the deed is such that it would not necessarily require precedence, in point of time, over certain assigned duties in the sheriff's office.

In view of the fact that there are no statutory provisions prohibiting a notary public, who is also a deputy sheriff, from notarizing a sheriff's deed, and because the act of notarizing such deed by a deputy sheriff does not prevent the deputy sheriff from fully performing his duties as such, I am therefore of the opinion, in specific answer to your inquiry that a deputy sheriff, who is a notary public, may notarize deeds which are executed by the sheriff in his official capacity.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3613.

MINOR—LEGAL SETTLEMENT DISCUSSED.

SYLLABUS:

Legal settlement of a minor discussed.

COLUMBUS, OHIO, December 11, 1934.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

> "Judge V. A. Bennehoff, of our Seneca County Juvenile Court, has submitted to me a question concerning the legal settlement of a child, namely, M. B. I believe all the essential facts are set forth in the enclosed letter in which he submitted the question to me.
>
> I would appreciate your early opinion upon this matter."

Attached to your request is the following letter from the Judge of the Juvenile Court of Seneca County:

> "There has been some controversy between Wyandott and Seneca Counties over the question of the residence of one M. B., and both Judge Kear and myself would like to have you get a ruling from the Attorney General's office so that we may know which county has the care and custody and which pay for the expenses of this child.
>
> The facts are as follows: M. B., born August 1, 1921, was living with her father and mother in Wyandott County, Base Line Road, on the F. Y. farm. In 1927 when M. was six years old, her uncle and aunt, L. and H. E. residing in Carey, Ohio, took M. into their home with the privileges of adoption. They kept her until December, 1933, when they separated. M. was then brought to Seneca County to live with her grandmother, Mrs. T. B. She stayed with her grandmother until July 26, 1934, when they could no longer keep her and took her to another uncle, R. B. on the Seneca County side.

In the fall of 1928 the mother of M. B. left her home where she was residing in Wyandott County and brought the remainder of her children with her to Seneca County. On July 10, 1929, she filed application for divorce in Seneca County Common Pleas Court. The records show that the case was dismissed on November 21, 1931. The costs paid in full by G. B.

While Mrs. B. and her children were living at different addresses in Seneca County, trouble arose in the family and charges were filed against her, declaring her an unfit person to care for her children. A hearing on May 4, 1932, was given in this court, taking the two remaining children from her. Namely: F. and H. B. They were each ordered committed to a licensed boarding home in Seneca County.

Since that time the mother has been roaming around in different counties and now is keeping house for someone in Fostoria on the Seneca County side. In the meantime the father remained at his Wyandott County address on the Y. farm. In the fall of 1933 he went to make his home with R. B. on the Seneca County side. In the spring of 1934, he left there and went back to the Wyandott County side to live and work for people by the name of M. Here he is making his home at the present time.

In August, 1934, R. B., who now has M., came to this office and complained that he was unable to care for M. and wanted this county to make some provision for her. After a careful investigation we called in the father and those who were interested in M. The father claims that he has bought M's school supplies and has given her a dollar occasionally for clothes. G. B., the father, states that he has been living the greatest part of his life in Wyandott County and stated in this court that he has no residence in Seneca County.

I believe that the above facts are correct and we should appreciate it very much having a ruling from the Attorney General's office as to which county should have charge of the care and custody and should pay for the support of both or either M. and H. B. Speed is essential for the reason that the parties now having M. B. in their custody are making great sacrifices to give her a temporary home."

I assume for the purpose of this opinion that you desire to ascertain the "legal settlement" of M. B.

Sections 3477 and 3479, General Code, have to do with "legal settlement" for the purposes of poor relief. However, minors of themselves are incapable of acquiring a "legal settlement". It is stated in the case of *Trustees of Bloomfield* vs. *Trustees of Chagrin*, 5 Ohio Rep. 316, at page 318:

"Richard Brown, (the infant) having acquired, through his mother, a legal settlement in Chagrin, did not lose it by his residence in Geauga County, because still being a minor he had no capacity to acquire a settlement for himself."

It was also stated in the case of *Board of Summit County Commissioners* vs. *Board of Commissioners of Trumbull County*, 116 O. S. 663, at page 667:

"Manifestly the minors of themselves could not change their legal

settlement by going from one county to another without their parents. * * *"

In a voluminous note, concerning the domicile of an indigent minor, 49 L. R. A. (N. S.), at page 864, it is stated:

> "Where the parents have separated, the domicil of the children remains that of the father unless he has relinquished his parental authority over them, or has been legally deprived of the same. *Hunt* vs. *Hunt,* 94 Ga. 257, 21 S. E. 515.
>
> So, the mere fact that the parents separated, and that the mother took the child and went to another country, does not affect the continuance of the child's domicil as that of its father, there being no legal dissolution of the relation of husband and wife. *VonHoffman* vs. *Ward,* 4 Redf. 244."

It is also held that a father who, after the death of his wife, sends his minor daughter to live with his brother, with the request that he rear her, does not effect a change in the domicil of the daughter. *Allgood* vs. *Williams,* 92 Ala. 551.

The above cases are with respect to domicil, but it is believed that the same reasoning would apply to the "legal settlement" of the child in question. In my opinion, M. B. did not acquire a derivative legal settlement from her uncle and aunt, L. and H. M., nor from her grandmother, Mrs. T. B., nor from her uncle R. B., and inasmuch as she was not adopted by any of these parties, none of them had the right to the child's services and none was legally bound to support her.

In order to determine the derivative legal settlement of M. B. it therefore becomes necessary to determine the legal settlement of her father, G. B. It is stated in the attached memoranda to your request that the father "states that he has been living the greater part of his life in Wyandot County and stated in this court that he has no residence in Seneca County." I infer from this statement that the father, G. B., never had any intention of acquiring a legal settlement for the purposes of relief in Seneca County. I call your attention to my Opinion No. 2612, rendered May 2, 1934, which held as disclosed by the syllabus:

> "The question of intention of an indigent affects the question of legal settlement as defined in Section 3479, General Code, and such intention is a factor in determining the legal settlement of such person."

Moreover, it does not appear from the facts stated in your inquiry that the father ever resided in Seneca County for a period of a year. I call your attention to an opinion of my immediate predecessor in office, to be found in Opinions of the Attorney General for 1932, Vol. I, page 53, which held as disclosed by the syllabus:

> "Where a person has a legal settlement in one county of the state, he may not acquire such a settlement in another county until he has resided and supported himself therein for the period of one year."

Hence, it is therefore evident that the father has his legal settlement in Wyandot County. See Section 3479, General Code.

Consequently, in specific answer to your inquiry, it is my opinion that the derivative legal settlement of M. B., the minor child of G. B., would be in Wyandot County since that is the legal settlement of her father, G. B.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3614.

CONDITIONAL APPROVAL—LEASE FORM OF LEASES WITH RESPECT TO CANAL LANDS THAT HAVE BEEN ABANDONED FOR CANAL PURPOSES AND OTHERWISE.

COLUMBUS, OHIO, December 11, 1934.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a general lease form of leases to be executed by you in your official capacity as Superintendent of Public Works and as Director of said Department, of canal lands under the provisions of various statutory enactments authorizing the execution of such leases with respect to canal lands that have been abandoned for canal purposes, and otherwise. The lease form submitted for the most part follows the printed form which has been heretofore used in the execution of leases of this kind. However, there is one marked exception and that is as to the provisions in this lease form with respect to the sale of spirituous or intoxicating liquors on the premises leased. In the lease form heretofore used, the sale of spirituous and intoxicating liquors on the premises leased is strictly forbidden under penalty of a forfeiture of the lease. Under the proposed lease form submitted, the sale of spirituous or intoxicating liquors on the premises leased is permitted under restrictions therein provided for. The particular paragraph in the lease form which sets out the provisions above referred to, reads as follows:

> "It is distinctly understood and agreed between the respective parties hereto, that the party of the second part, heirs, executors, administrators, successors and assigns, shall not permit the same to be used for immoral purposes nor allow to be sold on the premises hereby leased, any spirituous or intoxicating liquors, other than those and in the manner allowed by law upon the date of this lease, or under laws subsequently passed by the General Assembly of Ohio, under penalty of a forfeiture of this lease; providing further, that such sale of said spirituous or intoxicating liquors shall at all times be conducted in strict compliance with any and all State laws and local ordinances pertaining thereto."

Inasmuch as there is no statutory enactment which forbids the sale of spirituous or intoxicating liquors on state owned canal lands, no legal objection can be made to a provision in a lease of such canal lands which permits the sale on these lands of such spirituous or intoxicating liquors as are otherwise permitted to be sold in this State, subject to the restriction that such sale or sales shall be