question for the court to determine upon the hearing, the statute leaving the matter largely to the discretion of the court hearing the cause, which discretion would be reviewable as are the other questions involved.

As the statute does not fix any time for the hearing, but directs that the petitioners shall give notice by publication of the filing of the petition *and of the time when it will be for hearing* (Section 2298, supra), it is clear that the fixing of the time is left to the petitioners who should understand that this right impliedly carries with it the injunction that the time fixed must be a reasonable time and that their judgment in the matter is subject to review by the court. If the time thus fixed by them is in the opinion of the court a reasonable time, the petition may be heard at the time thus fixed.

A literal reading of Section 2299, supra, would seem to require the court to hear the petition at the time stated in the notice, or as soon thereafter as convenient, and on request of the petitioners, to have the hearing in preference to all other cases on the docket. It would seem to me, however, that the statute contains no more than a *directory* provision to the effect that the court shall give the cause preference over other cases on the docket and that it should be heard within a reasonable time after the time fixed in the notice. The court has inherent power to control the business of the court and fix the sequence of the hearing of causes therein to the end that justice may be done to all persons seeking relief in the courts.

Specifically answering your question, therefore, it is my opinion that the petitioners, when publishing the notice required by Section 2298, General Code, have authority to set a tentative date for hearing of their petition, which should be at such a time as to give opportunity to all persons interested to file objections thereto if they so desire. The petition may be heard at the date set by the petitioners if convenient to the court, and if not convenient to the court the hearing should await the court's convenience, which should be guided by the *directory* provision of Section 2299, General Code, to the effect that, upon request of the petitioners, the cause should be heard in preference to all other causes on the docket. The petitioners, in fixing the tentative date for the hearing, and the court, in hearing the cause, must be guided by what is reasonable and proper under the circumstances, any abuse of discretion on the part of either the petitioners or the court being subject to review on appeal in the Court of Appeals and on proceedings in error in the Supreme Court.

Notice of the filing, objects and prayer of the petition, and of the time when it will be for hearing, if published in a newspaper, shall be given by one publication in two newspapers of opposite politics, having a general circulation in the territory to be affected by such transfer, preference being given to newspapers published within the territory. If there be no such newspapers, the notice must be posted in ten most conspicuous places within the territory for the period of four weeks.

Respectfully,
EDWARD C. TURNER,
Attorney General.

716.

DEPARTMENT OF PUBLIC WELFARE—NO AUTHORITY UNDER SECTIONS 1819 AND 1820, GENERAL CODE, TO INQUIRE INTO QUESTION OF LEGAL SETTLEMENT—QUESTION OF LEGAL SETTLEMENT AMONG COUNTIES OF STATE IS JURISDICTIONAL—CANNOT LOSE LEGAL SETTLEMENT.

SYLLABUS:

1. *The Department of Public Welfare has no authority under Sections* 1819 *and* 1820 *of the General Code to inquire into the question of legal settlement as between counties in the state.*

2. *The question of the legal settlement of a person, whom it is sought to have committed to a state institution, as between counties in the state is a jurisdictional one which must be ldetermined by the court in which the proceeding is brought.*

3. *A person who has acquired a legal settlement in a county of this state does not lose that legal settlement until another such settlement has been acquired as provided in Section 3477, General Code.*

COLUMBUS, OHIO, July 11, 1927.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

> "The parents of one John Doe, a feeble-minded minor, were born in Darke County, Ohio, where the boy was also born, and the family resided in that county until May, 1926. They then moved to Montgomery County where they lived until October, 1926, when they moved to Champaign County and have since resided in that county where they expect to make their permanent home. The boy while definitely feeble-minded has never been so adjudged by any court. His condition since moving to Champaign County has become such as to necessitate his institutional care for the protection of himself and society. The Judge of the Champaign County Probate Court while recognizing the boy's condition holds that he cannot hold the inquest inasmuch as residence in the county for twelve months is required to establish legal settlement necessary to give the court jurisdiction. The Darke County court holds that the parents have lost their settlement in Darke County through an absence of more than one year.
>
> Query: Which county, Darke or Champaign, has jurisdiction to hold an inquest in this case?"

This question has been considered by my predecessors in office and discussed at length in well considered opinions. I refer especially to Opinions of Attorney General for 1917, Volume III, page 2037. The state of facts considered in that opinion are on all fours with the facts under consideration herein.

You state in your communication that the young man in question is feeble-minded. The authority of the probate judge to act in such case is found in section 1893 of the General Code, which provides that a feeble-minded child shall be committed to the Board of Administration, now the Department of Welfare, and "admitted to the institutions for the feeble-minded in the same manner and by like proceedings as are provided for the commitment and admission of insane persons to the state hospitals for the insane."

The proceedings referred to in said section are those prescribed in sections 1953, et seq., of the General Code. Section 1953 provides that a resident citizen of "the proper county" must file an application with the probate court "of such county" and an affidavit, which the statute prescribes must contain among other statements that the patient "has a *legal settlement* in ---------- township, in this county."

The opinion hereinabove referred to specifically held that the probate court has no jurisdiction to inquire into the question of feeble-mindedness or insanity unless the person to be adjudged has a legal settlement in the county in which the court has jurisdiction.

I also find an opinion in the Opinions of the Attorney General for 1920, Volume I page 265, in which this question is discussed at length. The syllabus of said opinion reads as follows:

"A probate court has not jurisdiction in insanity cases where the residence of the alleged insane person is known unless said person has a legal settlement in the county. To acquire such a legal settlement the person must have lived in said county for a period of twelve consecutive months. However, in case the alleged insane person is a non-resident of the state, or his residence is unknown, the probate court may take jurisdiction for the purposes contemplated in sections 1819 and 1820, General Code."

The requirements necessary to obtain a legal settlement are found in section 3477, General Code, which provides in part as follows:

"Each person shall be considered to have obtained a legal settlement in any county in this state in which he or she has continuously resided and supported himself or herself for twelve consecutive months, without relief under the provisions of law for the relief of the poor, * * *."

I assume that you have this question before you because of the provisions of sections 1819 and 1820 of the General Code, which sections read as follows:

"Sec. 1819. If the judge or superintendent finds that the person whose commitment or admission is requested has not a legal residence in this state, or his legal residence is in doubt or unknown, and is of the opinion that such person should be committed or admitted to such institution, he shall notify without delay the Ohio board of administration, giving his reasons for requesting commitment or admission."

"Sec. 1820. The Ohio board of administration by a committee, its secretary, or such agent as it designates, shall investigate the legal residence of such person, and may send for persons and papers and administer oaths or affirmations in conducting such investigation. At any time after investigation is made, and before or after the admission, or commitment to such institution, a non-resident person whose legal residence has been established may be transported thereto at the expense of this state."

These sections were discussed in the opinion of the Attorney General for 1917, supra, and I find the following language relative thereto:

"These sections were also passed before the law making counties liable, and should be interpreted as they would be without the existence of such liability, and therefore would seem to apply to the question of residence in the state. This application is made more probable by the concluding part of section 1820, which is as follows:

'* * * At any time after investigation is made, and before or after the admission, or commitment to such institution, a nonresident person whose legal residence has been established may be transported thereto at the expense of this state.'

It would therefore seem that the board of administration is given authority by this section to make an investigation as to whether the person is entitled at all to enter the institutions, and therefore to investigate only the question of residence in the state, and that the other question is not submitted to them, as between conflicting counties which is to have the expense. That question did not exist at the time of this provision for the decision by the state board, and neither is it likely that a question which is principally one of financial liability would be so committed to a board or taken away from the ordinary tribunals for judicial decision of such questions."

It is therefore my opinion that you have no authority under sections 1819 and 1820 of the General Code to inquire into the question of legal settlement as between two or more counties in the state. The authority given by said sections is to inquire into the question of whether or not the person has a residence within the state so as to entitle him to be admitted to the institution.

The probate court has no authority to commit a person who is not a resident of this state to a state institution, and when a nonresident is brought before it, the court proceeds as set forth in section 1819, supra, and thereafter your department proceeds as provided in section 1820, supra, and if you can determine the residence of the person you have authority to transport the patient to that place at the expense of the state.

The question of jurisdiction as to whether or not the patient has a legal settlement within the county is one which the committing court must determine, and, as stated in the former opinions, before a commitment can be made by a probate court it must find that the patient has a legal settlement in the county.

It might seem that a recent opinion of the Supreme Court, viz., the case of *Board of Commissioners of Summit County* v. *Commissioners of Trumbull County*, decided May 25, 1927, is contrary to the above mentioned opinions. The syllabus in this case, which is reported in the Ohio Law Bulletin and Reporter for May 30, 1927, reads as follows:

> "When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody, and control of minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and pursuant thereto the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

This is not in conflict with these opinions as the facts are different. It has always been recognized that the legal settlement of the parent is the legal settlement of the minor children, and it is also true that the legal settlement of the husband is the legal settlement of the wife. In that particular case the mother had custody of the minor children and had a legal settlement in Trumbull County. She, together with her minor children, moved to Summit County where she was married to a person who had a legal settlement in Summit County. The court held that the marriage of the mother to the person who had a legal settlement in Summit County was sufficient to give her a legal settlement in that county, and likewise her minor children. This was by virtue of the marriage of the mother and did not require a year's residence without assistance therein.

I find no opinions upon the question of whether or not a person who has a legal settlement in one county retains that legal settlement until one is acquired in another county of the state or he moves out of the state. I am of the opinion, however, that in this respect the same principle would apply to legal settlement as is applied to legal residence. It is a well established rule that a person may and does retain a legal residence at one place until he abandons such residence by intent and establishes a legal residence elsewhere. Intent, however, has no bearing on the question of *legal settlement*, and it would seem that a person who has a legal settlement in one county does not lose that legal settlement until he has acquired a legal settlement outside the county. This, however, is a question for the probate court to determine.

It is therefore my opinion that:

(1) The Department of Public Welfare has no authority under Sections 1819 and 1820 of the General Code to inquire into the question of legal settlement as between counties in the state.

(2) The question of the legal settlement of a person, whom it is sought to have committed to a state institution, as between counties in the state is a jurisdictional one which must be determined by the court in which the proceeding is brought.

(3) A person who has acquired a legal settlement in a county of this state does not lose that legal settlement until another such settlement has been acquired as provided in Section 3477, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

717.

ANNEXATION OF ONE OR MORE TOWNSHIPS TO A MUNICIPAL CORPORATION—APPORTIONMENT OF NET INDEBTEDNESS—ADJUSTMENT OF UNENCUMBERED BALANCES—ADJUSTMENT MADE BY COUNTY AUDITOR MUST BE ACCEPTED BY ORDINANCE OR RESOLUTION OF MUNICIPALITY.

SYLLABUS:

Upon the annexation of a portion of one or more townships to a municipal corporation within which township tax levies for the payment of township debts do not apply, the auditor of the county in which the township is located shall apportion the existing net indebtedness of the township between the territory transferred to the municipal corporation and the unannexed portion of the township or townships in the proportion that the total tax duplicate for the annexed territory bears to the total tax duplicate remaining in and for the unannexed portion of the township or townships. The portion of said net indebtedness apportioned to the territory annexed shall be assumed and paid by the municipal corporation. A like adjustment shall be made of the unencumbered balances of the funds of the township. The annexation shall not be effective until the apportionment as made by the county auditor shall be accepted by ordinance or resolution of the council or other legislative authority of such municipal corporation.

COLUMBUS, OHIO, July 11, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication reading as follows:

> "The Bureau is making an examination of the affairs of the City of Akron and is in receipt of a letter from its examiner, which reads:
>
> 'On August 2, 1927, Senate Bill No. 290, an act to supplement Section 3557 of the General Code, relative to the division of funds and indebtedness when territory is annexed to a municipal corporation, goes into effect. The following situation is now existing in the City of Akron relative to the annexation of a part of Tallmadge Township, known as Goodyear Heights Subdivision No. 1: