

From the facts contained in your communication it is apparent that R.A. obtained a legal settlement in Cuyahoga County since she supported herself and child for a period in excess of one year without charitable relief.

There is no doubt that the Juvenile Court of Cuyahoga County has jurisdiction to declare M.A. dependent since the child is found within the county under facts and circumstances which constitute dependency, and since the legal residence of the child or its parents does not determine the jurisdiction of the court. See Opinions of the Attorney General, 1929, page 1151.

Your request for opinion presents the question of legal residence of M.A. Legal residence is defined as that fixed habitation where the rights of elective franchise are to be exercised and where the liability for taxation exists. 34 CYC 1647.

From the statement of facts submitted, it is apparent that R.A. could have exercised the rights of elective franchise and could have been taxed in Cuyahoga County if she has complied with the elective formalities and made a tax return.

It would, therefore, follow from the above definition that R.A. had a legal residence in Cuyahoga County.

M.A. being a minor and abandoned by her father, her legal residence would be that of her remaining parent, or mother. 19 C.J. 412.

I am, therefore, of the opinion that where the failure of a husband to provide for his wife results in the commitment of such wife to the County Infirmary and the later removal of the wife and a minor child from the County Infirmary to another county, legal residence may be established by the wife in the latter county.

From the foregoing, it is apparent that upon commitment M.A. will become a county charge of Cuyahoga County.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3236.

AMENDED SENATE BILL NO. 31—REQUIRING CANDIDATE FOR COMMON PLEAS JUDGE, WHERE MORE THAN ONE ARE TO BE ELECTED, TO DESIGNATE INCUMBENT HE SEEKS TO SUCCEED—WHEN APPLICABLE TO CANDIDATE FOR MUNICIPAL JUDGE.

SYLLABUS:

*Amended Senate Bill No. 31, as enacted by the 89th General Assembly discussed with reference to its applicability to the election of judges of municipal courts.*

COLUMBUS, OHIO, May 20, 1931.

HON. JOSEPH N. ACKERMAN, *Chairman, Elections Committee, Ohio Senate, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In introducing Senate Bill No. 31, the following enactment clause was passed:

“To supplement sections 4785-71, 4785-80, and 4785-91 by the enactment of supplemental sections 4785-71a, 4785-80a, and 4785-91a. and to

amend section 4785-102 of the General Code, relative to the manner of electing common pleas judges where two or more are to be elected at the same election.'

It has been called to my attention that the election of municipal judges has been also affected so as to conform to the election of common pleas judges.

Inasmuch as there is a conflict of opinion as to the interpretation of this act, will you be good enough to render an opinion at your earliest convenience as to the effect of this measure on the election of both common pleas and the municipal judges of Ohio?"

You inquire as to the effect Amended Senate Bill No. 31 has on the election of Common Pleas Judges and also as to the effect it has upon the election of Municipal Judges. You also state that there is a conflict of opinion as to the interpretation of this act. Since you have not informed me as to wherein the conflict lies, I shall be compelled to confine myself to a certain extent to generalities.

With respect to the portion of your inquiry bearing upon the election of municipal judges, it should be noted that the three new sections enacted pertain only to judges of the court of common pleas, and the amendment of Section 4785-102, General Code, relates only to candidates for the office of judge of the court of common pleas. It is obvious, therefore, that this act has no effect upon the election of municipal judges except in cases where it is provided that such judges shall be elected in the same manner as is provided for the election of judges of the courts of common pleas.

Section 4785-71, General Code, which is the first section supplemented by this act, provides the form of declaration of candidacy to be used by persons desiring to become a party candidate in a primary by the method of declaration. Section 4785-71a provides as follows:

"Where two or more judges of the court of common pleas are to be elected in a county at any one election, the various candidates for such office shall designate in their respective declarations of candidacy at a party primary the particular term for which each is a candidate by naming the incumbent he seeks to succeed, or in case of a vacancy, shall designate such vacancy by the name of the last incumbent. In case a new judgeship has been created, each candidate for such term shall designate in his declaration of candidacy that he is a candidate for a newly created judgeship. This section shall not apply to candidates for an unexpired term or for a term as judge of the court of common pleas, division of domestic relations, or to candidates for any other term for which the candidates are differentiated on the ballot from candidates for other terms as judges of the court of common pleas, and who are candidates for such specified terms only."

The obvious purpose of this section is to require candidates for the office of judge of the court of common pleas to designate the particular term which he seeks when there is more than one judge to be elected. The requirement that the candidate name the incumbent that he seeks to succeed is only made when there is more than one judge to be elected for terms commencing on the same day. Obviously if there is more than one judge to be elected and the candidates are differentiated as to terms with respect to time, there is no necessity for naming the incumbents they seek to succeed.

Section 4785-80, General Code, provides the form of the primary ballot. Section 4785-80a, General Code, provides as follows:

“Where two or more judges of the court of common pleas are to be elected in a county at any one election the names of the candidates shall be placed upon the primary ballot under the designation of the respective term for which they are candidates, such designation to correspond to that required by section 4785-71a of the General Code. The candidates for each respective term so designated shall be candidates for that term only, unless two or more new judgeships have been created, in which case from all candidates for a newly-created judgeship those receiving the highest number of votes shall be nominated.”

Section 4785-91 relates to the form of petition for the nominations of independent candidates. Section 4785-91a, General Code, is as follows:

“The nominating petitions of each candidate for independent nomination for judge of the court of common pleas shall contain a designation of the term for which he is a candidate, when and as provided by section 4785-71a of the General Code and such candidate shall be nominated only for the term so designated.”

Section 4785-102 relates to the placing upon the nonpartisan ballot the names of all candidates for election to any judicial office. As amended there has been inserted the following language:

“In case candidates for the office of judge of the court of common pleas have been nominated for a particular term under the provisions of sections 4785-80a or 4785-91a of the General Code, the names of the candidates for such respective terms shall be placed under the title of the term, as in case of names on the primary ballot, and such nominees shall be candidates only for the respective terms for which they have been nominated.”

I assume that your inquiry is chiefly as to the effect of the act upon the election of municipal judges. It may be well to illustrate, therefore, the reference, supra, to the fact that where it is provided that municipal court judges shall be elected in the same manner as common pleas judges the act should apply. As an illustration, section 1579-5, General Code (113 O. L. 25), relating to the election of municipal judges of Cleveland, provides:

“The judges of the municipal court, including the chief justice, shall be nominated by petition. Such petition shall be signed by at least twenty-five hundred electors of the city of Cleveland. It shall be in the general form and shall be signed, verified and filed in the manner and within the time required by law for nominating petitions of other nominees for public office in the city of Cleveland. Each elector shall have the right to sign petitions for as many candidates as are to be elected but no more. And such judges shall be elected by the electors of the city of Cleveland in the manner provided by law for the election of judges of the court of common pleas. The six additional judges provided for in this act shall be elected at the regular municipal election of 1923. Two of said addi-

tional judges shall be elected for a period of two years, two for four years and two for six years. At the regular municipal election next preceding the expiration of the term of office of each judge a successor shall be elected for a term of six years. The term of office of each judge shall commence on the first day of January next after his election and he shall hold office until his successor is elected and qualified."

The provision that such judges shall be elected "in the manner provided by law for the election of judges of the court of common pleas" necessarily compels a reference to the act in question providing how judges of the court of common pleas shall be elected. Although there is apparently no primary election for the nomination of Cleveland municipal court judges, it is my view that the nominating petitions of these judges should contain the designation as to terms as provided in Section 4785-71a, supra, in order that at the November election they may be elected "in the manner provided by law for the election of judges of the court of common pleas."

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3237.

APPROVAL, BONDS FOR THE FAITHFUL PERFORMANCE OF THEIR  
DUTIES AS RESIDENT DIVISION DEPUTY DIRECTOR AND RESI-  
DENT DISTRICT DEPUTY DIRECTOR—JOHN O. McWILLIAMS—  
KENT E. WEDEKIND.

COLUMBUS, OHIO, May 20, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted two bonds, each in the penal sum of \$5,000.00, with sureties as indicated, to cover the faithful performance of the duties of the officials as hereinafter listed:

John O. McWilliams—Resident Division Deputy Director, Division No.  
12—U. S. Fidelity & Guaranty Company.

Kent E. Wedekind—Resident District Deputy Director, Ottawa County—  
The Aetna Casualty & Surety Company.

Finding said bonds to have been properly executed, I have accordingly approved the same as to form, and return them herewith.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*