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AID TO NEEDY PERSONS—PERMANENTLY AND TOTALLY DISABLED—“STATE PLAN”—PROMULGATED BY DIRECTOR OF PUBLIC WELFARE— CHAPTER 5113., RC—RELIEF PRIOR TO OCTOBER 4, 1955, EFFECTIVE DATE OF CHAPTER 5106., RC, SHOULD BE DEEMED “POOR RELIEF”—ACQUISITION OF LEGAL SETTLEMENT—SECTION 5113.05 RC.

SYLLABUS :

Such aid to needy persons who are permanently and totally disabled, under the “state plan” promulgated by the Director of Public Welfare under authority of Chapter 5113., Revised Code, as was extended prior to October 4, 1955, the effective date of Chapter 5106., Revised Code, should be deemed “poor relief” within the meaning of Section 5113.05, Revised Code, relative to the acquisition of legal settlement.

Columbus, Ohio, October 20, 1955

Hon. Henry J. Robison, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"We would appreciate your opinion on another question involving legal settlement as defined in section 5113.05 of the Revised Code.

"An individual cannot change his place of legal settlement without residing in a county for a period of one year without receiving poor relief. Since November, 1950, the Department of Public Welfare has operated the program of Aid to the Permanently and Totally Disabled through an executive order based on the provisions of sections 5113.01 through 5113.14. Modifications in the eligibility requirements were necessary in order to meet federal requirements for participation in the disabled program. The question has now arisen as to whether Aid to the Permanently and Totally Disabled constituted poor relief for the purpose of determining legal settlement. The situation arises in the following manner:

"A recipient of relief in Mahoning County moved to Huron County where she continued to receive relief from the Mahoning County Department of Welfare. In 1950, after the Aid for Disabled program was established, the recipient qualified for the new category and received payment through the Huron County Department of Welfare. No supplemental poor relief was required at that time, but relief in addition to the \$55 maximum from Aid for the Disabled is now needed. Does this recipient continue to have legal settlement in Mahoning County in view of the fact that she has received aid at all times from either poor relief or from the Aid for Disabled program?

"Your advice will be helpful because this same question has occurred in other instances."

Section 5113.05, Revised Code, provides in part as follows:

"Legal settlement for the purposes of sections 5113.01 to 5113.14, inclusive, of the Revised Code, is acquired by residing in one county for a period of one year without receiving poor relief or relief from a private agency which maintains records of relief given. * * *"

The state program of aid to needy persons who are permanently and totally disabled, financed in part by federal grants to the state under the federal social security act, is now constituted and administered as provided in Chapter 5106., Revised Code, effective October 4, 1955.

Prior to that date, and since November 1950, such program, with federal aid, was administered under a "state plan" established by executive order of the Director of Public Welfare.

The validity of such plan was challenged, as you know, in *State, ex rel. Robison v. Henderson*, 162 Ohio St., 504 (1955), in which case this office advanced the argument that the program involved was purely a form of poor relief, and that the administration of the program under such "state plan" was authorized under the poor relief statutes. Chapter 5113, Revised Code. Of the argument thus advanced the majority of the court in a per curiam decision said, pp. 509, 510:

"The relator claims that authority for the adoption of such 'plan' is based upon Section 5113.09, Revised Code, which is in part as follows:

" 'The Department of Public Welfare shall:

" '(A) Make reasonable rules for the effective administration of poor relief;

" '(B) Make investigations of local administration and issue orders for the correction of any violations of law or regulation; and reimbursement may be discontinued by the state until such orders are complied with;

" '(C) Prescribe forms and require reports from local relief authorities, either directly, or through any county officer or board, and from such officer or board, in such form as is prescribed;

" '(D) Determine the kinds and amounts of obligations for poor relief and the administration thereof on which state reimbursement will be based;

" '(E) Co-operate with agencies of the federal, state and local governments * * *'

"The broad statutory authority of the department to make rules and to require accounting and reports as to persons permanently and totally disabled in a county, with reference to funds furnished by the state and accepted by the county for reimbursement for aid expended from local funds, whether such funds so furnished are state or federal in origin, can not be ques-

tioned by the county. Where such funds are accepted by a county, the accounting and the furnishing of the reports required by the department must follow as a matter of course.

“The demurrer to the petition is overruled, and, since it is agreed by the parties that the ruling on the demurrer will be dispositive of the question on the merits, the writ is allowed.”

It is obvious that the court's ruling is essentially based on the view that the public assistance payments thus involved were justified as poor relief under the statutes relating thereto, and this decision must be regarded as dispositive of the question of the character of such payments made under the plan in operation prior to October 4, 1955, the effective date of Chapter 5106., supra.

From this it necessarily follows that legal settlement could not be acquired in a county by virtue of residence therein while receiving aid under the program in question during the period November 1950 to October 4, 1955.

Accordingly, in specific answer to your question, it is my opinion that such aid to needy persons who are permanently and totally disabled, under the “state plan” promulgated by the Director of Public Welfare under authority of Chapter 5113, Revised Code, as was extended prior to October 4, 1955, the effective date of Chapter 5106., Revised Code, should be deemed “poor relief” within the meaning of Section 5113.05, Revised Code, relative to the acquisition of legal settlement.

Respectfully,
C. WILLIAM O'NEILL
Attorney General