

If I am in error as to my inference as above set forth that the term "or otherwise" does not include "loans on notes secured by mortgages on real estate" then there is, in my opinion such an ambiguity in such section as will authorize the reference to the title of the act with a view to the determination of the legislative purpose in the enactment of such Section 6346-1, General Code.

"An ambiguity is defined as doubtfulness or uncertainty; language which is open to various interpretations or having a double meaning; language which is obscure or equivocal." Marshall, C. J., in *Caldwell vs. State*, 115 O. S., 458, 460.

The purpose of the legislature as set forth in such titles in the enactment of such section is clearly expressed as being for the purpose of licensing the business of lending money without security or on chattel security. As stated in the third paragraph of the syllabus of *Cleveland Trust Company vs. Hickox*, 32 O. App. 69:

"In construing a legislative act to discover its application, the purpose of the legislature is an element which cannot be ignored."

In specific answer to your inquiry it is my opinion that a corporation engaged in the business of making loans on notes secured by mortgages on real estate only, which charges interest at a rate in excess of eight per centum per annum is not required by the provisions of Section 6346-1, General Code, to obtain a license so to do from the commissioner of securities and otherwise complying with the provisions of Chapter 25, Title II of Part Second of the General Code; but such loans are subject to the provisions of sections 8303 and 8306, General Code, with reference to usury as limited by section 8623-78, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2487.

POOR RELIEF—LEGAL SETTLEMENT OF ILLEGITIMATE CHILD
DISCUSSED.

SYLLABUS:

Legal settlement of an illegitimate child discussed.

COLUMBUS, OHIO, April 11, 1934.

HON. A. L. CHATFIELD, *Prosecuting Attorney, McArthur, Ohio.*

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

"Referring particular'y to Section 3479 of the General Code, as to who are considered to have a legal settlement for the purpose of poor relief, we are confronted with the following situation:

J. W. N., illegitimate son of P. N., was committed to the Vinton County Children's Home, October 9, 1930. Some time during the year of 1930 P. N., mother of the said child, left Vinton County and went to Marion to live with her sister.

Some time after she came to Marion, she married a man by the name of K. from Lima, Allen County, Ohio. Some time later after the marriage they separated and without obtaining a divorce, she then went back to live with her sister at Marion in Marion County, Ohio.

On October 3, 1933, P. N. came to the Vinton County Children's Home and requested that J. W. N. be discharged to her. She made it appear to the authorities of the Children's Home that she was able to provide for the child and was well able to take care of him and in accordance therewith the child was discharged to its mother, P. N., October 3, 1933. The mother took the child to Marion County and soon found that she was unable to take care of the child and presented her case to the Juvenile Court of Marion County.

The authorities of Marion County insist that the child is not a legal charge of theirs and demand that he be brought back to Vinton County. The mother has not resided in Vinton County since 1930. She was married to a man by the name of K., who resides in Allen County. She has never been legally divorced from Mr. K.

We would like to have it determined whether this child is a legal charge on Vinton County, Marion County or Allen County."

I have also received a request for an opinion on the same case from the prosecuting attorney of Marion County, which supplies additional fact information, and I shall first outline a summary of the operative facts necessary for the ascertainment of the "legal settlement" of the illegitimate son, J. W. N., and the facts upon which this opinion will be predicated.

(1) J. W. N., illegitimate son of P. N., was committed to the Vinton County Children's Home on October 9, 1930. (2) Shortly afterwards, P. N. went to Marion, Marion County, Ohio, staying for a period of two weeks. J. W. N., illegitimate son, remained in the Vinton County Children's Home. (3) P. N., the mother, then married one K. who had a "legal settlement" in Lima, Allen County, Ohio, and then lived in Lima with her husband until March, 1931. (4) In May, 1931, P. N. separated from her husband and lived with her sister in Marion, Ohio, for a few months and then later lived in various towns and counties of this state. (5) On October 3, 1933, the illegitimate child, J. W. N., was released from the Vinton County Children's Home by a permanent commitment to the mother, P. N. (6) From November, 1933, to the present date, P. N. and J. W. N. have resided in Marion, Marion County, Ohio, and during the month of November, 1933, P. N. brought the child, J. W. N., to the Probate Judge of Marion County because of her destitute circumstances.

The question for determination is: On what county is the child, J. W. N., a legal charge for poor relief purposes, or, in other words, where is the "legal settlement" of the child, J. W. N.?

It must be assumed, at the outset, that the child, J. W. N., had a "legal settlement" in Vinton County. Although the mother by her marriage and residence in Lima, Allen County, Ohio, acquired a legal settlement therein, it is my opinion that the illegitimate child did not. The facts involved in the instant case are not comparable to the case of *Board of County Commrs. of Summit*

County vs. Board of Commrs. of Trumbull County, 116 O. S. 663 (1927). The syllabus of that 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 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 the 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 found at pages 667 and 668 of the opinion:

"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.)

I also call your attention to the syllabus of an early Ohio case, *Trustees of Bloomfield vs. Trustees of Chagrin*, 5 Ohio 316, which reads:

"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."

Under these decisions, the marriage of a mother in another township or county, without taking the minor children of the former marriage into the new county with her, would not change the legal settlement of the children, and consequently the children's legal settlement would remain the same. Obviously the same reasoning applies to illegitimate children, the paternity of the children being unknown.

Under the facts stated in the two requests for an opinion, although there is some slight discrepancy as to the length of P. N.'s, the mother's, residence in Marion County, still I am of the opinion that such fact is not material to the present inquiry. Following the reasoning of the recent case of *Stoecklein vs. Priddy, et al.*, decided by the Common Pleas Court of Montgomery County on January 16, 1934, such decision would indicate that the mother, P. N., under the circumstances never obtained a legal settlement in Marion County, inasmuch as her child was being supported in the Vinton County Children's Home. This case lays down the following propositions:

"1. The charity extended by a county in caring for and maintaining children in the County Children's Home constitutes public support and relief within the meaning of the law for the relief of the poor.

2. Public support and relief of the children constitutes public support and relief of the person who is the head and sole support of the family.

3. So long as public support or relief is being given to a person by any county of the state in which such person has a legal settlement, such person cannot acquire a legal settlement in a second county of the state wherein such person has resided for one year even though public support or relief has not been furnished by the second county.

4. Where father was adjudged insane and mother removed to second county where she resided for more than a year, *held*, nevertheless, no legal settlement was acquired in second county because during part of the twelve month period her children were being supported by the first county, and after such support ceased she did not reside in the second county twelve months before receiving relief from a charitable organization."

Under the facts presented by your inquiry, it is my opinion that inasmuch as the illegitimate child, J. W. N., did not obtain a legal settlement in Allen County by virtue of the marriage of P. N. to K., and inasmuch as the mother did not obtain a legal settlement in Marion County and the child was not released to her until October 3, 1933, the child, J. W. N., retained its legal settlement in Vinton County by virtue of Section 3479, General Code, and is a proper charge for poor relief purposes upon Vinton County.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2488.

HORSE RACING—COUNTY FAIR GROUNDS MAY BE LEASED FOR HORSE RACING IF LICENSED BY STATE RACING COMMISSION WHEN.

SYLLABUS:

1. *The grounds owned, controlled or used by a county agricultural society for county fair purposes, may be leased for a horse racing meeting at which pari-mutuel or certificate form of wagering is allowed by virtue of a license issued by the State Racing Commission.*

2. *A lease for the use of grounds managed and controlled by a county agricultural society, the title of which is in the name of the county commissioners, must be executed in the name of the county agricultural society.*

COLUMBUS, OHIO, April 11, 1934.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter which reads as follows: