

What a reasonable time would be is a question of fact dependent upon all of the circumstances in each particular case, and I do not attempt to express an opinion thereon. I can state, however, that if they have no present intention of removing from this territory into the territory now composing the county school district, the vacancies would exist at once.

This conclusion leads to a consideration of your second question, in which you inquire if "the remaining two members of the county board have the right to fill these vacancies." The statute is quite plain upon this subject. Section 4731, General Code, which relates to boards of education of county school districts, provides:

"Any vacancy on the board shall be filled in the same manner as is provided in Section 4748 of the General Code."

Said Section 4748 clearly states that:

"A majority vote of all the remaining members of the board may fill any such vacancy."

This language is so clear that it scarcely needs any interpretation, but I find that the question has been considered by a former Attorney General in an opinion found in the Opinions of the Attorney General, 1924, Vol. I, page 137, wherein it was held:

"A vacancy in a county board of education can only be filled in accordance with the provisions of Section 4748, which provides that such vacancy shall be filled by a majority vote of all the remaining members of the board."

Therefore, if the three members no longer reside in the territory composing the county school district and have no present intention of removing to said district or do not so remove to said territory within a reasonable time, vacancies exist on the county board of education, which vacancies may be filled by the two remaining members.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2359.

LEGAL SETTLEMENT—MARRIED WOMAN MAY LAWFULLY ACQUIRE WHEN JUSTIFIED IN SEPARATING FROM HUSBAND—NOT LIMITED TO SETTLEMENT IN THAT COUNTY IN WHICH HUSBAND RESIDES.

SYLLABUS:

When a married woman is justified in separating from her husband, she may lawfully acquire a legal settlement in another county from that in which her husband resides.

COLUMBUS, OHIO, September 18, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication requesting my opinion on the following:

"Up until the 1st of October, 1928, Mrs. Emma H. Dungen and her husband and family were living in a small town in Franklin County, Ohio, and had been living there more than twelve consecutive months without receiving aid, thus giving them a legal settlement in Franklin County, Ohio.

On or about the 1st of October, 1928, Mr. and Mrs. Dungen had some domestic differences and Mrs. Dungen left her husband, taking their automobile and her children, and came to Marion Township, Hardin County, Ohio, with the intention, as she says, of permanently separating from her husband and obtaining a divorce. She came to her father's home and was there for several days, and leaving her children in care of her sister, she went to Springfield, Ohio, to work for the purpose of supporting her children, and while there sent money home to her father for that purpose. She continued to work until a few days before Thanksgiving, 1928, when she returned to her father's home. In the meantime, that is, while she was in Springfield, Ohio, working, her sister telegraphed her husband, who came and took the children home with him back to Franklin County for two or three weeks, returning them before the time his wife returned from Springfield, Ohio.

Mrs. Dungen and her children continued to live with her father, and her husband remained at their former residence in Franklin County, Ohio, until the latter part of February, 1929, at which time he came to see her to effect a reconciliation. Through the influence of her father, Mrs. Dungen agreed to again live with her husband, and Mr. Dungen moved what furniture they had to Hardin County, Ohio, to their new home, which was on a farm in Marion Township, Hardin County, Ohio. They lived there until about the 5th of December, 1929, when they moved to Cessna Township in Hardin County, Ohio, and about sixty days thereafter, Mrs. Dungen became ill and was taken to the hospital and operated on.

As they were at that time in indigent circumstances they called upon the trustees of Cessna Township for relief.

The trustees of Cessna Township paid the hospital bill and operating expenses, and as the Dungen's had only lived in the township for about sixty days they had not gained a legal settlement in said township, and the bill was referred to the Marion Township Board of Trustees for reimbursal according to law.

The Marion Township Board of Trustees contend that inasmuch as Mr. Dungen and the furniture that they owned was in Franklin County until about the latter part of February, 1929, that is, less than twelve months before the time that they were moved to Cessna Township or before they received aid from the Cessna Board of Township Trustees, that they had not gained a legal settlement in Marion Township, Hardin County, Ohio, and that their legal settlement continued to be in Franklin County, Ohio.

It is the opinion of the trustees of Cessna Township that when Mrs. Dungen left her husband and a sort of division of their personal property was effected, and together with her children came to Hardin County with the intention of permanently separating from her husband, and continued to live there for more than twelve months, namely about thirteen months, that she and her children had gained a legal settlement in Hardin County and Marion Township and that the Marion Township Board of Trustees were legally liable for the expenses of operation, hospital bill, etc., that was necessitated by the operation on Mrs. Dungen.

The question is, did Mrs. Dungen have a legal settlement in Marion

Township, Hardin County, Ohio, or was her legal settlement still in Franklin County, Ohio?

There is no contention as to whether she had a legal settlement in Cessna Township, as all agreed that they had not lived there for ninety days prior to receiving any aid which is necessary to gain a legal settlement from one township to another."

Section 3477, General Code, which defines what shall constitute a legal settlement for relief under the poor laws, must necessarily be considered in connection with your communication. That section reads:

"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."

Section 3479, General Code, provides:

"A person having a legal settlement in any county in the state shall be considered as having a legal settlement in the township, or municipal corporation therein, in which he has last resided continuously and supported himself for three consecutive months without relief, under the provisions of the law for the relief of the poor, or 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. When a person has for a period of more than one year not secured a legal settlement in any county, township or city in the state, he shall be deemed to have a legal settlement in the county, township or city where he last has such settlement."

From the above it is clear that it is necessary for a person to continuously reside for twelve consecutive months without the relief described in Section 3477, supra, in a county before a legal settlement can be acquired. Of course, it is further necessary that one must reside in a municipal corporation or township for three consecutive months without relief before acquiring a legal settlement therein.

The sole question which your inquiry presents is whether or not the woman you mention acquired a legal settlement in Marion Township, Hardin County, Ohio.

It seems to be well settled in Ohio, that under certain conditions a woman may acquire a residence separate from that of her husband. In the case of *Cache vs. Cache*, 12 Ohio App. 140, it was held, as disclosed by the first and second branches of the head notes, that:

1. "When a wife is justified in separating from her husband by reason of his aggression, she may lawfully select and acquire a residence separate from his.
2. "If the wife removes into this state and acquires a bona fide residence herein for the length of time required by our Code, she is entitled to the benefit of our divorce laws, although during all of the time she lived with her husband he was a resident of another state and continued to reside therein."

In the body of the opinion of that case, the court quotes with approval the case of *Cheever vs. Wilson*, 9 Wall., 108, wherein it was held:

"The rule is that she may acquire a separate domicile whenever it is necessary or proper that she should do so. The right springs from the necessity for its exercise, and endures as long as the necessity continues."

In the Cache case, the Appellate Court said further.

"When a married woman is justified in separating from her husband, his marital control over her, which made his residence her residence, is broken, and she can lawfully acquire an actual residence separate from his. She then has a right to select any place for her residence that she may desire."

In the case you present, it would appear that whatever difficulties existed between the father and mother, they resulted in the mother assuming custody of the children, and providing for their support, which in itself would be indicative of the existence of facts justifying her in the establishment of a separate residence.

Therefore, in specific answer to your inquiry, it is my opinion that, under the facts and circumstances presented in your communication, the woman under consideration acquired a legal settlement in Marion Township, Hardin County, Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2360.

APPROVAL, BONDS OF PICKAWAY COUNTY, OHIO—\$22,520.93.

COLUMBUS, OHIO, September 19, 1930.

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

2361.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND INDIANA ENGINEERING AND CONSTRUCTION COMPANY, FOR REMODELING OF ADMINISTRATION BUILDING OF KENT STATE COLLEGE, KENT, OHIO, AT AN EXPENDITURE OF \$100,500.00—SURETY BOND EXECUTED BY THE MARYLAND CASUALTY COMPANY.

COLUMBUS, OHIO, September 19, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for the Board of Trustees of the Kent State College, Kent, Ohio, and Indiana Engineering and Construction Company, a foreign corporation, with an Ohio office at Akron, Ohio. This contract calls for the construction and completion of general contract, exclusive of plumbing