

2404.

MOTHER'S PENSION—DIVORCE OBTAINED THROUGH HUSBAND'S AGGRESSION—WIFE GIVEN CUSTODY OF CHILDREN—NO ALIMONY—AT EXPIRATION OF THREE YEARS MAY RECEIVE BENEFITS OF PENSION—CONDITIONS NOTED.

SYLLABUS:

Where a woman who is poor and is the mother of children not entitled to receive an age and schooling certificate, obtains a divorce from her husband due to the aggression of the husband and is awarded the custody of such children, and three years have expired since the obtaining of said divorce, such a woman may be regarded as one whose husband has deserted within the meaning of Section 1683-2 of the General Code, notwithstanding he had not deserted her prior to the obtaining of the divorce, providing, of course, that said husband has not, during said period, been supporting the family by the payment of alimony or otherwise.

COLUMBUS, OHIO, October 2, 1930.

HON. JAY S. McDEVITT, *Prosecuting Attorney, Mt. Vernon, Ohio.*

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

“Will you please give me an opinion and your construction on the provisions of Section 1683-2, General Code, Mothers' Pension Act, reading in part as follows: ‘whose husbands have deserted and such desertion has continued for three years.’ This is the question.

The judge of our juvenile court has this situation: A mother having secured a decree of divorce from her husband on December 14, 1927, on grounds of gross neglect. No charge of desertion could have been established at the time of such decree. Now at this present date the mother makes application for a mother's pension on the grounds that her husband has deserted and such desertion has continued for three years. No desertion having existed at the time of the divorce decree and this mother having secured a decree of divorce and the marriage contract having been annulled almost three years ago is such a divorced husband still her husband within the provisions of Section 1683-2 for the purpose of securing a mother's pension?

It is true the father has failed to support his children since the date of the divorce decree and is under indictment for non-support but the statute relating to this act reads ‘whose husbands have deserted, etc.’ It might further be said that upon investigation of the juvenile officials, the only question raised as to the mother being eligible for a mother's pension is the one raised here, it being conceded that she is a proper person to have custody of the children and have care of their education and maintenance.

The sole question presented here is whether or not by virtue of the above section, the mother in question having been divorced, has a husband and does she come within the provisions of the statute for a mother's pension.”

Section 1683-2 of the General Code, to which you refer, provides in part:

“For the support of women whose husbands are dead, or become permanently disabled by reason of physical or mental infirmity, or whose husbands are prisoners or whose husbands have deserted, and such desertion

has continued for a period of three years, when such women are poor, and are the mothers of children not entitled to receive age and schooling certificate, and such mothers and children have a legal residence in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows."

In connection with your inquiry it will be profitable to examine an opinion found in the Reports of the Attorney General for the year 1914, page 885, wherein it was held as disclosed by the third branch of the syllabus :

"If a husband has deserted more than three years before and the mother has secured a divorce, she falls within the provisions of Section 1683-2, since nothing is said in such statute relative to divorce."

The Attorney General in said opinion stated that this section, with other related sections, is to be "given a liberal interpretation to accomplish the result at which it is aimed." Said opinion indicates that the question of divorce has little or nothing to do with the matter. It is pointed out, however, in said opinion that a mother of children who has been divorced from her husband on account of her aggression would not be entitled to receive a pension on the ground of desertion of her husband. It would appear to be equally clear that a woman would not be regarded as having been deserted so long as the husband was supporting the family by the payment of alimony or otherwise. In other words, failure of support is an essential element of desertion in cases arising under the section under consideration.

Your attention is further directed to an opinion of the Attorney General found in the Opinions of the Attorney General for the year 1915, page 1027, wherein it was held as disclosed by the syllabus :

"Divorce of wife from husband, who prior to the divorce was imprisoned, does not render her ineligible to relief under the mothers' pension act."

It would appear that about the only distinction between the cases hereinbefore mentioned and the case which you present is that in the former cases the divorce was granted during the period of said desertion. However, by analogy it is believed that there is very little distinction between the last case above mentioned and the situation which you present. In other words, if a husband's conduct is such that it results in his being placed in the penitentiary and affords grounds for a divorce, which may be regarded as desertion, by the same logic it would appear that where a husband by his aggression or misconduct affords grounds for a divorce the same would constitute desertion under the statute. Of course, I concur in the conclusion of the former Attorney General to the effect that if the divorce is obtained due to the aggression of the wife the same rule would not obtain.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that where a woman who is poor and is the mother of children not entitled to receive an age and schooling certificate obtains a divorce from her husband due to the aggression of the husband and is awarded the custody of said children, and three years have expired since the obtaining of said divorce, such a woman may be regarded as one whose husband has deserted within the meaning of Section 1683-2 of the General Code, notwithstanding he had not deserted her prior to the obtaining of the divorce, providing, of course, that said husband has not, during said period, been supporting the family by the payment of alimony or otherwise.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2405.

APPROVAL, BONDS OF SPRINGDALE RURAL SCHOOL DISTRICT,
HAMILTON, OHIO—\$1,490.00.

COLUMBUS, OHIO, October 2, 1930.

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

2406.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND HARRINGTON ELECTRIC COMPANY, CLEVELAND, OHIO, FOR ELECTRICAL WORK IN LAUNDRY BUILDING, HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT AN EXPENDITURE OF \$2,049.00—SURETY BOND EXECUTED BY THE COMMERCIAL CASUALTY INSURANCE COMPANY, NEWARK, NEW JERSEY.

COLUMBUS, OHIO, October 2, 1930.

HON. A. T. CONNAR, *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, and Harrington Electric Company, of Cleveland, Ohio. This contract covers the construction and completion of contract for electrical work to be installed in a building known as Laundry Building, Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio, as set forth in Item No. 4 of the Form of Proposal dated July 29, 1930. Said contract calls for an expenditure of two thousand, forty-nine dollars (\$2,049.00).

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 also furnished evidence to the effect that the consent of the Controlling Board to the expenditure has been obtained, as required by Section 4 of House Bill 203 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the Commercial Casualty Insurance Company, of Newark, New Jersey, 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 properly 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 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,
GILBERT BETTMAN,
Attorney General.