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INDIGENT PERSON—RESIDENT OF OHIO, INTENDS TO REMAIN IN OHIO, MEETS RESIDENCE REQUIREMENTS—COUNTY COMMISSIONERS WHERE SUCH PERSON RESIDES CAN LEGALLY PAY FOR HOSPITALIZATION IN A DISTRICT TUBERCULOSIS HOSPITAL.

## SYLLABUS:

Where an indigent person is in the State of Ohio and has the intention of remaining in Ohio, or meets the requirements for residence, the county commissioners of the county where such person resides can legally pay for hospitalization in a district tuberculosis hospital.

Columbus Ohio, June 1, 1948

Hon. Mary F. Abel, Prosecuting Attorney  
Logan County, Bellefontaine, Ohio

Dear Madam:

I am in receipt of your request for my opinion, which states:

“May the County Commissioners legally pay for hospitalization in a tuberculosis sanitarium for a person who has resided in the State of Ohio only since February 12, 1947?”

"The circumstances of the case are: These parties, Mr. and Mrs. X, moved to Ohio on the above stated date, coming here from the State of Indiana, where they had resided for approximately five years. In December Mrs. X became quite ill and while in our local hospital her condition was diagnosed as tuberculosis. She was removed to the Lima District Tuberculosis Sanitarium, after our health commissioner had contacted the health commissioner of Starke County, Indiana. Under date of December 16, 1947, our commissioner received a letter from the Department of Public Welfare of Starke County stating that they would accept the expense of the care of Mrs. X until February 12, 1948, but not beyond that time. Since then, however, he has received a letter from one of the trustees in Wayne Township, Indiana, stating that the Attorney General's office had advised them that they were not authorized to pay these expenses.

"I would indeed appreciate your advice in this matter."

Your inquiry appears to include two questions: (1) Do the requirements for "legal settlement," as set forth in Section 3477, General Code, have to be complied with before the county commissioners can legally pay for tubercular hospitalization of an indigent? (2) What is the **necessary** prerequisite for county liability? I have reached the above conclusion upon full consideration of the facts set forth in your request.

Section 3477, General Code, provides:

"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, or relief from any charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief. No adult person coming into this state and having dependents residing in another state, shall obtain a legal settlement in this state so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside."

In an opinion rendered by me October 2, 1945 (1945 Opinions of the Attorney General, p. 614, Opinion No. 481), it is stated in the first branch of the syllabus:

"The expense of treatment of an indigent in the hospital for tuberculosis should be paid by the county of *legal residence* under Sections 3139 to 3139-22, General Code. Hospitalization

at county expense of a tubercular person is not poor relief within the meaning of Section 3477, General Code.”

(Emphasis added.)

This same conclusion was reached by many of my predecessors. I state in the opinion quoted above that the requirements of “legal residence” have not been changed by the reenactment of the provisions for tuberculosis hospitals and clinics by the 94th General Assembly (119 O. L. 721), codified in Section 3139 through Section 3139-24, General Code. Thus the conclusions reached by my predecessors on the “legal residence” requirements are applicable. The opinions of my predecessors, which reach the same conclusion stated in the syllabus, *supra*, are: 1934 Opinions of Attorney General, Opinion No. 3529, page 1664, and 1937 Opinions of Attorney General, Vol. I, Opinion No. 35, p. 58. In 1940 Opinions of Attorney General, Vol. II, Opinion No. 2928, page 967, at page 968 it is stated:

“The legislature being cognizant of the fact that tuberculosis is a disease which will spread unless properly controlled, that if not properly treated will likely prove fatal to the patient, and that many people in this state so afflicted were not receiving proper care and treatment, enacted legislation to control this problem.”

I am in accord with this conclusion of my predecessor as to the motivation behind this legislation. This opinion goes on to state that tubercular hospitalization is not a poor relief problem. This opinion of my predecessor reaches the conclusion that the requirements of Section 3477, General Code, are not a necessary prerequisite for a county to assume responsibility for tubercular patients. In 1943 Opinions of Attorney General, Opinion No. 6007, page 210, the second branch of the syllabus states:

“2. Where a patient afflicted with tuberculosis is committed, by action of the commissioners of the *county of his residence or by their authorization*, to a district tuberculosis hospital organized under Section 3139-1, et seq., of the General Code, of which district such county is not a part, such county commissioners are liable for the cost of the care, treatment and maintenance of such patient to the extent that he is unable to pay such cost.”

(Emphasis added.)

It is clear that the requirements of “legal settlement,” as set forth in Section 3477, General Code, are not applicable to persons receiving

treatment in tuberculosis hospitals. In other words, hospitalization for tuberculosis, as provided in Section 3139, through Section 3139-24, General Code, is not a part of the poor relief program.

The next question to be considered is: When may the county commissioners legally pay for a patient in a district tuberculosis hospital?

Section 3140 through Section 3153-7, General Code, contained the provisions for tubercular hospitalization prior to the enactment of the present provisions found in Section 3139 through Section 3139-24, General Code. Section 3140, General Code, in part provided:

“\* \* \* such person in such hospital or institution shall become a legal charge against and be paid by the county in which such person has a *legal residence*. If such person is not a *legal resident of this state*, then such expense shall be paid by the county maintaining the infirmary from which removal is made.”  
(Emphasis added.)

Section 3143, General Code, in part provided:

“\* \* \* *The commissioners of the county in which such patients reside shall pay* to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, \* \* \*.”

“Provided, that the county commissioners of any county may contract for the care and treatment of the inmates of the county infirmary *or other residents of the county* suffering from tuberculosis with an association or corporation, \* \* \*.”  
(Emphasis added.)

Section 3146, General Code, in part provided:

“The district hospital for tuberculosis, as hereinafter provided for, shall be devoted to the care and treatment of those admitted to the county infirmary within the district afflicted with tuberculosis, *and of other residents of the district* suffering from the disease and in need of proper care and treatment.”  
(Emphasis added.)

The 94th General Assembly repealed and reenacted the provisions for tuberculosis hospitals and clinics. This session of the General Assembly enacted Sections 3139 through Section 3139-22, General Code. These sections became effective September 5, 1941. There have been two modi-

fications since the enactment of these sections which have no bearing on the problem presented by you in your inquiry.

Your attention is directed to the existing provisions for tubercular hospitalization, Section 3139 through Section 3139-24, General Code. It is to be noted that a great deal of control of this program is vested in the state department of health. This substantiates my above stated conclusion that this legislation is a health measure rather than a part of the poor relief program. Section 3139-2, General Code, provides:

“The district hospital for tuberculosis shall be devoted to the care and treatment of those persons afflicted with tuberculosis *who are residents of the district* and who are in need of hospital care and treatment, provided that if facilities are available and not used *by such residents*, trustees of such hospital may contract for the care of patients from counties not included in the district.” (Emphasis added.)

In Section 3139-18, General Code, it is in part provided:

“\* \* \* The county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper officer of a municipal tuberculosis hospital, for the care, treatment and maintenance *of residents of the county* who are suffering from tuberculosis.” (Emphasis added.)

Section 3139-18, General Code, goes on in a later part of said section to provide:

“\* \* \* The county commissioners of such county may also contract for the care and treatment of *residents of the county* suffering from tuberculosis. \* \* \*” (Emphasis added.)

The question of what constitutes “residence” and “domicile” has been discussed many times by courts. This question is a mixed factual and legal question. It has often been stated that a person may have many different “residences,” but only one “domicile.”

In *Grant v. Jones*, 39 O. S. 505, it is stated by the Supreme Court in the course of the opinion:

“What constitutes a person a resident of Ohio, for the purpose of voting, of admission to the public schools *and benevolent institutions of the state*, for the administration of estates and in other cases, has been a frequent matter for consideration in the courts. There is no substantial difference between the words

residence and domicile in regard to these matters, though they are not always synonymous. For business purposes and perhaps for purposes of taxation, a man may have more than one residence, but he can have but one domicile." (Emphasis added.)

This rule could be applied to tubercular hospitalization within the classification of "benevolent institutions of the state."

It is stated in Kennan on Residence and Domicile, Sec. 8, page 18, as follows:

"There are some fifteen states in which statutory definitions have been attempted. The earliest definition of residence (in connection with voting privileges) appears to be that of Ohio. This first appeared in 39 Vol. St. 13, Ch-41, Sec. (71) 11, which was an act passed March 20, 1841. This definition in its original form read as follows:

'This place shall be considered and held to be the residence of a person in which his habitation is fixed without any present intention of removing therefrom, and to which, whenever he is absent, he has the intention of returning.'

"It will be found in the above form in Section 1996 of the Compiled Statutes of Nebraska for 1922 and in Ch. 6, Sec. 651, of Wisconsin Statutes of 1923. This definition remained in the Ohio statutes in the form given above until the Statutes of 1880 appeared when the words 'without any present intention of removing therefrom' were omitted. As thus abbreviated it is substantially followed in the statutes of California, Kansas, Montana, Nevada, Oregon and Utah. It is a curious fact that this definition of residence which has become the law in eight or nine states appears to be taken from Story's definition of domicile and this no doubt accounts for much of the confusion which has resulted."

This definition, which so many other states have followed, is still in the election law of Ohio. Since the term "residence" is not defined in Section 3139 et seq., General Code, we must look for a definition exclusive of these provisions. In 1917 Opinions of the Attorney General, Vol. III, Opinion No. 764, p. 2037, the syllabus in part provides:

"Residence is a question of mixed law and fact and change of residence is a question of intention and fact, or facts in the light of intention, and it may continue in a certain territory or jurisdiction, after actual connection with any particular spot therein has ceased. \* \* \*"

It is stated in 1940 Opinions of Attorney General, Vol. II, Opinion No. 2892, p. 927, in the second branch of the syllabus:

“The term ‘residence’ as the same appears in the above sections should be construed to mean the place where a person has his true, fixed, permanent home and principal establishment, and to which place whenever he is absent, he has an intention of returning, as distinguished from temporary residence which a person intends to leave when the purpose for which he has taken up his abode ceases.”

In your request for my opinion you state that this person in question has resided in the State of Ohio less than one year at the time of hospitalization. Since you use the word “resided,” it appears that Mrs. X intended to remain in Ohio. There is no requirement in the tuberculosis hospital and clinic law that a person be a resident of Ohio for any length of time prior to hospitalization. As has been stated hereinbefore, tubercular hospitalization is a health measure and is not a matter of poor relief. I have reached this conclusion being fully cognizant that the 94th General Assembly when enacting Section 3139-2, General Code, used the term “residents,” without the use of the qualifying adjective “legal.” It is to be noted that this qualifying adjective was used in other sections of this enactment of the 94th General Assembly.

Therefore, it is my opinion, and you are informed, that where an indigent person is in the State of Ohio and has the intention of remaining in Ohio, or meets the requirements for residence, the county commissioners of the county where such person resides can legally pay for hospitalization in a district tuberculosis hospital.

Respectfully,

HUGH S. JENKINS,  
Attorney General.