

rant, it may not be paid. Even if he had authorized another person to execute his endorsement, this authority expires upon the death of the payee.

If the payee dies subsequent to endorsement, the warrant is not void. To hold otherwise would be without basis in law or reason. No doubt in most cases the payee receives the value in money upon endorsement of the warrant. There may be several subsequent endorsees, none of whom had knowledge of the death of the payee. The State has satisfied its obligation to the recipient of aid when the Treasurer of State honors the warrant drawn by the Auditor of State with the endorsement of the payee contained thereon.

The conclusions expressed herein answer the second and third questions. I am therefore of the opinion, for the reasons stated herein, that where a recipient of aid, under the Old Age Pension Law dies prior to his endorsement of a warrant drawn by the Auditor of State, in which such pensioner is the payee, said warrant is void. The death of a pensioner subsequent to his endorsement of said warrant, as payee, but prior to the payment thereof by the Treasurer of State, has no effect upon the validity of the warrant.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3991.

INDIGENT—SUPERINTENDENT OF COUNTY HOME MAY REMOVE COUNTY CHARGE TO STATE OF LEGAL SETTLEMENT WHEN.

SYLLABUS:

By virtue of Section 2540, General Code, the Superintendent of the County Home, may at the expense of the county, remove any person becoming a charge upon the county who has no legal settlement in the state to the county and state where such person has a legal settlement if such person consents to the removal, but not without the consent of such person.

COLUMBUS, OHIO, March 4, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

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

“Living near the border of Ohio and Kentucky, we have a situation relative to indigents not having a legal settlement in Ohio, which I presume is like all other counties in Ohio which are similarly situated. Various families having legal settlements in Kentucky and other states are situated in this county and are dependent upon charity for a livelihood. I appreciate under the laws of Ohio the county superintendent is authorized to extend to these persons aid.

The question has arisen as to whether or not the superintendent of the county home or any other county authority has the right, with or without the consent of such persons, to remove them and their necessary personal belongings from the State of Ohio and to the state wherein they have a legal settlement. An answer to this question involves section 2540 of the General Code and sec-

tion 3482 applies to transient indigents who have a legal settlement in a county other than the one in which they are situated.

I would appreciate your earliest opinion on the following specific questions:

1. Can the superintendent of the county home or any other county official remove, at the expense of the county, a person or persons having no legal settlement in such county to a state in which they have a legal settlement, if such person consents to such removal?
2. Can the superintendent of the county home or any other county official remove, at the expense of the county, a person or persons having no legal settlement in such county to a state in which they have a legal settlement, if such person does not consent to such removal?"

Section 3482, General Code, to which you refer in your request for my opinion is only applicable to the removal of paupers, requiring relief, from the county wherein they are found to a county in this state in which they have a legal settlement. That is, it has no application to the removal of paupers who have no legal settlement whatsoever in this state. However, Section 2540, General Code, which you mention in your request provides as follows:

"The Superintendent of the infirmary (county home) may remove any person becoming a charge upon the county who has no legal settlement in the state, to the county and state where such person has a legal settlement."

I assume for the purpose of this opinion that the persons to whom you refer in your request having no legal settlement in this state have become charges upon your county. The authorities in the several jurisdictions differ as to whether a pauper may be removed by virtue of statutory provisions to his place of settlement in another state by officials in the state in which he is found. For authorities holding a pauper may be removed see *Niskayuna Overseers of Poor vs. Guilderland Overseers of Poor*, 8, Johns. (N. Y. 412); *Thompson Case*, 4 City Hall Rec. (N. Y. 43). For authorities holding that such a provision is nugatory for want of power by which the order can be enforced in the other state, see *Juanita County vs. Delaware Township*, 107 Pa. 68; *Limestone Township vs. Chillisquaque*, 87 Pa. 294; *Parker City Overseers of Poor vs. Dubois Overseers of Poor*, 6 Pa. Cas. 591, 9 Atl. 457; and *Ga. vs. Grand Isle*, 1 Vt. 464. In the case of *Overseers of Poor of Limestone Township vs. Overseers of Poor of Chillisquaque*, supra, it was stated on page 298:

"It is indeed true, that by our poor laws, provisions is made for the removal of paupers into other states, but this provision is nugatory in that there is no power by which it can be carried into effect; hence, the order of removal loses all force the moment it crosses the state line. In other words, the legislature of Pennsylvania cannot charge the poor districts of other states with the support of paupers, though their settlements may properly be therein, and, per contra, other states cannot so charge the poor district of Pennsylvania."

With reference to your first question I call your attention to an opinion of one of my predecessors in office to be found in Opinions of the Attorney General for 1927, Vol. II, page 1106 at 1108, wherein it is stated:

"By the terms of this section, (referring to section 2540), as soon as the

injured person, (a pauper who was injured in the state of Ohio and who was a resident of Tennessee), who is the subject of your inquiry, shall have recovered his health sufficiently to make such action possible, the superintendent of the county home may, at the county's expense, cause him to be transported to the place where he has a legal settlement." (Word in parenthesis mine.)

However, in this opinion of the Attorney General referred to supra, it was assumed that the indigent person in question was willing to be returned to the state of his legal settlement and the opinion merely held that he could be so returned at the expense of the county in which he was found. I am in accord with the reasoning of this opinion and specifically answering your first inquiry, it is my opinion that the Superintendent of the County Home may remove, at the county's expense, a person becoming a charge upon the county who has no legal settlement in the state, to the state and county where such person has a legal settlement if such indigent consents to the removal. However, it is within the jurisdiction of the Superintendent of the County Home to order such removal and not within the jurisdiction of any other county official, as such authority is conferred entirely by statute and must be strictly followed.

With reference to your second question your attention is directed to the excerpt from the case of *Overseers of Poor of Limestone Township vs. Overseers of Poor of Chillisquaque* in which it is stated that even though statutory provision is made for the removal of paupers to other states such provision is nugatory in that there is no power by which it can be carried into effect. Your attention is also directed to the case of *State of Ohio ex rel. John Alexander vs. Mark Eshbaugh*, Case No. 78706 on the Common Pleas docket of Montgomery County, decided January 28, 1935, in the course of which opinion it is stated relative to the use of federal poor relief funds:

"In the exhibit placed in the record in this case * * * the position of that administration is indicated in the following words:

' * * * Settlement shall be defined as residence within a state for a period of one continuous year or longer.' Hence, all persons in need of relief who have not resided within the boundaries of a state for twelve consecutive months are considered as "transients." Special provisions for transients have been made by this administration. Federal funds are used to maintain transient relief activities, which are managed by the Transient Director connected with each State Emergency Relief Administration.

There is no provision of law by which a person on relief rolls can be sent from one state to another against his will.'

Inasmuch as Section 2540, General Code, does not in my opinion contemplate the removal, against their will, of indigents who have legal settlements in other states to those states and inasmuch as even if such statute did contemplate such a procedure, the order of removal would lose all force the moment it crossed the state line, it is my opinion that indigent persons who have a legal settlement in another state cannot be removed against their will to that state.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

3992.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR DUTIES—L. C. LAMB AS DISTRICT DEPUTY DIRECTOR, AND WALTER E. WILLARD AS DIVISION DEPUTY DIRECTOR; DISAPPROVAL, BONDS OF HOWARD P. MASON AS DISTRICT DEPUTY DIRECTOR, AND B. H. FRASCH AS DIVISION DEPUTY DIRECTOR.

COLUMBUS, OHIO, March 4, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted four bonds, each in the penal sum of \$5,000, with sureties as indicated, to cover the faithful performance of the duties of the officials as herinafter listed:

L. C. Lamb, Resident District Deputy Director in Coshocton County—United States Fidelity and Guaranty Company.

Howard P. Mason, Resident District Deputy Director in Licking County—American Bonding Company of Baltimore.

B. H. Frasch, Resident Division Deputy Director in Division No. 5—American Bonding Company of Baltimore, Maryland.

Walter E. Willard, Resident Division Deputy Director in Division No. 8—The Ohio Casualty Insurance Company.

The first two bonds are undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code, which state, in so far as pertinent:

Sec. 1183. “* * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars. * * *”

Sec. 1182-3. “* * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * * *” (Words in parenthesis the writer’s.)

The two latter bonds are undoubtedly executed pursuant to the provisions of sections 1182 and 1182-3, General Code, above quoted. Section 1182, General Code, states in so far as pertinent:

“Each division deputy director shall give bond in the sum of five thousand dollars, conditioned for the faithful performance of his duties with sureties to the approval of the state highway director. * * *”

Upon examination of the foregoing bonds, I find that the bonds of L. C. Lamb and Walter E. Willard appear to be in proper legal form under the foregoing statutory provisions, and same are hereby approved as to form.

However, I note that the bonds of B. H. Frasch and Howard P. Mason have not been approved by the State Highway Director, in accordance with the specific provi-