

5094.

APPROVAL—PROPOSED AGREEMENT FOR CONSTRUCTION
OF SUBWAY IN THE VILLAGE OF DELTA, OHIO—NEW
YORK CENTRAL RAILROAD COMPANY.

COLUMBUS, OHIO, January 13, 1936.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR: You have submitted for my consideration a proposed agreement by and between the Director of Highways, the Village of Delta, and the New York Central Railroad Company covering the construction of a subway under the tracks of the New York Central Railroad on Madison street (S. H. 299) in the Village of Delta, Ohio.

After examination, it is my opinion that said proposed agreement is in proper legal form and when the same is properly executed it will constitute a valid and binding contract.

Said proposed contract is being returned herewith.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5095.

APPROVAL—BONDS OF CITY OF LIMA, ALLEN COUNTY,
OHIO, \$10,000.00.

COLUMBUS, OHIO, January 13, 1936.

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

5096.

POOR RELIEF—PUBLIC HEALTH NURSE SERVICES,
CLOTHING AND SUPPLIES FURNISHED BY BOARD OF
EDUCATION, CHRISTMAS GIFTS, NOT RELIEF, UNDER
SECTION 3477, GENERAL CODE.

SYLLABUS:

1. *The services of a public health nurse are not relief within the purview of Section 3477, General Code.*
2. *Clothing and supplies furnished children by a Board of Education, pursuant to the provisions of Section 7777, General Code, are not*

relief under the provisions of law for the relief of the poor within the meaning of Section 3477, General Code.

3. *Christmas gifts to a needy family by a church Sunday school class, are not relief within the purview of Section 3477, General Code.*

COLUMBUS, OHIO, January 14, 1936.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: I am in receipt of your communication which reads in part, as follows:

“The officials of Morrow County and Marion County, Ohio, are having a dispute over a residence of J. R. I am wondering if you could give us some assistance in determining this question. The facts are as follows:

That prior to August 19, 1929, J. R. and his family were residents of Marion County, Ohio, and on that date moved to Chester Township, Morrow County, Ohio. Contributions were made to this family at the following times and in the following order:

September, 1929—School books to the children of J. R. furnished by the Chester Township Board of Education. Some, but not all, of such books were returned.

November, 1929—Clothing and supplies furnished to the family by the Chester Township Board of Trustees in the sum of \$16.26.

December, 1929—Clothing and bedding furnished by the Willing Workers Class of the Fairview Church.

February, 1930—Services of Public Health Nurse.

September, 1930—School books furnished children by Chester Township Board of Education. Some, but not all, of such books were returned to the Board.

November, 1930—Clothing and supplies furnished the children of J. R. by the Chester Township Board of Education in the sum of \$35.15.

December, 1930—Clothing and bedding furnished by the Willing Workers Class of Fairview Church in the sum of \$2.40.

From February, 1931, until April 7, 1931, this family was taken care of by the Township Trustees of Chester Township, Morrow County, Ohio.

On April 7, 1931, the family moved from Chester Township, Morrow County, to Canaan Township, Morrow County and from April 7, 1931, until February, 1933, this family was

taken care of by the Board of Township Trustees of Canaan Township, Morrow County.

In February, 1933, the family moved from Canaan Township, Morrow County, Ohio, to Claridon Township, Marion County, Ohio, where they have resided since that date. After moving to Marion County in February, 1933, the Township Trustees of Canaan Township, Morrow County, furnished them with relief until October, 1933, when the Federal Administration of Public Relief took over the obligation and furnished them with necessaries until November, 1935.

It is the contention of the authorities of Marion County, that the J. R. family gained a residence in Morrow County in the twelve month period from January 1, 1930 until December 31, 1930. It is the contention of the Morrow County officials that they did not gain their residence during this period.

It is the contention of the Morrow County officials that the services of the public health nurse in February, 1930, constituted relief; that the school books furnished the children of J. R. in September 1930, by the Chester Township Board of Education constituted relief; that the clothing supplies furnished said family by the Chester Township Board of Education in November, 1930, constituted relief; that the clothing and bedding furnished in December, 1930, constituted relief; that the family after moving to Morrow County was never self-supporting for a continuous period of one year for the above reasons. * * **

I assume, for the purpose of this opinion, that at the time of the family's removal from Marion County to Morrow County on August 19, 1929, J. R., the father, had a legal settlement in Marion County.

The specific question presented in your communication is whether any of the following acts constitute a furnishing of relief within the purview of Section 3477, General Code:

1. Services of the public health nurse in February, 1930.
2. Furnishing of school books by the Chester Township Board of Education in September, 1930.
3. The furnishing of clothing and supplies to the children of J. R. by the Chester Township Board of Education in November, 1930.
4. The furnishing of clothing and bedding by the Willing Workers Class of Fairview Church.

If none of the above acts constitute a furnishing of relief under Section 3477, General Code, J. R. and his family acquired a new legal settlement in Morrow County, by virtue of their one year's residence in that county without receiving relief. Section 3477, General Code, provides 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.*” (Italics the writer’s.)

Provision for the appointment of public health nurses by the Board of Health is made in Sections 4408 and 4411, General Code. These sections are found among other sections setting up an organization to protect the public health, providing for the abatement of nuisances dangerous to health, providing for the report and quarantine of cases of communicable diseases and providing for the inspection of foods with a view to insuring their purity. The primary purpose of these sections is to safeguard the public health and whatever incidental benefit the indigent sick may derive under these sections, would not make the services of a public health nurse “relief under the provisions of law for the relief of the poor” within the meaning of Section 3477, General Code.

Supplies are usually deemed furnished to a person when they are furnished to one of the members of his family, whom it is his duty to support. Hence, it has been held that supplies furnished to an unemancipated minor child will prevent the parent from acquiring a legal settlement.

Norwich v. Saybrook, 5 Conn. 384; *Winterport v. Newburgh*, 78 Me. 136, 3 a. 48; *Taunton v. Middleborough*, 12 Metc. (Mass.) 35; *Gilmanton v. Sanbornton*, 56 N. H. 336.

It follows that if the books, clothing and supplies furnished the children of J. R. by the Chester Township Board of Education, are poor relief within the purview of Section 3477, General Code, they are poor relief furnished to J. R. himself and as such would prevent him from acquiring a legal settlement in Morrow County.

The books, clothing and supplies were apparently furnished the children of J. R. under the provisions of Section 7777, General Code. The purpose of this section is to enable children in needy circumstances to attend school. It provides a means of enforcing the compulsory school laws in cases where children cannot be in school because their time is taken up working to support themselves or those who are legally entitled to their services. This section specifically provides: “Such child shall not be considered a pauper by reason of the acceptance of such relief.” If the child receiving such relief is not to be considered a pauper, neither should the parents of a child receiving it be considered paupers by virtue of this fact alone. The construction that Section 7777, General Code, was not intended to authorize the substitution of a Board of Education for

the proper poor relief agency in a school district, was recognized in an opinion of my predecessor to be found in Opinions of the Attorney General for 1931, Volume 3, p. 1283, which held, as disclosed by the syllabus:

“1. Boards of education are not authorized by law to borrow money or issue bonds for poor relief purposes; nor are boards of education authorized, under any circumstances, to expend public funds for poor relief purposes, as such.

2. The power of a board of education to expend public funds for textbooks, personal necessities and medical care for certain classes of children, in order to enable them to attend school, as authorized by Section 7777, General Code, should not be regarded as the extension of poor relief, as such.”

From the reading of Section 3477, General Code, it is evident that the receipt of either of two types of relief will prevent the acquisition of a legal settlement: “relief under the provisions of law for the relief of the poor” or “relief from any charitable organization or benevolent association which investigates and keeps a record of facts relating to those who apply for or receive its aid.” The last question presented by your request is whether the clothing and bedding furnished by the Willing Workers Class of Fairview Church in the sum of \$2.40 is within the latter category.

The apparent intent of the statute is to prevent indigent persons from moving from their own county of legal settlement to another and becoming a charge upon the latter county, unless they give proof of ability to support themselves continuously for one year without relief from public or private charities. To effectuate this intent, the relief furnished by a charitable organization and the administration of the organization itself should closely approximate that of public relief and public relief agencies. The relief furnished by private charities should be of such character that were it not for the aid extended by them, the recipients of their benefits would become charges upon public relief agencies. It was with this in mind that the qualification “which investigates and keeps a record of facts relating to persons who receive or apply for relief” was imposed on the relief furnished by charitable organizations and hence it is only the relief received from charitable organizations complying with this requirement, which is sufficient to prevent the acquiring of a new legal settlement.

Whether the Willing Workers Class of Fairview Church was a charitable organization which administered relief within the provisions of Section 3477, General Code, is a question I am unable to answer categorically in the absence of facts not now before me. I assume, however, from a letter from a member of the class which you have enclosed,

stating that "in December, 1930, we presented them (the R's) with a comfort for Christmas" that the class was not an organization furnishing systematized relief and hence, that the clothing and bedding were in the nature of a Christmas gift. Mere gifts, whether from an individual or an organization to the less prosperous members of the community, are not relief within the intent of Section 3477, General Code.

Consequently, in specific answer to your inquiry, it is my opinion that:

1. The services of a public health nurse are not relief within the purview of Section 3477, General Code.

2. Clothing and supplies furnished children by a Board of Education, pursuant to the provisions of Section 7777, General Code, are not relief under the provisions of law for the relief of the poor within the meaning of Section 3477, General Code.

3. Christmas gifts to a needy family by a church Sunday school class, are not relief within the purview of Section 3477, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5097.

DENTAL HYGIENIST—QUALIFICATIONS NECESSARY FOR
LICENSE—STATE DENTAL BOARD MAY ISSUE LICENSE
WHEN.

SYLLABUS:

1. *An applicant for a license as a dental hygienist in the State of Ohio, in addition to other requirements, must show that she is possessed of an education equivalent to completion of four years of a first grade high school of at least 15 units, as defined in the school laws of this state.*

2. *The State Dental Board may license a person as a dental hygienist who has not actually served four years of high school provided such person has the equivalent of a high school education. In considering whether or not a person has the equivalent of a high school education, the State Dental Board may employ all reasonable methods necessary to a proper determination of such question.*

COLUMBUS, OHIO, January 15, 1936.

HON. MORTON H. JONES, D. D. S., *Secretary, Ohio State Dental Board,*
1553½ North Fourth Street, Columbus, Ohio.

DEAR SIR: This will acknowledge receipt of your request for my opinion upon the following set of facts:

It appears that an applicant for a license as a dental hygienist has only two years of high school education, which was procured in 1909 and