

1163.

RELIEF — RESIDENCE REQUIREMENT — TOWNSHIP TRUSTEES, BOARDS OF—NO AUTHORITY TO REMOVE NON-RESIDENT APPLICANT TO COUNTY OF LEGAL RESIDENCE — SECTIONS 3491 TO 3491-13 G. C. COUNTY COMMISSIONERS — SUPERINTENDENT COUNTY HOME —AUTHORITY TO REMOVE NON-RESIDENT INDIGENTS TO COUNTY OF LEGAL RESIDENCE.

**SYLLABUS:**

1. *Boards of township trustees have no authority since the enactment of Sections 3491 and 3491-1 to 3491-13, both inclusive, General Code (H. B. 675) to remove a non-resident applicant for poor relief to the county of his legal residence.*

2. *The enactment of Sections 3391 and 3391-1 to 3391-13, both inclusive, General Code (H. B. 675) did not by implication or otherwise, repeal the authority granted to boards of county commissioners and the superintendent of the county home to remove non-resident indigents to the county of their legal residence.*

COLUMBUS, OHIO, September 9, 1939.

HONORABLE LAMOINE HANDLEY, *Prosecuting Attorney, Carroll County, Carrollton, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion, which reads:

“The County Commissioners and our local Relief Director have requested me to obtain an opinion from you relative to the effect of the new relief law (H. B. 675, G. C. 3391 et seq.) upon existing Sections 3476, 3477 and 3479.

I understand these sections are not repealed or modified to any very great extent by said H. B. 675. I read your opinion No. 233, dated March 2, 1939, and have some difficulty reconciling it with the provisions of H. B. 675. I have also studied the analysis of the above Bill as propounded by the Department of Public Welfare and on page 7, thereof, I find quite some discourse on this matter.

Nevertheless, we desire your opinion on the following questions, formally or informally, as soon as possible.

(1) Have Township Trustees, at the present time, authority to remove an applicant for relief back to the township of his legal residence for the reason he cannot qualify under G. C. 3477?

(2) Have County Commissioners, at the present time authority to remove an applicant for relief back to the county

of his legal residence for the reason he cannot qualify under G. C. 3477?

An early reply will be most appreciated, as we have a large number of these cases on our hands at the present time."

In Sections 3476, 3478, 3480, 3480-1, 3481, 3482, 3483 3484 and 3484-1, General Code, is contained language which purports to place certain duties upon boards of township trustees to furnish poor relief to indigents found to be needy within their township, if such indigents have a legal residence within such township; and if such needy indigent does not have a residence within the township, authority and duty appears to be placed upon such officers to set in motion the machinery to remove such persons to the county where they have a legal settlement.

In an opinion rendered by me under date of July 27, 1939, bearing number 948, I pointed out that, in my opinion, the enactment of House Bill 675 by the present General Assembly (§§ 3391, 3391-1 and 3391-13 both inclusive, of the General Code) took from township trustees all of their duties with reference to poor relief under the above enumerated sections. Such opinion is based upon the evident fact that such House Bill 675 was enacted later in time than such sections and in terms provides a complete and comprehensive method of performing the duties formerly required to be performed by township trustees. To the extent that such acts are inconsistent, the later enactment must necessarily prevail.

I must, therefore, answer your first inquiry in the negative.

You next inquire whether the board of county commissioners has the authority to remove an indigent to the county of legal residence. I find no mention of grant of power to remove indigents in such House Bill No. 675 other than that contained in sub-paragraph 5 of Section 3391-2, General Code, which reads:

"For the purposes of this act:

\* \* \* \* \*

5. If and when any local relief authority in consultation with the recipient shall deem it to be in the general public interest and for the benefit of persons receiving poor relief, the costs of transportation of such persons and their property to other places may be paid by such authority, subject to rules prescribed by the state director."

You will note that when the local relief authority, whether county local relief authority or city local relief authority, deems it to be in the public interest and for the benefit of the indigent, *such authority* may pay the cost of transporting the indigent and his property to some other place, subject to the rules promulgated by the State Director of Public

Welfare. Such section, in terms does not necessarily authorize the return of the indigent to the county of his legal residence.

Section 3481, General Code, provides, in substance, that the township trustees or proper officers of a municipal corporation shall make an investigation of complaints for poor relief. Section 3482, General Code, then reads as follows:

“When it has been so ascertained that a person requiring relief has a legal settlement in some other county of the state, such trustees or officers shall immediately notify the infirmary superintendent of the county in which the person is found, who, if his health permits, shall immediately remove the person to the infirmary of the county of his legal settlement. If such person refuses to be removed, on the complaint being made by the infirmary superintendent, the probate judge of the county in which the person is found shall issue a warrant for such removal, and the county wherein the legal settlement of the person is, shall pay all expenses of such removal and the necessary charges for relief and in case of death the expense of burial if a written notice is given the county commissioners thereof within twenty days after such legal settlement has been ascertained.”

Section 2540, General Code, grants authority to the superintendent of the county infirmary or county home, as it is now called, to remove the indigent who has become a county charge to the state wherein he has a legal residence. Such section reads:

“The superintendent of the infirmary may remove any person becoming a charge upon the county who has no legal settlement in the state, to the county and state where such person has a legal settlement.”

If there be no county home in the county, Section 3484, General Code, makes the following provisions:

“When the trustees of a township, or proper officers of a municipal corporation in a county in the state in which there is no county infirmary ascertain that any person, requiring relief, in such township or municipal corporation has a legal settlement in another county of the state, they shall immediately notify the board of county commissioners thereof to remove such person to the infirmary of such county. \* \* \*”

Section 3484-1, General Code, provides the method of removing a non-resident who refuses voluntarily to remove to the county of his residence. Such section reads:

“If a person requiring relief whose legal settlement has been ascertained to be in some other county of the state refuses to be removed thereto, pursuant to G. C. § 3482 or to G. C. § 3484, on complaint being made by the officer whose duty it is to remove him, the probate judge of the county in which the person is found shall issue a warrant for such removal. In addition to all other proceedings for the removal of a person requiring relief to another county of the state wherein his legal settlement may be, the township trustees or the proper officers of the municipal corporation in which a person requiring public relief is found or resident taxpayer of the county may institute proceedings in the probate court of such county to determine the legal settlement of such person and procure his removal thereto. Such proceedings shall be by petition which shall be sufficient if it states the facts required by G. C. § 3481 to be ascertained. The county commissioners of the county in which such person is alleged to have a legal settlement shall be made parties and summons issued to them as in civil actions. The proceedings may be set down for hearing at any time after the return day of the summons and shall be deemed at issue without further pleading. If upon the evidence the person is found to require public relief or support and that he is legally settled in the township and county alleged in the petition a warrant for his removal to said county shall be issued by the probate judge and judgment shall be rendered for costs and all charges and expenditures for which the commissioners of said county shall be liable by virtue of notice similar to that provided for in G. C. §§ 3482 and 3483 which notice for the purpose of action herein provided for may be given by a board, officer or person authorized to bring such action.”

I realize that there is contained in such House Bill 675 language which is not entirely in harmony with the language of the above quoted sections; however, the legislature has not expressly repealed such sections. Unless they have been repealed by implication they must be considered as existing laws. Repeals by implication are not favored in law. Black on Interpretation of Laws, Sec. 53. A statute is not to be construed as repealed by implication through the enactment of a later statute, when the earlier statute and the later statute can be so construed as to give effect to each. In re. Hesse, 93 O. S., 234; Thorniley vs. State, 81 O. S., 118. It is only when a meaning can not be given to the earlier enactment which will not bring it in conflict with the later enactment, that the earlier is said to be repealed by implication. It has always seemed to me that the term, “repealed by implication” is a misnomer. An examination of court decisions which use such term clearly indicates that in the opinion of the

courts, when a later enactment is in conflict with an earlier statute to that extent only the provisions of the later enactment supersede the earlier.

I find no language in such House Bill 675 which purports to take the powers granted to boards of county commissioners to remove non-resident indigents to the counties of their legal residence. I find no language in such House Bill 675, which is in conflict with such grants of power to the county commissioners. I am therefore of the opinion that such grants of power to boards of county commissioners were not repealed by implication by the enactment of such House Bill 675.

Specifically answering your inquiries it is my opinion that :

1. Boards of township trustees have no authority, since the enactment of Sections 3491 and 3491-1 to 3491-13, both inclusive, of the General Code (H. B. 675) to remove a non-resident applicant for poor relief to the county of his legal residence.

2. The enactment of Sections 3391 and 3391-1 to 3391-13, both inclusive, General Code (H. B. 675) did not by implication or otherwise repeal the authority granted to boards of county commissioners and the superintendent of the county home to remove non-resident indigents to the county of their legal residence.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1164.

PUBLIC SALE—ELEMENTS: NOTICE, OPPORTUNITY TO BID, COMPETITION, CONSENT TO HOLD BID OPEN—BONDS OF PUBLIC INSTITUTIONAL BUILDING AUTHORITY—REQUIRED TO BE SOLD AT PUBLIC SALE—LEGAL NOTICE—SECTIONS 2332-4 ET AL., G. C.—INTERPRETATION, LANGUAGE OR WORD—"MAY"—PERMISSIVE—WHEN PEREMPTORY—STATUTE MANDATORY.

**SYLLABUS:**

1. *Where power is given to public officers in a statute using the word "may" or equivalent language, whenever the public interest is concerned, such word or language, although permissive in form, is in fact peremptory, and such a statute is mandatory.*

2. *In order to constitute a public sale, at least four essentials must be present, namely, (1) adequate public notice, (2) opportunity to all to come and bid, (3) fair competition among the bidders, and (4) the bids must not be held open, except with the consent of all the bidders.*

3. *Bonds issued by the Public Institutional Building Authority under the provisions of Sections 2332-4, 2332-7 and related sections of the*