

854.

APPROVAL.—BONDS OF CITY OF TOLEDO, LUCAS COUNTY,
OHIO, \$151,000.00.

COLUMBUS, OHIO, July 7, 1937.

The Industrial Commission of Ohio, Columbus Ohio.

GENTLEMEN :

RE: Bonds of City of Toledo, Lucas County, Ohio,
\$151,000.00.

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of grade elimination bonds in the aggregate amount of \$219,500, dated June 1, 1931, bearing interest at the rate of 4% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

855.

BLIND RELIEF—SECTION 2965-1 G. C. INTERPRETED—"MORE THAN 65 YEARS OF AGE" MEANS PERSON HAS PASSED 65th BIRTHDAY—STATUS OF LEGAL RESIDENCE WHERE BLIND WOMAN MARRIES AND MOVES FROM COUNTY INTO COUNTY OF HUSBAND'S RESIDENCE—RESIDENCE IN PRIVATE INSTITUTION OR HOME FOR ONE YEAR—STATUS AS TO LEGAL SETTLEMENT FOR BLIND RELIEF.

SYLLABUS:

1. *Under Section 2965-1, General Code, the phrase "nor more than 65 years of age," is a statutory limitation which means what it says, and that is, when a person passes his sixty-fifth birthday, he is then "more than 65 years of age," and cannot thereafter participate in any further*

payments of relief to the needy blind, by county commissioners, as is provided under the authority of Sections 2965, et seq., of the General Code.

2. *A woman who is a recipient of blind relief in county "A" and who, after marriage to a man who is a recipient of blind relief in county "B," removes to county "B" to live with her husband and establishes it as her future home, thereby acquires a legal residence or legal settlement in county "B," in so far as she is entitled to participate in blind relief provided under Section 2965 et seq., of the General Code.*

3. *A person who has lived in a private institution or home for a period of one year, shall, under the provisions of Section 2965-1, General Code, thereby acquire a legal settlement for the purpose of blind relief, in such county in which such private institution or home is situated, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom.*

COLUMBUS, OHIO, July 7, 1937.

HON. WILLIAM E. BERTRAM, *Chief, Bureau of Aid for the Blind, Division of Public Assistance, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

"We are requesting your opinion on the following points raised in connection with the administration of Section 2965-1 (a) and (c), General Code.

1. H. B., Prosecuting Attorney of L. County, in response to an inquiry from the county blind relief administration of that county, states with reference to the phrasing of the above indicated section, 'not less than 18 nor more than 65 years of age,' that 'it is, therefore, my opinion that this law does limit the ages of recipients of blind relief * * * and the county would have no authority to pay blind relief to a person past 65 years of age.' Our interpretation of the law permitted the county to continue payment for a period of 90 days after attaining the 65th birthday. Are we legally correct in assuming that the 90 day period beyond the 65th birthday is not necessarily within that time known as, 'more than 65 years of age?'

2. We understand that for purposes of poor relief, and so forth, the residence of a wife follows that of a husband. However, in the revised statute relating to residence for blind relief recipients, there is specific provision for one year's residence in a county, or the attainment of 'a legal settlement elsewhere'—'legal settlement' being defined for the purposes of this act as a year's

residence without regard to self-support or non-public maintenance. In the case before us, which gives rise to this inquiry, a recipient of blind relief in county 'A' removed to county 'B' immediately after her marriage to a recipient of blind relief in county 'B'. What is the respective responsibility of counties 'A' and 'B' to the wife?

3. What is the legal residence of one who is living in a private institution or home—the county from which he has entered such institution or home, or the county in which such institution or home is located?"

Section 2965, General Code, provides :

"Any person of either sex who, by reason of loss of eyesight, is unable to provide himself with the necessities of life, who has not sufficient means of his own to maintain himself, and who, unless relieved as authorized by these provisions, would become a charge upon the public or upon those not required by law to support him, shall be deemed a needy blind person."

Section 2965-1, General Code, effective April 9, 1936, was enacted as part of House Bill No. 611, passed by the 21st General Assembly, for the purpose of amending the Ohio Blind Relief Law, so as to make it conform to the Federal Social Security Act. Section 3965-1, General Code, reads as follows :

"Relief shall be given under this act to any needy blind person who: (a) is not less than 18 nor more than 65 years of age; and (b) lost his eyesight while a resident of the state or shall have resided in the state for a period of five years during the nine years immediately preceding the filing of the application for assistance, the last year of which shall be continuous and immediately precede such application; and (c) has resided in and been an inhabitant of the county in which application is made for at least one year immediately preceding the date of the application, or has a legal settlement in the county in which the application is made; provided, however, that any person otherwise qualified who has no legal settlement in the county in which he makes application, shall file his application in the county in which he is residing, and relief if granted, shall be paid entirely from state funds until he can qualify as having a legal settlement in that county. For the purpose of this act.

every person who has resided one year or more in any county of this state shall thereby acquire a legal settlement in such county, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom."

Your first question involves an interpretation of the legal phrase, "not less than 18 nor more than 65 years of age." It seems to have been the opinion of the prosecuting attorney to whom you refer in your letter, that the words, "nor more than 65 years of age," place a limitation on the authority of the county commissioners to pay relief to a needy blind person, to one who has not passed his sixty-fifth birthday. You state that it is your opinion payments can be made to a needy blind person for some period of time after he passes his sixty-fifth birthday. The whole question involved here is whether or not all payments must stop when the participant reaches his sixty-fifth birthday. In other words, what is the correct interpretation to be placed on the legal phrase, "nor more than 65 years of age." Does this mean the exact sixty-fifth birthday anniversary of the participant, or does it mean that he is still "65 years of age" until he reaches his sixty-sixth birthday, or just what does it mean?

In the writing of life insurance, a person is considered to be 65 years of age six months before and six months after the anniversary date of his birth. In so far as the judicial interpretation of this question is concerned, I can find no authority in Ohio. I do find two cases outside of this state which may throw some light on the question at issue. In the case of *Gibson vs. People*, decided by the Supreme Court of Colorado, January 4, 1909, 99 Pacific Reporter, page 333, the second branch of the syllabus reads:

"The contributory delinquent law (Sess. Laws 1905, p. 198, c. 94) prescribes a punishment for persons who contribute to the delinquency of a child, as defined by law. The delinquent children law (Sess. Laws 1903, p. 178, c. 85) provides that the words 'delinquent child' shall include any child '16 years of age or under' who violates any law. HELD, that the words '16 years of age or under' excludes children who have passed beyond their sixteenth birthday, for a child is 16 years of age on the sixteenth anniversary of his birth, and thereafter is over 16 years of age, and hence one cannot be convicted of contributing to the delinquency of a child who has passed his sixteenth birthday."

Campbell, J., in his opinion, in discussing the question of age, says:

“The Attorney General contends that these words (sixteen (16) years of age or under) include children during their entire sixteenth year and up to the seventeenth anniversary of their birth, while defendant maintains that it excludes children who have passed beyond the first day of their sixteenth year. * * * It is obvious that the General Assembly intended to fix some limit to the age of children affected by the statute—a point of time beyond which they no longer are amenable to its provisions. In one sense a child is 16 years of age until it is 17; so also it is 16 when it is 18; but in the true sense, it is 16 and over whenever it has passed beyond the first day of the sixteenth anniversary of its birth. * * * If a statute prescribing the age limit read, ‘over the age of fourteen years,’ one 14 years and 6 months old would not come within its provisions if the Attorney General’s contention is correct, because he would be only 14 years of age, and not over 14, until he reaches the fifteenth anniversary of his birth. And yet we apprehend no such construction would be put upon a statute as reading, *A child is 16 years of age on the sixteenth anniversary of his birth*, and thereafter is over 16 years of age.” (Italics the writer’s.)

The phrase interpreted in the case of *Gibson vs. Pcope, supra*, is: “16 years of age or under,” while the phrase for determination in this opinion is: “nor more than 65 years of age.”

In the case of *Watson vs. Loyal Union Life Association of Muskogee*, decided by the Supreme Court of Oklahoma, April 16, 1930, 286 Pacific Reporter, page 888, the syllabus reads:

“*A person is not over 55 years of age within the meaning of section 2, chapter 32, S. L., 1925, until he arrives at the age of 56.*” (Italics, the writer’s.)

In this case the Life Association was limited by statute, in issuing benefit certificates to persons whose “limit of age shall not exceed 55 years.” The court said:

“It is contended by defendant that the certificate is void for the reason that insured was over 55 years of age at the time it was issued, and that for this reason no recovery can be had thereunder. * * *

The certificate was issued May 31, 1927. Insured was born December 24, 1871, and was therefore, at the time of the issuance thereof, 55 years, 4 month, and 4 days old. She arrived

at the age of 56 December 24, 1927. Was she then at the time the certificate was issued, over 55 years of age within the meaning of the act in question? We arrive at the conclusion that she was not. *A person is ordinarily not considered over 55 years of age until he arrives at the age of 56. It may safely be said that it is universally so understood, and it occurs to us that this must have been the sense in which the language was used by the legislature.*

Defendant contends that the very moment one passes his or her fifty-fifth birthday, he or she is then over 55 years of age. If this contention be correct, the question naturally arises: At what period in a man's life would he be said to be only 55 years of age? He certainly would not be of that age until he reaches his fifty-fifth birthday. If the contention of defendant be correct, no one could legally give his age as 55 years one hour or one moment after he passes his fifty-fifth birthday. We cannot believe that the Legislature intended that the act should be so construed, but, on the contrary, are of the opinion that the language used should be construed in its ordinary sense and be given its ordinary meaning. We prefer to so construe it, and in so doing arrive at the conclusion that insured was not over 55 years of age at the time she took out the certification in question." (Italics, the writer's.)

A review of these decisions cited supra, shows that the courts are in considerable conflict as to just when a person arrives at a certain age, and also how long he continues to be that certain age. The latest case on this question—*Watson vs. Loyal Union Life Association of Muscogee, supra*, seems to very definitely hold that a person is "not over 55 years of age" until he reaches his 56th birthday. If this case is applicable to the question involved in your communication then a person would be 65 years of age until he reaches his 66th birthday. However, I feel that the best authority on the whole question and the one which reaches the most logical conclusion, is the case of *Gibson vs. People, supra*. In this case it is held that the words, "16 years of age or under" excludes any children who have passed beyond their sixteenth birthday, for a child is 16 years of age on the sixteenth anniversary of his birth, and thereafter is over 16 years of age." By a like interpretation and conclusion, it can be said the legal phrase "nor more than 65 years of age" excludes any person who has passed beyond his sixty-fifth birthday, for a person is 65 years of age on the sixty-fifth anniversary of his birth, and thereafter is more than 65 years of age. I realize, of course, that there is no question but that relief can be given to needy blind persons

who have not passed their 65th birthday. The question then arises, is it possible under subsection (a) of Section 2965-1, General Code, for any relief payments to be made to needy blind persons after they pass their 65th birthday? Had this section of the statute said that relief could be given to any needy blind person who has passed his 18th birthday and has not passed his 65th birthday, the same would be quite clear as to interpretation. However, since it only mentions "years of age," I am led to the conclusion, in view of the conflict of the decisions of the courts on this matter, and the lack of authority of any decisions of the courts of this state or of any previous opinions of this office on the matter, and in view of the decision of the court in *Gibson vs. Pcoyle, supra*, that the phrase: "nor more than 65 years of age" means what it says, and that is, when a person passes his 65th birthday he is then "more than 65 years of age" and cannot, therefore, participate in any further payments of relief to the needy blind, by county commissioners, as is provided under the authority of Sections 2965 and 2965-1, General Code.

In response to your second question, in which you inquire concerning the legal settlement or legal residence of a wife, in so far as blind relief payments are concerned, who as a recipient of blind relief in county "A," removes to county "B" immediately after her marriage to a husband who is already a recipient of blind relief in county "B." You ask: "What is the respective responsibility of counties 'A' and 'B' to the wife?"

14 Ohio Jurisprudence, page 579, holds:

"It is a general principle of law that a woman by marriage loses her own domicile and acquires that of her husband. The matrimonial domicile is presumed to be that of the husband at the time of the marriage."

Section 7996, General Code, provides:

"The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto."

It follows, therefore, without question, that the wife establishes a new residence when she marries and removes from county "A" to county "B" to live with her husband. Section 2965-1, *supra*, requires a participant of blind relief to reside in and be an inhabitant of the county in which application is made, for at least one year immediately preceding the date of the application, *or have a legal settlement* in the county in which the application is made. This section further provides:

“For the purpose of this act, every person who has resided one year or more in any county of this state shall thereby acquire a legal settlement in such county which he shall retain until he has acquired a legal settlement elsewhere.”

There is no question in my mind, but that the wife acquires a legal settlement for the purposes of blind relief, in the county in which her husband resides, immediately upon removal thereto where she does it for the purpose of making it her future home.

It is therefore my opinion, in specific answer to your second question that, a woman who is a recipient of blind relief in county “A,” and who, after marriage to a man who is a recipient of blind relief in county “B,” removes to county “B” to live with her husband and establishes it as her future home, thereby acquires a legal residence or legal settlement in county “B,” in so far as she is entitled to participate in blind relief provided under Section 2965 et seq., of the General Code.

In your third question you ask: “What is the legal residence of one who is living in a private institution or home—the county from which he has entered such institution or home or the county in which such institution or home is located?”

14 Ohio Jurisprudence, at page 564, says:

“It is a fundamental principle of law that ‘every person must have a domicile somewhere,’ and that no person can have more than one domicile at the same time. (*Grant vs. Jones*, 39 O. S., 506; *Hill vs. Blumenberg*, 19 O. App., 404). The law ascribes a domicile to every person, and no one can be without one. (*Sturgeon vs. Korte*, 34 O. S. 525).”

The term “domicile” in its ordinary acceptance, means a place where a person lives or has his home. It has also been defined, in the case of *Bowen vs. Bowen*, 12 O. N. P., N. S., 221, as, “the place where a person lives, or has his home, to which, when absent from it, he intends to return, and from which he has no present purpose to remove.”

There are three fundamental categories into which domicile may be divided: domicile of birth or origin, domicile of choice, and domicile by operation of law. The court in the case of *Sturgeon vs. Korte*, 34 O. S., 525, says:

“The word ‘residence,’ as used in the constitution has substantially the meaning of ‘habitation,’ ‘domicile,’ or ‘place of abode.’ The law ascribes a domicile to every person, and no person can be without one. * * * Domicile of birth remains until

another is chosen, or where a person is incapable of choosing, until one results by operation of law. *To acquire a new residence or domicile, where one is under no disability to choose, two things must concur—the fact of removal and the intention to remain.* The old domicile is not lost or gone until the new one is acquired. It is not, however, necessary that the purpose to acquire a new residence should exist at the time of removal. It may be formed afterward. *A residence may be acquired by one who has removed to a place for temporary purposes only, by a change of purpose, and an election of the new habitation or place of abode, as his place of future domicile or home. * * ** (Italics, the writer's).

In the case of *State ex rel. Kaplan vs. Kuhn, et al.*, 8 O. N. P., 197, the second branch of the syllabus holds:

“Every person must have a domicile somewhere. No person can have more than one domicile at the same time. Every person who is sui juris and capable of controlling his personal movements may change his domicile at pleasure. A change of domicile is a question of fact and intention.”

The court, in discussing the question of intention on the part of a person to change his residence, in *Kaplan vs. Kuhn, supra*, says:

“In the matter of intention there are three elements:

- (1) Capacity to choose;
- (2) Freedom of choice;
- (3) Actual choice.

In order to constitute the requisite animus or intention amounting to an actual choice, two states of mind must concur; (1) animus non revertendi—that is, the intention not to return to a former domicile; (2) animus manendi, or the intention to remain indefinitely at the new residence.”

However, it must be noted that the general principles of law enunciated by the foregoing authorities, as to the proper method of establishing a “legal residence” in any county in this state, are limited and restricted by the special provisions as to “legal settlement” contained in Section 2965-1, General Code, covering relief for the needy blind, which section specifically provides that a needy blind person must reside in and be an inhabitant of the county in which application is made, for at least

one year immediately preceding the date of the application, or has a legal settlement in the county in which the application is made.

Section 2965-1, supra, also defines the term, "legal settlement" in so far as an applicant for needy blind relief is concerned, by providing:

"For the purpose of this act, every person who has resided one year or more in any county of this state shall thereby acquire a legal settlement in such county, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom." (Italics, the writer's.)

This, in my opinion, places a very definite restriction, in so far as residence qualifications are concerned, on any person who is an applicant for needy blind relief in any county of this state.

It must also be further noted that Section 2965-1 (c), provides a method for temporary blind relief to those needy persons who are otherwise qualified but have no legal settlement in the county in which such application is made. It provides such person "shall file his application in the county in which he is residing, and relief if granted, shall be paid entirely from state funds until he can qualify as having a legal settlement in that county." In other words, any needy blind person is entitled to some kind of relief, if needed, and the matter of "legal settlement" is to be no bar thereto.

Therefore, in specific answer to your third question, it is my opinion that a person who has lived in a private institution or home for a period of one year, shall, under the provisions of Section 2965-1, supra, thereby acquire a legal settlement for the purpose of blind relief, in such county in which such private institution or home is situated, which he shall retain until he has acquired a legal settlement elsewhere, or until he has been absent voluntarily and continuously for one year therefrom.

Respectfully,

HERBERT S. DUFFY,
Attorney General.