

2186.

LEGAL SETTLEMENT—MINOR CHILDREN LIVING IN COUNTY CHILDREN'S HOME RETAIN LEGAL SETTLEMENT IN THAT COUNTY ALTHOUGH MOTHER RESIDES IN ANOTHER COUNTY—COUNTY RESPONSIBLE FOR CARE AND SUPPORT AS PAUPERS.

SYLLABUS:

Where the sole custody of minor children, by divorce decree, is given to the father and they have the legal settlement of their father in a particular county, and they are thereafter placed in the Children's Home of that particular county, such children, despite the death of their father and even though their mother has acquired a legal settlement in another county, retain their same legal settlement, and such county of their legal settlement is responsible for their care and support as paupers.

COLUMBUS, OHIO, January 19, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

"Your opinion is respectfully requested upon the following set of facts:

G. D. and F. D. were husband and wife; they were married in 1919. Following their marriage they resided in Warren, Trumbull County, for a period of eight years, having a legal residence there for all purposes.

In April, 1927, F. D., the wife, left G. D., her husband, and their two minor children, and came to Cuyahoga County.

The husband filed suit for divorce in Trumbull County Common Pleas Court, and was granted a divorce in May, 1927, on the ground of extreme cruelty and gross neglect of duty of the wife. As to the children, the divorce decree provided: 'that the custody, care, education and control of the said children of the parties hereto until further order, be confided to the said G. D., the plaintiff, exclusively, and the defendant F. D. is hereby enjoined from interfering in any manner with either of said children, or with the plaintiff in the custody of them. But it is hereby ordered that the defendant shall have the privileges of visiting said children and having children visit her at reasonable times and proper places.'

In September, 1928, the father, G. D., placed the minor children in the Trumbull County Children's Home, where they have been continuously to the present time, and are there still. The father, G. D., died during the winter of 1933. The mother, F. D., has continued to live in Cuyahoga County since April, 1927, and has obtained a legal settlement in Cuyahoga County. She was married in 1929 to a man who is a legal resident of Cuyahoga County.

Upon the above set of facts the questions are which county is the legal settlement of the children in question and which county is responsible for their care and support as paupers."

It is manifest that the children involved in this case had a legal settlement in Trumbull County prior to the death of their father and unless their legal settlement has changed due to their father's death, and the now legal settlement

of their mother, they retain their established legal settlement in Trumbull County.

I call your attention to the case of *Trustees of Bloomfield vs. Trustees of Chagrin*, 5 Ohio Reports, 316 (1832) which states:

“The mother of an infant pauper settled in one township, does not change the infant’s *residence*, by marrying a second husband settled in another township, *and there residing without the infant pauper.*” (Italics the writer’s.)

The recent case of *Board of Summit County vs. Board of Commis. of Trumbull County*, 116 O. S., 663 (1927) is also relevant to the inquiries you present. The syllabus of this case reads:

“When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of 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.” (Italics the writer’s.)

It is manifest that this decision is based on the fact that the mother took the minor children *into the county into which she moved*, as shown by the following language in the opinion at pages 667 and 668:

“Manifestly the minors of themselves could not change their legal settlement by going from one county to another without their parents, but it is quite another thing to say that if a parent, having exclusive control and custody of the children by a decree of court, changes legal settlement, that does not change the legal settlement *of the children who have accompanied such parent* into the new legal settlement territory.

* * * There is nothing in the decisions of this court cited that conflicts with this decision under the facts of this case.” (Italics the writer’s.)

From the last sentence quoted above, it is evident that the Ohio Supreme Court did not mean to overrule its former decision given supra. Under these decisions, the acquiring of a new legal settlement by the mother in another township or county without taking the minor children into the new county does not change the legal settlement of the children. Consequently, and in view of the fact that the children were put into the custody and care of the Trumbull County Children’s Home, it is my opinion that the children involved in this particular case have never acquired the legal settlement of their mother in Cuyahoga County despite the death of their father, and hence retain their legal settlement in Trumbull County. As a result it is also my opinion that Trumbull County is responsible for their care and support as paupers.

Specifically answering your inquiries, it is my opinion that where the sole custody of minor children, by divorce decree, is given to the father and they have the legal settlement of their father in a particular county and they are

thereafter placed in the Children's Home of that particular county, such children, despite the death of their father and even though their mother has acquired a legal settlement in another county, retain their same legal settlement, and such county of their legal settlement is responsible for their care and support as paupers.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2187.

APPROVAL, BONDS OF LIBERTY RURAL SCHOOL DISTRICT, TRUMBULL COUNTY, OHIO, \$4,500.00.

COLUMBUS, OHIO, January 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2188.

APPROVAL, BONDS OF CUYAHOGA FALLS, SUMMIT COUNTY, OHIO, \$1,000.00.

COLUMBUS, OHIO, January 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2189

SALARY—COMMON LABORERS EMPLOYED BY STATE EXEMPTED FROM SALARY REDUCTION WHEN—AMENDED SENATE BILL NO. 5 OF 89TH GENERAL ASSEMBLY APPLICABLE WHEN.

SYLLABUS:

1. *State departments may not alter, nullify or extend the operation of a state statute by departmental order, rule or regulation.*

2. *The provisions of Amended Senate Bill No. 5 of the 89th General Assembly, Third Special Session, do not apply in the case of laborers who receive less than \$3.20 per day computed upon a daily basis nor do they contain any inhibition against paying laborers more than that amount. If, however, they are paid more than \$3.20 per day, they are not excluded from the provisions of the act unless their employment occurred since January 1, 1933.*

3. *The method prescribed for making reductions in salaries in Amended*