

2798.

## LEGAL SETTLEMENT—INSANE PERSONS—QUESTION OF FACT—INMATE OF CHARITABLE INSTITUTION AT SPRINGFIELD—LEGAL SETTLEMENT IN CLARK COUNTY.

## SYLLABUS:

1. *Except in the case of non-residents of this state, a residence of twelve months in the county of the committing court is necessary to establish the legal settlement required to make a person eligible to be committed to a state hospital for the insane by such court.*

2. *Whether or not a person has a legal settlement in a county so as to empower the Probate Court of such county to commit such person to a state hospital for the insane is a question of fact in each particular case.*

3. *When an inmate of one of the charitable institutions, maintained by a fraternal organization at Springfield, Clark County, Ohio, as a home for its members and their families, has in fact acquired a legal settlement in Clark County, the Probate Court of such county has jurisdiction to commit such inmate to the proper state hospital for the insane, and in such case, on failure or inability of such inmate, or those having him in charge, to pay for the clothing and traveling and incidental expenses of such insane person so committed, the steward, or other financial officer, of the hospital may pay such expenses, which should in turn be paid by Clark County and charged to its current expense fund. The Auditor of Clark County should then collect the amount of such expenses as other debts are collected.*

COLUMBUS, OHIO, October 29, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication, which reads as follows:

“Located at Springfield, Clark County, Ohio, are a number of charitable institutions, established by fraternal organizations, as homes for their members and families.

You are respectfully requested to furnish this department with your written opinion upon the following question:

QUESTION: When persons in such homes are adjudged insane by the Probate Court of Clark County, and committed to a State Hospital for the Insane, should Clark County be charged with the support of such persons in the State Hospital, or should the county from which they are transferred to the homes be charged with such support?”

You have orally stated that this question comes from the Probate Judge of Clark County; and you also inquired whether, in such cases, the persons in question should be returned to the county whence they came for commitment to a state hospital, or whether the Probate Judge of Clark County should make said commitment, adding that such Probate Judge suggested that “it was hardly fair that Clark County should bear the expense of maintenance of all of these people.”

I may suggest in the beginning that the several counties of the state are not chargeable with the maintenance of inmates in state hospitals for the insane committed from said counties.

●Section 1815-2, General Code, provides as follows :

“The maximum rate for the support of inmates of such institutions shall be five dollars and fifty cents per week. Less amounts may be accepted by the board when conditions warrant such action, or when offered by persons not liable.”

This section does not apply, however, to inmates in state hospitals for the insane in so far as the liability of counties for the support of inmates is concerned, in cases where the inmate or those having him in charge, are unable to pay for the inmate's support. Section 1815-14, General Code, provides when the county shall be liable for the payment for the support of inmates, but limits said liability to payments for inmates in the institution for feeble-minded.

This discussion is therefore limited to the liability of the several counties for the payment for clothing and incidental expenses of inmates of the state benevolent institutions.

Section 1815, General Code, provides as follows :

“All persons now inmates of, or hereafter admitted into, a benevolent institution, except as otherwise provided in this chapter, and except as otherwise provided in chapters relating to particular institutions, shall be maintained at the expense of the state. They shall be neatly and comfortably clothed and their traveling and incidental expenses paid by themselves or those having them in charge.”

It is noted that, under the provisions of this section, inmates of benevolent institutions shall be maintained at the expense of the state, said section further providing that said inmates “shall be neatly and comfortably clothed and their traveling and incidental expenses paid by themselves or those having them in charge.”

Section 1816, General Code, provides as follows :

“In case of failure to pay incidental expenses, or furnish necessary clothing, the steward or other financial officer of the institution may pay such expenses, and furnish the requisite clothing, and pay therefor from the appropriation for the current expenses of the institution, keeping and reporting a separate account thereof. The account so drawn, signed by such officer, countersigned by the superintendent shall be forwarded by such officer to the auditor of the county from which the person came; and such auditor shall issue his warrant, payable to the treasurer of state for the amount of such bill and charge the amount to the current expense fund. The county auditor shall then collect the account in the name of the state as other debts are collected.”

Under the provisions of this section, if the incidental expenses and the necessary clothing of the inmates are not furnished by said inmates or those having them in charge, then the steward, or other financial officer, of the institution may pay such expense, and certify the account for same to the auditor of the county from which the person came. Such auditor shall issue his warrant for said amount out of the current expense fund and shall then proceed to collect said account in the name of the state as other debts are collected.

It is evident, therefore, that the state hospitals for the insane may make a charge against the respective counties for the payment of incidental expenses and necessary clothing furnished to the inmates. You will note that the account is to be sent to the auditor of the county from which the inmate came. It would therefore follow that, when patients are committed from Clark County, accounts for their incidental expenses and necessary clothing are sent to the auditor of Clark County for payment.

It therefore necessarily follows that, where persons are committed from the fraternal homes for the aged by the Probate Court of Clark County, Clark County should be charged with the accounts for necessary clothing and incidental expenses of said inmates. However, the Probate Judge of said county has inquired as to whether he should not return said inmates of said homes to the county whence they came for commitment to a state hospital.

It seems clear that the answer resolves itself into a question of residence. If the inmates in question of said homes have acquired a legal residence at said homes in Clark County, the Probate Judge of said county has jurisdiction to hear the inquest for lunacy of said inmates and said inmates are properly committed from Clark County to the state hospital. If said inmates have not acquired legal residences in said homes in Clark County, then the Probate Judge of Clark County would not have jurisdiction to hold said inquests of lunacy.

I had a similar question before me for consideration in 1915, in an opinion reported in Opinions, Attorney General, 1915, Vol. 11, page 1975. The syllabus of said opinion reads as follows:

“Residence of twelve months in county is necessary to establish the legal settlement required to make applicant for admission to insane hospital eligible therefor, except in case of non-resident of the state.”

The question then under consideration was as follows:

“Where a person who has resided in this state for more than a year removes from one county to another, and there becomes insane, how long must he have resided in the latter county in order to justify his commitment to an insane hospital from said latter county?”

In order that you may have the full discussion in said opinion, it is quoted as follows:

“Section 1818 of the General Code is as follows:

“When application to a judge of the probate court is made for the commitment of a person to a hospital for insane, a hospital for epileptics or the institution for feeble-minded, or whenever application to the superintendent of any other benevolent institution is made for the admission of a person thereto, such judge or superintendent shall require answers to the following questions:

1. Where was the person born?
2. When did he become a resident of this state?
3. When did he become a resident of the county?
4. If not a legal resident of the state and county, on what grounds is the application made?”

One of the requirements of the section is the information as to when the person who is an applicant for admission to an insane hospital became a resident of the county?

Section 10492 of the General Code provides as follows:

'Except as hereinafter provided the Probate Court shall have exclusive jurisdiction \* \* \*.

\* \* \*

6. To make inquests respecting lunatics, insane persons, idiots, and deaf and dumb persons, subject by law to guardianship.'

Section 10989 of the General Code, in part, is as follows:

'Upon satisfactory proof that a person resident of the county or having a legal settlement in any township thereof, is an idiot, imbecile, or lunatic, the Probate Court shall appoint a guardian for such person, who by virtue of such appointment shall be the guardian, etc.' \* \* \*

Section 3477 of the General Code is 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, subject to the following exceptions:

First. An indentured servant or apprentice legally brought into this state shall be deemed to have obtained a legal settlement in the township or municipal corporation in which such servant or apprentice has served his or her master or mistress for one year continuously.

Second. The wife or widow of a person whose last legal settlement was in a township or municipal corporation in this state, shall be considered to be legally settled in the same township or municipal corporation. If she has not obtained a legal settlement in this state, she shall be deemed to be legally settled in the place where her last legal settlement was previous to her marriage.'

It will be observed that in Section 10492 of the General Code, supra, the Probate Court is given jurisdiction to hold lunacy inquests, and that the jurisdiction of the court to hold a lunacy inquest is limited to such cases wherein the person is subject by law to guardianship. Again in Section 10989, supra, will be found the provision to the effect that it is jurisdictional that a person be a resident of the county or have a legal settlement in a township thereof before he is subject to action on the part of the Probate Court towards the appointment of a guardian.

Section 1953 of the General Code is as follows:

'For the admission of patients to a hospital for the insane, the following proceedings shall be had. A resident citizen of the proper county may file with the Probate Judge of such county an affidavit, subsequently (substantially) as follows:

'The State of Ohio, -----County, ss:

-----the undersigned, a citizen of-----

County, Ohio, being sworn, says, that he believes-----  
is insane (or, that in consequence of his insanity, his being at large is dangerous to the community). He has a legal settlement in-----  
township, this county.

Dated this ----- day of ----- A. D.-----.'

This section prescribed the requisites of an application for the admission of patients to a hospital for the insane, among which will be found a necessity for a showing as to a legal settlement in a township of the county.

The question propounded by you is, how long must a person have resided in a county to justify his commitment to an insane hospital from the county of his residence.

The question of legal settlement was considered in the case of *In re Clinton Canady* by J. M. Canady, Vol. VII, Ohio Decisions, at page 285. This was a case involving the appointment of a guardian for an idiot, and the court in passing on the question of legal settlement, at page 286, says:

'A legal settlement as in Section 6203 used, in my opinion, means a continuous residence within the county for the period of twelve consecutive months. It is so defined in Section 1492, in relation to pauper relief, and being an old phrase, for many years found in our statute law, it is fair to presume that the Legislature intended it to have the meaning here that they elsewhere declared it to have.'

It is my opinion, that under the existing statutes, a legal settlement for the purpose referred to can only be said to have been acquired only after a continuous residence of twelve months in the county, except in the case of a non-resident of the state, who, under the provisions of Section 1950 of the General Code, as amended, page 447 of 103 O. L., may be admitted upon the authority of the Ohio Board of Administration irrespective of such non-residence."

It is evident from the foregoing that the question of residence is a question of fact to be determined by the Probate Judge in each particular case. If the court finds that an inmate of one of the respective fraternal homes for the aged has not acquired a legal residence in Clark County, he may order said inmate returned to the county of his legal residence. On the other hand, if he determines that said inmate has acquired a legal residence in Clark County, it would be his duty to act as in similar cases within his jurisdiction.

In view of the foregoing and in specific answer to your question, it is my opinion that:

1. Except in the case of non-residents of this state, a residence of twelve months in the county of the committing court is necessary to establish the legal settlement required to make a person eligible to be committed to a state hospital for the insane by such court.

2. Whether or not a person has a legal settlement in a county so as to empower the Probate Court of such county to commit such person to a state hospital for the insane is a question of fact in each particular case.

3. When an inmate of one of the charitable institutions, maintained by a fraternal organization at Springfield, Clark County, Ohio, as a home for its members and their families, has, in fact, acquired a legal settlement in Clark County, the Probate Court of such county has jurisdiction to commit such inmate to the proper state hospital for the insane, and in such case, on failure or inability of such inmate, or those having him in charge, to pay for the clothing and traveling and incidental expenses of such insane person so committed, the steward, or other financial officer, of the hospital may pay such expenses, which should in turn be paid by Clark County and charged to its current expense fund. The auditor of Clark County should then collect the amount of such expenses as other debts are collected.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*