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“RESIDENCE” NOT SYNONYMOUS WITH TERM “LEGAL SETTLEMENT” AS USED IN SECTIONS 1890-23, 1890-33 AND DEFINED BY SECTION 3477 G. C.—“RESIDENCE” DEFINED—DISTINGUISHED FROM “TEMPORARY RESIDENCE.”

SYLLABUS:

1. *The term “residence” as used in Section 1890-23 and 1890-33, General Code, is not synonymous with the term “legal settlement” as defined by Section 3477, General Code.*

2. *The term “residence” as the same appears in the above sections should be construed to mean the place where a person has his true, fixed, permanent home and principal establishment, and to which place whenever*

*he is absent, he has an intention of returning, as distinguished from temporary residence which a person intends to leave when the purpose for which he has taken up his abode ceases.*

Columbus, Ohio, October 15, 1940.

Hon. Nicholas F. Nolan, Prosecuting Attorney,  
Dayton, Ohio.

Dear Sir:

This will acknowledge receipt of your recent letter requesting my opinion, which reads as follows:

“At the request of the Probate Judge of Montgomery County we respectfully ask your formal opinion growing out of the following situation: John Doe, aged 27 years, was, on June 22, 1940, committed to the Dayton State Hospital by the Probate Court of Montgomery County under Section 1890-23 of the General Code, his temporary residence being then in Montgomery County, having been brought to the Montgomery County Jail from Darke County the same day he was committed to the Dayton State Hospital.

It was then contemplated that his temporary residence was in Montgomery County, but his legal residence was considered by the committing Probate Court to be in Darke County. Under Section 1890-33 the expense of said commitment was charged to Darke County, and a certified transcript of all the proceedings was sent to the Probate Court of Darke County.

Whereupon, a question arose as to which County, Montgomery or Darke, was the legal residence of said person. The Executive Secretary of the Department of Public Welfare and the Probate Judge of Darke County protested the charge being made against Darke County on the theory that John Doe had not resided in Darke County for twelve continuous months after a previous discharge from the Dayton State Hospital on June 30, 1939, lacking eight days of the twelve months.

The facts further show that John Doe, on June 16, 1938, was released from the Dayton State Hospital on a trial visit, and immediately went to reside with his mother in Darke County, and that on June 30, 1939 he was released from said Institution as ‘improved’ and continued his residence with his mother until June 22, 1940 when he was again committed to said Institution.

The Probate Judge of Montgomery County contends that the twelve-months residence is not necessary in Darke County, but that ‘legal residence’ is not determined by the length of time of residence, but upon the ‘domicile theory’, so the question is:

Is the term 'legal residence' as used in the Act For The Treatment of The Mentally Ill synonymous with 'legal settlement' as it relates to the laws granting relief to the poor?"

A question similar to the one you present was for consideration by one of my predecessors, whose opinion appears in Opinions of The Attorney General, 1934, Vol. I, page 213. The syllabus of that opinion reads as follows:

"By virtue of Section 1950-1, General Code, the Probate Court of a county in which an insane person is temporarily residing may commit such person to a state institution for the insane, but the probate court fees incident to commitment and the expenses of clothing and incidentals furnished such patient at the state hospital for the insane to which such person is committed, should be charged against the county of their legal settlement."

Since the rendition of the opinion mentioned above the Ninety-second General Assembly enacted Amended Substitute House Bill No. 545. Amended Substitute House Bill No. 545 was denominated an act to create within the Department of Public Welfare a Division of Mental Diseases, to establish our patient hospitals, etc. This act was codified as Section 1890-1, et seq., General Code. Section 1890-113, General Code, repealed certain statutes in effect until the enactment of Amended Substitute House Bill No. 545, and provides as follows:

"That section (s) 1817 to 1820 inclusive, 1891 to 1895 inclusive, 1904-1 to 1904-3 inclusive, 1916 to 1918 inclusive, 1947 to 1962 inclusive, 1964 to 2032 inclusive, 2035, 2037, 2038, 2041, 2042, 2044 to 2051 inclusive, 2204, 2216 to 2227 inclusive, 2541, 3154, 3155, 3155-1 and 3156 of the General Code be, and the same are hereby repealed."

To determine properly the question you present it becomes necessary to contrast and compare the law in effect upon the subject prior and subsequent to the enactment of Amended Substitute House Bill No. 545.

Section 1953, General Code, repealed by Section 1890-113, General Code, setting forth the proceedings for admission to hospitals for the insane and the information that must be disclosed, provided:

"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, as ..... 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 1890-23, General Code, setting forth the proceedings for admission to hospitals for the insane under the present law, and the information that must be disclosed provides, in part, as follows:

“For the admission of a person thought to be mentally ill to an institution the following proceedings shall be had: One of the next of kin or a resident of the county in which the person alleged to be mentally ill has a legal residence or is temporarily residing or detained, shall file in the probate court of said county an affidavit in the manner and form prescribed by the division of mental diseases which shall contain the following information:

1. The name and address of such person together with any additional information that may be necessary for the purpose of determining residence.”

\* \* \*

From a comparison of the two sections above quoted it will be noted that Section 1953, supra, requires the affiant executing the affidavit setting forth the information necessary for admission to state the patient’s place of legal settlement, while under the provisions of Section 1890-23, General Code, the affiant is only required to state such information as may be necessary for the purpose of determining residence.

Upon the subject of probate court fees and expenses incidental to the commitment of patients, Section 1950-1, General Code, repealed by Section 1890-113, supra, provided:

“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."

Concerning probate court fees and expenses incidental to commitment of patients coming within the provisions of the present law, Section 1890-33, General Code, provides:

"If the legal residence of such person is in another county of the state of Ohio, the regular probate court fees and expenses incident to the commitment and any other expense incurred in his behalf, shall be charged to and paid by the county of his residence upon the approval and certificate of the probate judge thereof. A certified transcript of all proceedings had in the committing court shall be sent to the probate court of the county of the residence of such person. Such court shall enter and record said transcript. All further proceedings shall be the same as if the affidavit had been filed, hearing had, and commitment made in such probate court. Such certified transcript shall be prima facie evidence of the residence of such person. When the residence of such person cannot be established as represented by the committing court, the matter of residence shall be referred to the commissioner for investigation and determination."

Construing repealed Sections 1953 and 1950-1, *supra*, together, it will be noted that the conclusion reached in the 1934 opinion cited above is sound in holding the act then in effect contemplated that the place of legal settlement was probably chargeable with the expenses incident to commitment. However, in construing Sections 1890-23 and 1890-33, General Code, together, the same conclusion cannot be reached for the reason that the legislature in its enactment of the latter two sections makes no mention of legal settlement and confines the expenses of commitment to the county of the patient's place of residence.

The question now is whether the word "residence" as used in Sections 1890-23 and 1890-33, General Code, should have the same meaning and legal purport as "legal settlement," so far as the act here involved is concerned.

The term "legal settlement" is defined in Section 3477, General Code, 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."

Since "legal settlement" is expressly defined by Section 3477, General Code, it cannot be presumed that the legislature intended the term "residence" as used in Amended Substitute House Bill No. 545, Section 1890-1, et seq., General Code, to have the same legal import.

In fact, a contrary intent on the part of the legislature could be more readily assumed since Section 3477, *supra*, lays down very definite qualifications for a person that would acquire legal settlement in a county of this state, and it cannot be fairly concluded that the legislature intended that an applicant for treatment in a state institution for the treatment of feeble-minded and insane should have the same residence qualifications as an applicant for aid and assistance under the poor laws.

The term "residence" is susceptible of several different interpretations. Upon this subject it is stated in 14 O. Jur., page 567:

"\* \* \* 'Residence' is the favorite term employed by the American legislator to express the connection between person and place, its exact signification being left to construction, to be determined from the context and the apparent object to be attained by the enactment. Questions as to the correspondence or difference in meaning between the terms 'residence' and 'domicil' are referable generally to the wording and purpose of the statutes in which they are used, in some of which, and for certain purposes, the words are distinguished, while in others they are regarded as synonymous.

It is customary to distinguish between 'residence' and 'domicil' on the ground that any place of abode or dwelling place constitutes a 'residence' however temporary it may be, while the term 'domicil' relates rather to the legal residence of a person, or his home in contemplation of law. 'Domicil' is not, in a legal or technical sense,

synonymous with 'residence'. The term 'domicil' is of more extensive signification, the word 'residence' commonly importing something less than domicil. The essential distinction is that the word 'residence' involves the intent to leave when the purpose for which one has taken up his abode ceases. The term 'domicil' involves no such intent. Domicil includes residence, with an intention to remain, while no length of residence, without the intention of remaining, constitutes domicil. In determining whether a person is a resident of a particular state, the question as to his domicil is not is not necessarily always involved; for he may have residence which is not in law his domicil. A person may have more than one residence at the same time, but he can have but one domicil."

In the case of *Grant v. Jones*, 39 O. S. 506, at page 515, it is stated:

"What constitutes a person a resident of Ohio, for the purpose of voting, of admission to the public schools and benevolent institutions of the state, for the administration of estates and in other cases, has been a frequent matter for consideration in the courts. There is no substantial difference between the words residence and domicile in regard to these matters, though they are not always synonymous. For business purposes and perhaps for purposes of taxation, a man may have more than one residence, but he can have but one domicile."

In view of the above holding it would appear that the word "residence" as used in Sections 1890-23 and 1890-33, General Code, should be considered as "domicile."

In Vol. XIV, O. Jur., page 564, the term "domicile" is defined in the following manner:

"The term 'domicil', in its ordinary acceptation, means a place where a person lives, or has his home. Its nearest equivalent, in untechnical or colloquial language, is the word 'home'. In a strict legal sense, that is properly the domicil of a person where he has his true, fixed, permanent home and principal establishment, and to which place, whenever he is absent, he has the intention of returning. 'Domicil' has also been defined as the relation which the law creates between an individual and a particular locality or country."

The intent and purpose of the legislature in its enactment of Amended Substitute House Bill No. 545 is expressly stated in Section 1890-2, General Code, which reads:

"The intent and purpose of this act is to provide humane and medical treatment and care, preventive and curative, for mentally ill, insane, feeble-minded and epileptic persons, to promote the study of the causes of mental illness, insanity, feeble minds and

epilepsy, with a view to the earliest possible cure and ultimate prevention; to protect the people of Ohio from the ultimate danger and unnecessary expense that results from placing in a penal institution insane and mentally defective persons who require for their own safety and the protection of society, present and future, treatment or detention in a hospital for the mentally ill or insane; to secure, by uniform and systematic management and treatment, the highest attainable degree of economy and efficiency in the administration of the state institutions defined in this act consistent with the objects in view."

It is, therefore, my opinion in specific answer to your inquiry that:

1. The term "residence" as used in Sections 1890-23 and 1890-33, General Code, is not synonymous with the term "legal settlement" as defined by Section 3477, General Code.

2. The term "residence" as the same appears in the above sections should be construed to mean the place where a person has his true, fixed, permanent home and principal establishment, and to which place whenever he is absent, he has an intention of returning, as distinguished from temporary residence which a person intends to leave when the purpose for which he has taken up his abode ceases.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.