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1. AID FOR AGED—RECEIPT—NOT “POOR RELIEF”—RECIPIENT OF AID FOR AGED MAY CHANGE HIS LEGAL SETTLEMENT FROM ONE COUNTY TO ANOTHER—MUST RESIDE IN NEW COUNTY ONE YEAR WITHOUT RECEIVING “POOR RELIEF” OR RELIEF FROM PRIVATE AGENCY—REST HOME—SECTION 3391-1 ET SEQ., G.C.
2. PROPER AUTHORITIES IN COUNTY OF LEGAL SETTLEMENT CHARGED WITH DUTY TO PROVIDE ANY ADDITIONAL FINANCIAL ASSISTANCE FOR MAINTENANCE, SUPPORT AND BURIAL OF RECIPIENT OF AID FOR AGED—OVER AND ABOVE EXPENSES COVERED BY FUNDS FROM DIVISION OF AID FOR AGED.
3. RECIPIENT MAY LAWFULLY CHANGE RESIDENCE FOR VOTING PURPOSES FROM ONE COUNTY TO ANOTHER IF NEW HABITATION FIXED—WHEN ABSENT SHOULD HAVE INTENTION TO RETURN TO NEW PLACE OF HABITATION—REST HOME.

SYLLABUS:

1. Receipt of aid for the aged does not constitute the receipt of “poor relief” as that term is defined in Section 3391-1, et seq., General Code (Opinion No. 1607, Opinions of the Attorney General for 1950, page 183 approved and followed.) A person may while receiving aid for the aged change his “legal settlement” from one county to another, by residing in such new county for a period of one year without receiving “poor relief” or relief from a private agency which maintains records of relief given. The fact that such new residence is in a rest home, while receiving such aid for the aged, does not affect such change in “legal settlement.”

2. The proper authorities in the county of “legal settlement” are charged with the duty of providing any additional financial assistance for maintenance, support and burial of the recipient of aid for the aged, over and above such expenses as are covered by funds from the Division of Aid for the Aged. (Opinion No. 1633, Opinions of the Attorney General for 1939, page 2459 approved and followed.)

3. A person while receiving aid for the aged may lawfully change his residence for voting purposes from one county to another if his new habitation is fixed and whenever absent he has the intention of returning to such new place of habitation. The fact that such new place of habitation is a rest home does not affect the right of such recipient to change his residence for voting purposes.

Columbus, Ohio, January 18, 1952

Hon. Wray Bevens, Prosecuting Attorney
Pike County, Waverly, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“A who has acquired a residence in B county in the state of Ohio is placed in a rest home in County C where he is supported wholly by funds received from the Division of Aid for the Aged of Ohio. A remains in County C for the past three years. By reason of Section 3477, General Code of Ohio or as repealed and reenacted by Section 3391-16, General Code, has A acquired a residence in C county which would permit him to vote therein or which would charge the County Commissioners of C county with the financial responsibility of his maintenance, support and burial?”

Your first question as to whether or not a recipient of aid for the aged is to be considered as one receiving poor relief under the provisions of Section 3391-16, General Code, requires an examination of said section which became effective on October 20, 1949 and replaced former Section 3477, General Code. Section 3391-16 in its present form reads in part as follows:

“Except as otherwise provided by law, legal settlement shall be acquired by residing in one county for a period of one year *without receiving poor relief or relief from a private agency which maintains records of relief given.* A person having a legal settlement in any county in the state shall have to be considered as having legal settlement in the township or municipal corporation therein in which he has last resided continuously for three consecutive months without receiving poor relief. * * *”

(Emphasis added.)

The question of whether the receipt of aid for the aged constitutes “poor relief” within the meaning of Section 3391-16, General Code, was considered by my predecessor in office in Opinion No. 1607, Opinions of the Attorney General for 1950, page 183, the syllabus of which reads as follows:

“Aid for the aged does not constitute poor relief, as that term is defined in Section 3391-1 et seq., General Code, as enacted by Amended Substitute House Bill No. 277 of the 98th General Assembly.”

It was pointed out in such opinion that while aid for the aged is public assistance, it is not included within the definition of poor relief. I concur with the conclusions expressed in such opinion.

Although you refer to “A” having been “placed” in a rest home in “C” county, where he is supported wholly by funds received from the Division of Aid for the Aged, “A” is perfectly free to remain in such rest home or other place of residence. His status, with regard to such rest home, is exactly the same as if his payments to the rest home were from his accumulated savings.

In light of the above, it is my opinion that receipt of aid for the aged does not constitute the receipt of “poor relief”, as that term is defined in Section 3391-1, et seq., General Code (Opinion No. 1607, Opinions of the Attorney General for 1950, page 183, approved and followed,) and that a person residing in a rest home within a county while receiving such aid for the aged may acquire “legal settlement” within such county of residence if such residence has continued for a period of one year without receiving poor relief or relief from a private agency which maintains records of relief given.

Your question as to the rights of “A” to vote in said “C” county necessitates a study of the sections of the General Code, defining the word “residence” for voting purposes, and a determination of his intention to acquire such a residence in said county. Section 4785-31, paragraph a, General Code, reads as follows:

“a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.”

The fact that “A” has been residing in a rest home in “C” county in no way prevents him from acquiring a residence in that county. In this connection, I refer you to Section 4785-33, General Code, which reads in part as follows:

“Persons who are inmates of a public or private institution, or of a county home maintained by the county, who are citizens

of the United States and have resided in this state one year next preceding the election and are otherwise qualified as to age and residence within the county and township, shall have their lawful residence in the county and township in which said institution is located."

It would appear from the above quoted sections that although "A" had acquired a residence in "B" county and, after the receipt of aid for the aged, moved to a rest home in "C" county, he may claim "C" county as his residence, assuming this now to be his fixed place of habitation to which whenever absent he has the intention of returning.

In the case of *Sturgeon v. Korte*, 34 O. S. 525, Judge Boynton referred in his opinion to Judge Story's Commentary on the Conflict of Laws, which reads as follows:

"* * * To acquire a new residence or domicile, where one is under no disability to choose, two things must concur—the fact of removal and an intention to remain. The old domicile is not lost or gone until the new one is acquired, *facto et animo*. It is not, however, necessary that the purpose to acquire a new residence should exist at the time of removal. It may be formed afterward. A residence may be acquired by one who has removed to a place for temporary purposes only, by a change of purpose, and an election of the new habitation or place of abode as his place of future domicile or home."

I am of the opinion that the above further strengthens the conclusion reached.

I come now to a discussion of your question as to the authorities responsible financially for "A's" maintenance and support over and above the amount which has been provided by the Division of Aid for the Aged, and any funeral expenses incurred.

An examination of previous opinions rendered by this office reveals that a similar situation was presented which resulted in an opinion found in Opinion No. 1633, Opinions of the Attorney General for 1939, page 2459, the syllabus of which reads as follows:

"1. It is the duty of the Division of aid for the Aged, when the recipient of aid is a patient in any private, charitable, fraternal or benevolent home or institution, other than a state institution, to pay within the limit of Section 1359-3, General Code, the reasonable cost of such maintenance, including medical serv-

ices and such payment shall be made to the governing body of such institution.

“2. When the total cost of such maintenance exceeds Thirty Dollars per month, then the amount in excess of Thirty Dollars must be borne, in so far as medical expenses are concerned, by the local relief area under Sections 339I-1 to 339I-13 inclusive, General Code, and the hospitalization costs must be borne by the proper city or township authorities, depending upon the legal settlement of the person, under the poor relief statutes. Sections 3476 to 3496, inclusive, General Code.”

In light of the discussion of Section 339I-16, General Code, and the opinions referred to herein, it would appear that “A” by his residing in “C” county for the past three years has acquired a legal settlement in “C” county, which would charge the proper authorities of the county with the duty of providing any additional financial assistance for his maintenance, support and burial expenses not covered by the funds received by him from the Division of Aid for the Aged limited by Section 1359-3, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General