

2928.

1. TUBERCULOSIS — COST OF CARE AND TREATMENT — COUNTY OF DOMICILE OR LEGAL RESIDENCE RESPONSIBLE FOR COST — DISTINGUISHED FROM COUNTY OF LEGAL SETTLEMENT, SECTION 3477 G. C.
2. CONTRACT WITH CHURCH HOME FOR CARE, DURATION NATURAL LIFE, WITH RIGHT OF REMOVAL FROM COUNTY, SITUS OF HOME, TO ANOTHER COUNTY — RIGHT OF REMOVAL VESTED IN HOME — WILL NOT PREVENT PARTY FROM ACQUIRING LEGAL RESIDENCE OR DOMICILE IN COUNTY, SITUS OF HOME, PURPOSE, RECEIVE CARE AND TREATMENT UNDER LAWS FOR CONTROL OF TUBERCULOSIS.

SYLLABUS:

1. *The county of domicile or legal residence is responsible for the cost of care and treatment of persons afflicted with tuberculosis as distinguished from the county of legal settlement as defined in Section 3477, General Code.*

2. *Where a person having a domicile or legal residence in a county of this state enters into a contract with a church home situated in another county, under the terms of which contract the home agrees to care for such person as long as she lives but which contract includes a provision that the home shall have the right to remove such person from the county in which the home is situated to any other place, this right of removal vested in the home will not prevent such person from acquiring a legal residence or domicile in the county in which the home is situated for the purpose of receiving care and treatment under the laws enacted for the control of tuberculosis.*

Columbus, Ohio, October 24, 1940.

Hon. Ellis W. Kerr, Prosecuting Attorney,
Troy, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

"A woman from Troy, Miami County, ten years ago entered the Ohio Presbyterian Home in Shelby County as a resident for life. After going to that County, with the intention of staying there, she was fully self-supporting for more than twelve months and also qualified and voted there. Her acceptance at the Presbyterian Home was upon a contract in which she agreed that the Trustees of the Home might in their discretion transfer her to any other of their homes in Ohio. At the date of this contract there was one other such Presbyterian home but there is now no other.

This woman has recently developed active tuberculosis and will have to go to a tubercular hospital. Shelby County disclaims liability for her care, claiming she is a resident of this County. Their objection to her residence as being there is based upon the fact that the contract permitted her to be transferred.

Upon this state of facts, is this woman a proper charge upon Shelby County or upon Miami County?

If the Trustees of the Home should now, with her consent rescind that clause of the original contract permitting her transfer, would that be sufficient to make Shelby County her permanent residence or is she in any case to be considered as having never abandoned her Miami County residence?"

The legislature being cognizant of the fact that tuberculosis is a disease which will spread unless properly controlled, that if not properly treated will likely prove fatal to the patient, and that many people in this state so afflicted were not receiving proper care and treatment, enacted legislation to control this problem.

The question presented in the above request has to do with the proper application of the laws enacted for the care and treatment of persons suffering from tuberculosis.

The first query is whether legal settlement in a county of this state is necessary in order to be eligible for treatment. The words of the legislature in its enactment of Sections 3140 and 3143, General Code, appear to provide the answer wherein it is stated:

Section 3140.

"Whenever complaint is made to the state board of health that a person is being kept or maintained in any county infirmary in violation of section 3139 of this act, such state board of health may make arrangements for the maintenance of such person in some hospital or other institution in this state devoted to the care and treatment of cases of tuberculosis; and the cost of removal to, and the cost of maintenance of, such person in such hospital or institution shall become a legal charge against, and be paid by the county in which

such person has a legal residence. If such person is not a legal resident of this state, then such expense shall be paid by the county maintaining the infirmary from which removal is made."

Section 3143.

"Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, for the care and treatment of the inmates of such infirmary or other residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessaries, and they shall also pay for their transportation. Provided, that the county commissioners of any county may contract for the care and treatment of the inmates of the county infirmary or other residents of the county suffering from tuberculosis with an association or corporation, incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis; but no such contract shall be made until the institution has been inspected and approved by the state board of health, and such approval may be withdrawn and such contracts shall be cancelled if, in the judgment of the state board of health, the institution is not managed in the proper manner. Provided, however, that if such approval is withdrawn, the board of trustees of such institution may have the right of appeal to the governor and attorney general and their decision shall be final."

Inasmuch as Sections 3140 and 3143, General Code, refer to "legal residence" and "residents of the county", it must be concluded that the legislature intended to make "residence" the qualification for a person seeking treatment under the laws providing for the care and treatment of tuberculosis patients, rather than "legal settlement" as defined in Section 3477, General Code, which term is generally associated with the poor laws.

The above conclusion concurs with an opinion rendered by one of my predecessors appearing in Opinions of the Attorney General for 1934, Vol. III, page 1664, wherein it is stated in the first branch of the syllabus:

"The county of legal residence of persons afflicted with tuberculosis should hospitalize such residents. Legal settlement of such persons within the county is not a necessary requirement. The ex-

pense of treatment in the hospital for tuberculosis should be paid by the county of legal residence if such person is indigent.”

Having concluded that “legal residence” is the test to be applied under the law here for consideration, it becomes necessary to ascertain the legal import of this term. “Legal residence” has not been defined by the legislature as has legal settlement, therefore, it becomes necessary to look elsewhere for authority. The term “residence” is susceptible of different interpretations depending in what type of law it is used. In some cases of its use it has been held to be synonymous with the term “domicile”. A discussion upon this subject appears in 17 Am. Jur. page 593, Section 9, wherein it is stated:

“Whether the word ‘residence’ as used with reference to particular matters is synonymous with ‘domicil’ is a question of some difficulty, and the ultimate decision must be made from a consideration of the purpose and intent with which the word is used. ‘Residence’ has many shades of meaning — from mere temporary presence to the most permanent abode. Generally, however, it is used to denote something more than mere physical presence. As in construing other statutes, in the construction of legislation using the term ‘residence’ the courts primarily look to the legislative purpose as well as the context.”

The Supreme Court of Ohio in the case of *Grant v. Jones*, 39 O. S. 505, at page 515, in considering the meaning of the terms “residence” and “domicile” 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.”

Inasmuch as laws relating to the care and treatment of tuberculosis are in the same category as laws providing for care and treatment in benevolent institutions of the state, for the reason that the legislature in both instances is attempting to protect the health, welfare, and safety of the people, it may be concluded that the rule laid down by the Court in the above case has proper application to the question here involved.

Having concluded that “legal residence” as used in the laws relating to the care and treatment of tuberculosis is synonymous with “domicile”, it is

now necessary to study the facts of the case you present in order to ascertain the domicile or legal residence of the patient in question.

It appears that there are three types of domiciles, namely, by birth or origin, by choice and by operation of law. Regarding the domicile of choice it is stated in 17 Am. Jur. page 598, Section 14:

“As defined in many cases, a domicil of choice is the place which a person has elected and chosen for himself to displace his previous domicil. It is a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with an intention of continuing to reside there for an unlimited time. In order to acquire such a domicil, there must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or relief from illness. It must be a residence fixed, not for a limited period, or particular purpose, but generally, and indefinite in its future contemplation.”

The facts of the case here involved disclose that the patient entered into a contract with the Presbyterian Home knowing that she would remove from Miami County to Shelby County, there to remain the rest of her life unless sooner moved at the instance of the Home. Her agreement with the Home was voluntary and was not compelled by any external force or circumstances, but was her own wish and of her own choosing. The residence contemplated in Shelby County was not for a definite or limited time, or to continue until some particular purpose was fulfilled and was truly indefinite in its future contemplation.

From all the external facts and circumstances that must be considered in determining the objective intentions of this patient the conclusion is compelled that she has acquired a domicile and legal residence in Shelby County, and as such is a proper charge of that County in regard to care and treatment of tuberculosis.

In specific answer to your inquiry it is, therefore, my opinion that:

1. The county of domicile or legal residence is responsible for the cost of care and treatment of persons afflicted with tuberculosis as distinguished from the county of legal settlement as defined in Section 3477, General Code.

2. Where a person having a domicile or legal residence in a county of this state enters into a contract with a church home situated in another

county, under the terms of which contract the home agrees to care for such person as long as she lives but which contract includes a provision that the home shall have the right to remove such person from the county in which the home is situated to any other place, this right of removal vested in the home will not prevent such person from acquiring a legal residence or domicile in the county in which the home is situated for the purpose of receiving care and treatment under the laws enacted for the control of tuberculosis.

Respectfully,

THOMAS J. HERBERT,
Attorney General.