient reason for such commitment. It would therefore appear that under the circumstances mentioned there certainly would be peculiar circumstances in connection with the status of the girl in question which would justify the department in authorizing her admission. Whether or not the amendments of the sections hereinbefore mentioned changed the rule as announced by the Attorney General in reference to the requirement of a legal settlement by insane patients before commitment, and if so whether feeble-minded persons would be governed by the amended sections, need not be decided for the purposes of this opinion for the reason as hereinbefore pointed out, such person may be committed under Section 1817, supra.

The question now arises as to what county should bear the expense of the support of said person in a state institution in the event that she should be legally committed thereto. Section 1815-12 of the General Code, which it is necessary to consider in connection with your inquiry, provides in part:

"The county from which an inmate of an institution for the feeble-minded was committed shall be liable for such inmate's support, provided the same is not paid otherwise as provided by this act."

Inasmuch as the section last quoted is in full force and effect it would seem from the facts and circumstances which you present that in the event such a person is committed to a feeble-minded institute the burden of her support would rest upon the county from which she is committed.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that:

1. Where a feeble-minded child has resided in Ohio for more than a year it may be legally committed to an institution for the feeble-minded from the county in which it resides at the time of the application, with the consent of the Department of Public Welfare, notwithstanding said child has not a legal settlement in any county of the state.

2. When so committed the cost of maintaining said child in such institution shall be paid by the county from which it is committed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1738.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM TIPTON
NILE TOWNSHIP, SCIOTO COUNTY.

COLUMBUS, OHIO, April 5, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval, abstract of title, warranty deed, encumbrance estimate No. 122 and Controlling Board's certificate relating to a certain tract of 109 acres of land in Nile Township, Scioto County, Ohio, and which is owned of record by one William Tipton. This tract of land is more particularly described as follows:

“Being in the Virginia District, beginning at a poplar standing one pole West of a branch North corner to Survey No. 15200;

Thence with two lines thereof S. 33 deg. 15' West 225 poles to a black oak and black oak gum in a cave West corner of said Survey;

Thence S. 56 deg. E. 28 poles to a stake on a sharp ridge;

Thence along ridge S. 73 deg 30' W. 15 61/100 poles to a line;

Thence N. 5 deg. 30' 14 28/100 poles to a stake and line;

Thence S. 85 deg. 45' W. 46 poles to a line;

Thence S. 74 deg. W. 28 poles to a stake;

Thence 1 deg. 30' E. 36 20/100 poles to a stake and stone pile;

Thence N. 34 deg. 30' W. 19 poles to two small pines and a chestnut oak;

Thence N. 4 deg. E. 17 72/100 poles to two white hickories from one root;

Thence N. 50 deg. 30' E. 20½ poles to a black jack;

Thence 63 deg. E. 12 60/100 poles to two small pines;

Thence 22 deg. E. 17½ poles to a stake and stone pile a little s. w. of the top of the ridge;

Thence N. 60 deg. 30' E. 22 poles to a hickory sapling;

Thence N. 22 deg. 45' E. 19 80/100 poles to a stake;

Thence N. 37 deg. 15' E. 12 poles to three jack oaks;