

2610.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$20,000.00

COLUMBUS, OHIO, May 2, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2611.

APPROVAL—BONDS OF CITY OF DAYTON, MONTGOMERY COUNTY, OHIO, \$103,000.00.

COLUMBUS, OHIO, May 2, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2612.

POOR RELIEF—INTENTION OF INDIGENT FACTOR IN DETERMINING LEGAL SETTLEMENT UNDER SECTION 3479, GENERAL CODE.

SYLLABUS:

The question of intention of an indigent affects the question of legal settlement as defined in Section 3479, General Code, and such intention is a factor in determining the legal settlement of such person.

COLUMBUS, OHIO, May 2, 1934.

HON. S. L. CHENEY, *Prosecuting Attorney, Chardon, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication, which reads as follows:

“I have been requested by the trustees of two townships in Geauga County to obtain your opinion on a question of settlement of an indigent person, for convenience called S, who has settlement in Geauga County. The question has arisen as to whether he has settlement in A or C township in said county.

By the provisions of General Code 3479, residence in C Township for three months would under proper circumstances constitute settlement therein. I find under the law as layed down in *Henrietta Township vs. Oxford Township*, 2 O. S. 32, ‘the domicile must be clear, notorious and continuous,’ and ‘when a settlement is obtained, it is not lost by the person residing in another township for a year, if there is the intention of returning to the former.’

In the case presented to me S had settlement in A Township where he had always lived with his brother. Sometime in June, 1933, he went

to C Township to work, where he was employed by the month until about Christmas time 1933, when he became sick and was then moved to the home of another brother in Cuyahoga County.

Investigation shows that he is an unmarried man, that he did not have a home in A Township, at least when he was taken sick, that the brother who remained in A Township lived in one room and that S did not have a bed there. Trustees of C Township maintain that he intended to return to A Township. The trustees of A Township maintain that he has no home in A Township, therefore there was no intention to return. It also appears that he could have continued to work in C Township had his health permitted.

His case appears to be curable, not tubercular in nature and not permanent in duration.

Will you kindly give me your opinion on the following:

1. Does the question of intention affect the question of settlement as would be established by other facts showing residence for three months or more in C Township, as provided in General Code 3479 (112 V 157)?
2. Does the rule in 2 O. S. 32 affect Section 3479, General Code, in determining settlement?
3. Can the statements of S be taken as a fact of his intention for purposes of determining settlement?
4. Did S, in your opinion, gain a legal settlement for the purpose of relief in C Township?"

Section 3477, General Code, defining legal settlement, provides:

"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." (Italics the writer's.)

Section 3479, General Code, states:

"A person having a legal settlement in any county in the state shall be considered as having a legal settlement in the township, or municipal corporation therein, in which he has last *resided* continuously and supported himself for three consecutive months without relief, under the provisions of law for the relief of the poor, or 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. When a person has for a period of more than one year not secured a legal settlement in any county, township or city in the state, he shall be deemed to have a legal settlement in the county, township or city where he last has such settlement." (Italics the writer's)

Your first question is whether or not under Section 3479, General Code, supra, the "intent" of the indigent is a factor in determining the legal settlement of such indigent, in addition to the fact of three months' living in a particular township "without relief, under the provisions of law for the relief of the poor, or 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." This involves an interpretation of the word "resided" used in the above quoted statutes.

A short review of the relevant Ohio Supreme Court cases on the subject is necessary for a determination of this question. In the case of *Henrietta Township vs. Brownhelm Township*, 9 Ohio 76, in the course of the opinion it was said at pages 77 and 78:

"The mode of acquiring such settlement is, by '*residing*' one year in any township of this state, without being warned by the overseers of the poor for said township to depart the same ***'. 29 O. L. 320. ***

The residence must not only be continuous, it must also be open and notorious, and attended with such circumstances as to lead the authorities of the township in the exercise of proper vigilance, to the conclusion that there is an *intention* to gain a settlement." (Italics the writer's).

The headnotes of the case of *Henrietta Township vs. Oxford Township*, 2 O. S. 32, read:

"In order to obtain a settlement in a township, under our poor-laws, the fact of residence is not sufficient, unless attended with the intention, on the part of the resident, of making such township his place of abode.

Where a person has obtained a settlement in a township, that settlement is not lost by his residing in another township for a year, if his residence in such township is attended with an intention of returning to the former township.

It is error in the court to charge the jury that the question of intention connected with residence is immaterial and not to be considered by them."

At page 36, it is stated:

"That any person or persons, other than those hereinafter provided for, *residing* one year in any township in this state, without being warned by the overseers of the poor, for said township, to depart the same, or three years after being so warned, without being again so warned as aforesaid, shall be considered as having gained a legal settlement in such township.' *** The court (referring to the lower court), however, charged the jury that they need not inquire as to the *intention* of Brown, the pauper, to make the township of Florence his place of residence, as intention was not involved in the matter. In this charge, we think the court erred. *A person who has gained a legal residence in a place, is never in any instance held to have lost his residence by being absent, when his absence has been accompanied with the intention of returning to such place of abode.* If Brown, then, who had obtained a

settlement in Oxford township, had gone into Florence township, although he resided there for a year, if during his stay he had the intention of returning to Oxford township, his settlement would not thereby have been changed; it would still have been in Oxford township." (Italics and parenthesis the writer's.)

I am unable to find any later relevant Ohio cases on the subject, nor am I able to find any opinions of former Attorneys General with reference to this matter.

Although Sections 3477 and 3479, General Code, with reference to "legal settlement," are not now in the exact phraseology of the definition of legal settlement in the statutes when construed by the Supreme Court of Ohio in the above two cases, still that interpretation with reference to the intention of the indigent necessarily involved the meaning of the word "reside" which was to be found in the older statutes and which is found in these poor relief enactments now in force. It is fair to presume that the General Assembly intended the word "resided" to have the same meaning in Sections 3477 and 3479 that the Supreme Court of Ohio declared it to have in these two Ohio decisions interpreting the former definition of legal settlement. Consequently, specifically answering your first question, it is my opinion that the question of intention of the indigent does affect the question of legal settlement as defined in Section 3479 of the General Code.

In view of my answer to your first question, I state it to be my opinion that the rules laid down in the headnotes of *Henrietta Township vs. Oxford Township*, 2 O. S. 32, affect the interpretation of Section 3479 of the General Code in determining the legal settlement of an indigent.

I come now to a consideration of your third question. You ask whether or not the statements of S, the indigent, may be taken as a fact of his intention for the purpose of determining his legal settlement. I may state categorically that the statement of S may not be taken as a fact, but his statement may be taken as evidence of the fact of his intention in determining his legal settlement. His statement of intent should be taken in conjunction with all the other evidence in order to ascertain his true intention in determining his legal settlement. In ascertaining his intent the same rule is applicable as in ascertaining the intent in domicile questions. I call your attention to the statement in 14 O. Jur. p. 594, which reads:

"It is necessary to look to the acts and declarations, family relations, business pursuit and vocation in life, mode of life, means, fortune, earning capacity, conduct, habits, disposition, age, prospects, residence, lapse of time, voting, and payment of taxes, and read these facts in the light of their own declarations. The fact that the whole matter turns upon the animus, or intention, is what invests these cases with peculiar difficulty. The cardinal fact being mental, it is hard to discover, and liable to misconstruction and dispute. It is provable in two ways: (1) *by the testimony of the person himself*; (2) inferentially or inductively, by the proof of other facts, physical and external, which may indicate the mind of the person." (Italics the writer's.)

I shall not attempt to express my opinion as to the legal settlement of S since I am not acquainted with all the facts and circumstances of the particular

case and I believe you are in a better position to ascertain the legal settlement of the particular indigent in question. I do not know the intent of S and his statement of intent may be very helpful to you in a decision as to his legal settlement in conjunction with the other extraneous facts which you have outlined in your request for my opinion.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2613.

APPROVAL—CONTRACT BETWEEN STATE OF OHIO AND ROBERT EVANS & CO., FOR THE CONSTRUCTION AND COMPLETION OF GENERAL WORK AT COTTAGE No. 5 HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT AN EXPENDITURE OF \$75,528.00.

COLUMBUS, OHIO, May 2, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare (Hawthornden Farm, Cleveland State Hospital), Columbus, Ohio, and the Robert Evans & Co., Columbus, Ohio. This contract covers the construction and completion of General Work for a project known as Cottage No. 5, Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio, in accordance with Item No. 1, Item No. 5 (Alternate G-1), and Item No. 6 (Alternate G-2) of the form of proposal dated April 13, 1934. Said contract calls for an expenditure of seventy-five thousand, five hundred and twenty-eight dollars (\$75,528.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have produced evidence to show that the Controlling Board has released moneys sufficient to cover the cost of this contract, in accordance with section 3 of House Bill No. 698 of the regular session of the 90th General Assembly, as amended in section 3 of House Bill No. 36 of the first special session of the 90th General Assembly. In addition, you have submitted a contract bond, upon which the American Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was given, bids tabulated as required by law, and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

JOHN W. BRICKER,
Attorney General.