1880.

APPROVAL, BONDS OF LOGAN COUNTY, OHIO, IN AMOUNT OF $33,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, March 1, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

1881.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN TRUMBULL, DARKE AND BROWN COUNTIES, OHIO.

COLUMBUS, OHIO, March 1, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1882.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN ADAMS AND HAMILTON COUNTIES, OHIO.

COLUMBUS, OHIO, March 2, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1883.

LEGAL SETTLEMENT—RESIDENTIAL QUALIFICATIONS FOR SAID PURPOSE DISCUSSED—EFFECT OF REMOVAL FROM ONE COUNTY TO ANOTHER.

On the facts stated in the query, the legal settlement of A. is in Sandusky county, and proceedings to commit A. to the state hospital for the insane, or to admit her to the county infirmary, should be had in Sandusky county.

COLUMBUS, OHIO, March 2, 1921.

HON. JOHN B. COONROD, *Probate Court, Fremont, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter of recent date, reading thus:

> "A., a married woman, residing with her husband in Sandusky county, was adjudged insane on December 2, 1913, and committed to the Toledo State Hospital. After her commitment, the probate court appointed a guardian

of her person and estate and said guardianship is now in full force and effect. In 1914 A. was permitted to go on a trial visit to her husband, who had in the meantime become a resident of Erie county, and later she was discharged from the asylum, having been absent from said institution for six months. A. remained with her husband about one month, when she was taken to Seneca county by her step-father and brother and has for the past five years and does now reside with and has been cared for by her mother and step-father. The guardian did not direct her removal to Seneca county but made no objection then or since, virtually acquiescing in said removal. A's property will be practically exhausted in payment of her support and the step-father can no longer care for her by reason of infirmity. A. will soon become a county charge, or if insane must be committed to the asylum. Which county has jurisdiction to commit her to the asylum, if insane, or to the infirmary, if not insane, and she becomes a public charge?"

In a supplementary letter you state the further fact that the guardian of A. was, at the time of appointment, a resident of Sandusky county, and has been a resident of said county ever since.

Practically the same facts were recently passed upon by this department in Opinion No. 1504, rendered August 19, 1920, by the Attorney-General to Hon. A. V. Baumann, Jr., prosecuting attorney of Sandusky county. However, the query upon which said opinion was based, was whether the person in question "might properly be received at the county home"; and the information being given that

"said person is now insane and has been insane ever since the time of her commitment to the state hospital,"

said opinion did not pass upon the question of legal settlement, but turned on the proposition that, because of the provisions of section 2541 G. C., no insane person may be received or kept at a county infirmary, or "county home," as it is now called.

It is evident from your letter that there is some doubt as to whether the person in question, whom you call "A," *is* or is *not* insane, and that in the event of her becoming a public charge, you wish to have the benefit of my views as to "which county has jurisdiction to commit her to the asylum if insane, or to the infirmary if *not* insane."

Although your question sets forth two hypotheses—one as to insanity and one as to non-insanity—there is really but one thing to be determined in this connection and that is: where, under the facts of your letter, is A's *legal settlement?* This is true, because in both lunacy proceedings and proceedings for admission of a person to the county infirmary, proper legal settlement of the person is a jurisdictional matter.

That the legal settlement of the alleged lunatic is a jurisdictional matter, appears from section 1953 G. C., which sets forth a form of lunacy affidavit. One of the allegations of such affidavit is that the alleged lunatic

"has a legal settlement in ———— township, in this county."

The importance of the question of legal settlement to the matter of one's admission to the county infirmary, appears from section 2544 G. C. (108 O. L., Part 1, p. 269), which says:

"In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by

law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

"Legal settlement" is defined by sections 3477 and 3479 G. C. as follows:

Sec. 3477 G. C. 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, subject to the following exceptions: * * *

Second—The wife or widow of a person whose last legal settlement was in a township or municipal corporation in this state, shall be considered to be legally settled in the same township or corporation. * * *"

Section 3479 G. C. (108 O. L., Part 1, p. 272):

"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 law for the relief of the poor. 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."

Your statement of facts shows that in 1913 A. had her legal settlement in Sandusky county. This appears not only from the fact that she was committed from that county to the Toledo State Hospital, but also from the fact that a guardian of her person was appointed in said county. The guardianship proceedings were undoubtedly had pursuant to section 10989 G. C. Said section was recently amended (108 O. L., Part 1, page 387), but at the time just referred to, read as follows:

"Upon satisfactory proof that a person resident of the county, or having a legal settlement in any township thereof, is an idiot, imbecile, or lunatic, the probate court shall appoint a guardian for such person * * *."

It being established, then that A. had at the times just mentioned a legal settlement in Sandusky county, what has occurred subsequently to change her settlement in that county?

Certainly no act on A's part has operated to change her settlement—at least no act requiring volition. For, while your letter indicates that there is in fact some doubt as to A's insanity, in law she must be regarded as insane until her guardianship as an insane person is terminated. This by reason of section 11010 G. C., which says:

"When the probate judge is satisfied that an idiot, imbecile, or lunatic, or a person as to whom guardianship has been granted as such, is restored to reason, or that letters of guardianship have been improperly issued, he shall make an entry upon the journal that such guardianship terminate. Thereupon it shall cease, and the accounts of the guardian be settled by the court."

The rule is, of course, well settled that "an insane person or idiot cannot acquire a settlement in any place by virtue of acts requiring his own volition." 30 Cyc. 1083. See also Rockel's Ohio Prob. Practice (2nd Ed.) p. 1326.

Says Woerner on Guardianship, page 398:

"The subject of the settlement of paupers has given rise to considerable litigation, and two principles of law are said to be well established which throw light on the question of jurisdiction over persons of unsound mind: first, that an idiot (or person of unsound mind) can acquire no residence or settlement in any place by virtue of his own acts; and next, that settlement continues until he acquires a legal settlement in another place in the state."

We must now consider whether A's legal settlement in Sandusky county was changed by (a) A's residence with her husband in Erie county for one month during the year 1914, or by (b) A's residence during the past five years in Seneca county.

(a) While section 3477 G. C. makes it possible for a wife to acquire legal settlement through her husband, said section providing that

"the wife or widow of a person whose last legal settlement was in a township or municipal corporation in this state, shall be considered to be legally settled in the same township or corporation * * *,"

this provision could not, under the circumstances, enable A. to gain a residence in Erie county. Said section clearly relates to women who are not under the special status imposed by lunacy or guardianship proceedings.

(b) A. could not gain a legal settlement in Seneca county by the mere process of residing there. In order to obtain a legal settlement, the fact of residence is not sufficient unless attended with the *intention,* on the part of the resident, of making the place removed to the place of abode. Henrietta Township vs. Oxford Township, 2 Ohio 32. But A. having at all times, while in Seneca county, the status of an insane person, was incapable of personally forming any intention as to her residence.

In Sturgeon vs. Korte, 34 O. S. 525, 535, it is said:

"Residence resulting from the operation of law supervenes upon a disability to make choice. Minors being incapable of acquiring a domicile, retain that of their parents. A married woman takes the domicile of her husband; an illegitimate child that of its mother. *An insane person may take that of his guardian.*"

Cited in connection with the last statement is the case of Trustees of Jackson Township vs. Trustees of Polk Township, 19 O. S., 28. In that case the facts were as follows: One Catherine Pfeifer was a resident of and legally settled in Polk township, Crawford county. She was declared a lunatic, and one Jacob Purkeypile was appointed guardian. The residence of the guardian at the time of the appointment and at all times thereafter was in Jackson township, Crawford county. The

guardian took the lunatic from her residence in Polk township into his custody at his residence in Jackson township, where she thereafter remained. In an action brought by the trustees of Jackson township against the trustees of Polk township to recover for poor relief furnished in Jackson township, the court "held that she was a resident of Jackson township and had no legal settlement in Polk township."

In the case put by your letter, it appears that A. is not now in the custody of the guardian, and has not been for the past five years; that, on the contrary A. has, during such time, resided with her mother and step-father and has been cared for by them, the guardian acquiescing in this.

Nevertheless, the guardianship still continues, and in law, at least, A. is still in the custody of her guardian. The actual custody of A. by her guardian may at any time be asserted, and the duty and responsibility of the guardian relation cannot be terminated by mere inaction.

On the facts stated, nothing appears which would indicate that A's legal settlement in Sandusky county has yet been changed. It is therefore believed that that county is the proper one wherein to bring proceedings under section 1953 G. C. As to proceedings for the admission of A. to the infirmary of Sandusky county, it is sufficient to repeat that admission to that institution can be had only upon the dissolution of the guardianship relation, agreeably to section 11010 G. C., quoted supra.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1884.

INHERITANCE TAX LAW—WHERE TESTATOR LEAVES LEGACY ABSOLUTELY TO DAUGHTER AND RESIDUARY ESTATE TO TRUSTEES OF PROPOSED CHARITABLE INSTITUTION—TESTATOR DIED WITHIN YEAR—SUCCESSIONS TO DAUGHTER TAXABLE—GEORGE MARSH ESTATE—SEE OPINION NO. 1623, OCTOBER 20, 1920.

A testator left a legacy absolutely to his daughter and his residuary estate to trustees of a proposed charitable institution. Prior to the execution of the will he entered into a contract with his daughter whereby he agreed to give her the legacy and certain other property, and she agreed that in the event of the invalidity of any part of the will she would by her will transfer the legacy to the proposed institution and immediately after his death transfer all the property covered by the residuary clause to the same institution; the testator died within the year:

HELD: That the entire specific and residuary legacies are taxable under the inheritance tax law as successions of the daughter.

COLUMBUS, OHIO, March 2, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—By letter of recent date the commission requests further opinion of this department upon the question reserved from consideration in Opinion No. 1623 under date of October 20, 1920. In that opinion it is held that a certain bequest to trustees for the purpose of establishing a foundation for the conduct of a children's home and school is exempt from inheritance taxation. The question reserved