

It is plain that the reasoning of the foregoing opinion is applicable here, as sections 12932 and 4757, General Code, which prohibit a member of a board of education from "acting in a matter in which he or she is pecuniarily *interested*" and having "directly or indirectly any pecuniary *interest* in any contract of the board," are quite similar to section 12910, General Code, which prohibits any officer from being "interested" in a contract for the purpose of fire insurance for the political subdivision with which he is connected.

The other of the two recent opinions is reported in Opinions of the Attorney General for 1927, volume III, page 2089. The first sentence of the first paragraph of the syllabus of this opinion holds:

"The relation of husband and wife is such that the relation alone does not engender an interest of the husband in the contracts of the wife, and where a county sheriff contracts with his wife for the furnishing of meals to the prisoners in the county jail, to be paid for from county funds, he does not thereby become interested in a contract for the purchase of supplies for the use of the county, in violation of section 12910, General Code."

It is true that the facts of the foregoing opinion differed from those before us in this opinion. In the 1927 opinion, the wife contracted with her husband, the sheriff, while in this opinion, the husband does the contracting with the board of which his wife is a member. However, the same principle is applicable that was laid down in the above opinions.

Consequently, I am of the opinion, in specific answer to your question, that it is not a violation of section 12910, General Code, for the husband of a member of the board of trustees of a county children's home to sell fire insurance for the use of the home.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

1496.

EMPLOYMENT—PREFERENCE MUST BE GIVEN TO PERSONS LIVING  
 IN POLITICAL SUBDIVISION UNDER INDUSTRIAL RECOVERY  
 ACT FOR EMPLOYMENT ON HIGHWAYS—ALIENS' RIGHTS UNDER  
 SAME.

**SYLLABUS:**

1. *By the terms of the Industrial Recovery Act, persons who are already living in a political subdivision and/or county and who honestly consider that territory as their home, must be given a preference in the employment of labor.*
2. *Aliens who have filed formal declarations of their intention of becoming citizens with the proper court, are considered in the same class with citizens of the United States in the employment of labor.*

COLUMBUS, OHIO, September 2, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“In order that this Department may properly comply with the requirements of the National Recovery Act in the placing of highway improvements under contract, it is necessary to secure an interpretation of Sub-section 4 of Section 206, Title No. II of the act known as (Public—No. 67—73d Congress) (H. R. 5755).

The sub-section in question reads as follows: ‘Preference shall be given . . . in the following order:—

—(A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or District in which the work is to be performed;’

Accordingly, it is requested that we be given formally, a definition of a bona fide resident of the State, of the County, and of aliens who have declared their intention of becoming citizens of the United States.

Our primary concern lies, of course, in the residence requirements of men to be employed on this work.”

Section 206 of the public works feature of the National Industrial Recovery Act provides in part “that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and men in the following order: \* \* \*.” This section then reads as stated in your letter.

One of the most confusing situations in the entire field of present day law is caused by the loose way such words as “domicile” and “residence” are used in legislation. Technically speaking, the words have a different meaning but are often used interchangeably. It is said that a person may have more than one residence at the same time but he can have only one domicile. *Grant vs. Jones*, 93 O. S. 506; *Hill vs. Blumenberg*, 19 O. A. 404. A notable attempt to clarify this situation has been performed by the American Law Institute in the Restatement on Conflict of Laws. As stated in 14 O. Jur. 567:

“The problem of distinguishing the terms ‘domicil’ and ‘residence’ presents some difficulty. ‘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.”

The particular legislation here in question makes use of the phrase “bona fide residents.” A study of the purposes of this legislation leads to the conclusion

that a combination of residence and domicile was intended by the use of this phrase. It was no doubt the purpose in inserting this provision in the Industrial Recovery Act to assist the persons living in a certain community. Persons who really live in the community and who have made such county or subdivision their home are to be given preference as distinguished from persons who migrate to the particular community with the idea of securing work in the new federal projects. The use of the term "bona fide" or "good faith" shows that persons who are already established in a community, who are residing there, and who intend to make that place their home, should be given preference. A person moving to a community with the idea of securing work in the new project does not come within the meaning of the term "bona fide," even though such person may intend to make that community his permanent home. It is obviously impossible to lay down definite residence requirements as to length of time, since that is expressly what the new federal act intended to avoid. It is immaterial that an applicant has lived in the locality one year or twenty years. The true test to be applied by your Department, is whether or not the applicant really is a resident of the community and whether or not such place is his home. Hence, a combination of domicile and residence was intended by the enactment of section 206 of this Act.

The statutes of Ohio lay down arbitrary rules for the determination of legal settlement for various purposes, such as poor relief, voting, etc. These statutes, in my judgment, have no application to the present inquiry. It is a well known fact that the residence requirements of many states are complied with for the sole purpose of securing a divorce. Such persons are not bona fide residents, at least in the sense used in the Industrial Recovery Act.

You next inquire as to the meaning of the expression "aliens who have declared their intention of becoming citizens of the United States." The Naturalization Act provides that before a person may file a petition seeking naturalization, he must file, under oath with the clerk of the proper court, a statement that it is bona fide his intention to become a citizen of the United States and to renounce his allegiance to all other sovereignties. Not less than two years nor more than seven years must then elapse before the applicant can file his petition for citizenship. The Industrial Recovery Act places aliens who have filed the above stated intention on the same parity with citizens of this country.

It is therefore my opinion in specific answer to your questions:

1. By the terms of the Industrial Recovery Act, persons who are already living in a political subdivision and/or county and who honestly consider that territory as their home, must be given a preference in the employment of labor.

2. Aliens who have filed formal declarations of their intention of becoming citizens with the proper court, are considered in the same class with citizens of the United States in the employment of labor.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*