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1. MINOR CHILD — IN NEED OF POOR RELIEF AT PUBLIC EXPENSE — DOES NOT HAVE LEGAL SETTLEMENT IN COUNTY — PRIMARY DUTY OF COUNTY, AS DISTINGUISHED FROM COUNTY RELIEF AUTHORITY, TO FURNISH SUCH RELIEF — COST MAY BE RECOVERED — SECTIONS 3482, 3483, 3484, 3484-1, 3484-2 G. C.
2. WHERE WIFE AND MINOR CHILDREN ABANDONED — COUNTY OF LEGAL SETTLEMENT — THEREUPON OR WITHIN TWELVE MONTHS SUCH CHILDREN ADJUDICATED DEPENDENT CHILDREN — CONTINUOUSLY RECEIVE RELIEF AT COUNTY EXPENSE — UNDIVORCED FATHER OR MOTHER OF SUCH CHILDREN CAN NOT OBTAIN NEW LEGAL SETTLEMENT IN ANY OTHER COUNTY OF STATE THROUGH PROVISIONS OF SECTION 3477 G. C.
3. ILLEGITIMATE CHILDREN — WHERE MOTHER HAVING LEGAL SETTLEMENT IN ONE COUNTY OF STATE, GIVES BIRTH TO ILLEGITIMATE CHILDREN IN ANOTHER COUNTY, SUCH CHILDREN DERIVATIVELY ACQUIRE LEGAL SETTLEMENT OF MOTHER IN SUCH OTHER COUNTY.

SYLLABUS:

1. When a minor child which does not have a legal settlement in the county becomes in need of poor relief at public expense, it is the primary duty of the county, as distinguished from the county relief authority, to furnish such relief, the cost of which may be recovered in the manner prescribed by Sections 3482, 3483, 3484, 3484-1 and 3484-2 General Code.

2. Where a father abandons his wife and minor children in the county of their legal settlement and thereupon or within twelve months thereafter such children are adjudicated dependent children and continuously receive relief at county expense, the undivorced father or mother of such children can not obtain a new legal settlement in any other county of the state by reason of the provisions of Section 3477 of the General Code.

3. Where a mother, having a legal settlement in one county of the state, gives birth in another county to illegitimate children, such illegitimate children acquire derivatively the legal settlement of the mother in such other county.

Columbus, Ohio, November 6, 1944

Hon. Lester W. Donaldson, Prosecuting Attorney
Painesville, Ohio

Dear Sir:

I have a letter from your office in which you request my opinion as to the duty of your county to furnish relief to a child who has been seriously burned. It appears from your letter that the mother of this child is a married woman who formerly lived in Geauga County with her husband and two children born in wedlock. Thereafter, the husband abandoned his wife and family and his whereabouts is unknown. It is stated in the letter that "Gauga County then stepped in and the children were placed with the grandmother, where they have been ever since and have continually been receiving relief from Gauga County". The mother has moved to Lake County where she has lived in adultery with a resident of Lake County and as a result of such adulterous cohabitation has given birth to three illegitimate children. The letter states that she has resided in Lake County for more than one year and has received no relief herself, but that her legitimate children in Geauga County have been receiving relief continuously. One of the illegitimate children in Lake County has been burned and you desire to know whether the relief extended to such child is the responsibility of Lake County or of Geauga County, and you state that it is imperative that this opinion be rendered as soon as possible because the condition of the child requires immediate medical attention.

Before reaching the question of the legal settlement of the child in question for purposes of poor relief, I believe attention should be called to the following language contained in Section 3476, General Code:

"* * * Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, * * *."

The phrase "necessary residence requirements" as contained in such Section 3476, General Code, patently means the necessary residence requirements to obtain the relief at township or municipal corporation expense. It should also be carried in mind that when the General Assembly enacted the law popularly referred to as the "poor relief act" (Sections 3391 to

3391-12, both inclusive, General Code) which transferred most of the obligations to furnish "poor relief" to "county local relief authorities" and "city local relief authorities", it specifically retained the obligation of counties created by Section 3476, General Code, to furnish relief to persons not having the necessary residence requirements to obtain relief from such other authorities. See Section 3391-2, sub-paragraph 8, General Code.

Such provision reads:

"8. Except as modified by the provisions of this act, section 3476 and other sections of the General Code of like purport shall remain in full force and effect and nothing in this act shall be construed as altering, amending, or repealing the provisions of section 3476 of the General Code, relative to the obligation of the county to provide or grant relief to those persons who do not have the necessary residence requirements and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control."

From the definition of "poor relief" contained in Section 3391, General Code, it is apparent that "medicines and the services, wherever rendered, of a physician or surgeon * * * furnished at public expense" constitute poor relief.

From the statutes above quoted, it would seem that if the child referred to in your inquiry does not have a legal settlement in Lake County, it is nevertheless the duty of Lake County, as distinguished from the "Lake County relief authority" to furnish the medicines and services of a physician and surgeon, wherever rendered, to the child in question if needed at public expense. Such being true, your question is as to whether Lake County may be reimbursed for the cost of such relief in the event that the facts under consideration establish for the child in question a legal settlement for purposes of poor relief in Geauga or some other county than Lake.

In the event that an indigent person who does not have a legal settlement in the county in which he becomes in need of relief, the statutes of Ohio make certain provisions for the recovery of the expense of the relief furnished and for avoiding future liability. See Sections 3482, 3483, 3484, 3484-1 and 3484-2, General Code. From your inquiry I assume that you

are familiar with such provisions and shall consider your inquiry as being for the purpose of determining whether the child in question has a legal settlement for purposes of poor relief in either Lake or Geauga County.

In determining the legal settlement of a minor for purposes of poor relief certain established rules must be carried in mind. Thus, a minor has a derivative legal settlement through his parents which can be altered by no act of his. *Trustees of Jefferson Township v. Trustees of Letart Township*, 3 Oh. 100; *Trustees of Spencer Township v. Trustees of Pleasant Township*, 17 O. S. 31. It can be changed by him only by his arriving at the age of majority. See 1943 Opinions of the Attorney General, No. 6307, page 473. A female upon marriage acquires the legal settlement of her husband which she retains during coverture. See *Board of Commissioners of Summit County v. Board of Commissioners of Trumbull County*, 116 O. S. 663.

In *Trustees of Spencer Township v. Trustees of Pleasant Township*, 17 O. S. 31, the court held:

"1. The legal settlement of a minor child, member of his father's family, continues to be in the township where his father was last legally settled, notwithstanding the father removes with his wife and children to a township in another county and there abandons them, if neither he nor his family remain in such township long enough to acquire a new settlement.

2. The abandoned wife, during coverture, is not legally able to acquire for herself or minor child a legal settlement different from that of her abandoned husband, the father of the child.

3. After such abandoned wife procures a divorce from her husband, she then, but not before, becomes able, as a *feme sole*, to acquire for herself a legal settlement; and if her custody of the minor child, granted by the decree of divorce, has any effect to make her legal settlement instead of her former husband's, the settlement of the child, such effect cannot follow until time enough elapses after the divorce and before her subsequent second marriage, to enable her to acquire a legal settlement as a *feme sole*."

In *Board of Commissioners of Summit County v. Board of Commissioners of Trumbull County*, 116 O. S. 663, the court held that:

"When the parents of minor children are divorced, and the decree gives to the mother the sole and exclusive care, custody

and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and, pursuant thereto, the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

While it seems to be the established rule that a legitimate child upon birth acquires the legal settlement of its father, it is equally well established that the legal settlement of an illegitimate child upon birth is that of its mother. See *Blythe v. Ayers*, 96 Cal. 532; 41 Am. Jur. 701.

From the facts stated in your inquiry, it would seem that at least until the man in question abandoned his family not only the two legitimate children, but their mother as well, had a legal settlement in Geauga County acquired through the father. The reason that the decisions of the courts have ascribed the legal settlement of the wife and children as that of the father is that he has the primary right to pick the place of abode and is primarily liable for their support (Sections 7996 and 7997, General Code). However, a secondary liability is upon the mother to support such children. See Section 7997, General Code.

You do not, in your request, state when, with respect to the dependency, the action in the juvenile court was instituted in Geauga County. It might well be that the father, who had gone to parts unknown, may have acquired a legal settlement in some other county and state than that which he possessed in Geauga County. If so, it would appear, from the cases above cited, that the wife and legitimate children would have also derivatively acquired such legal settlement.

Since the right of a juvenile court to adjudicate the dependency does not depend upon the legal settlement, but rather depends upon the physical presence of the dependent child in the county, it would seem that an adjudication of the dependency of the children could be construed to determine the question of the legal settlement of such children. See Section 1639-1, et seq., General Code.

If, however, I may assume that the children were adjudicated to be

dependent immediately upon the abandonment by the father and before the father had acquired a new legal settlement, then the question arises as to whether either the father or mother could obtain a new legal settlement outside of Geauga County. Section 3477, General Code, prescribes the conditions to be met in obtaining a new legal settlement. Such 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. No adult person coming into this state and having dependants residing in another state, shall obtain a legal settlement in this state so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside.”

You will observe from the section just quoted that it is only the fact that a person has received relief from the public or from a charitable or benevolent organization “which investigates and keeps a record of facts relative to persons who receive or apply for relief” that prevents him from obtaining a new legal settlement. If, therefore, the two legitimate children had been supported by their mother and grandmother, or either of them, after their abandonment by their father, or for more than a year after their parents left Geauga County, it would seem that the adjudication in such county could scarcely have the effect of preventing their parents from obtaining a new legal settlement in some other county. However, your letter states that from the time of the adjudication of dependency the children “have ever since and continually been receiving relief from Geauga County”; such fact would prevent the family of which the legitimate children are a part from acquiring a new legal settlement after the date of the commencement of such relief.

From the reasoning above set forth, it would seem that: (1) If the father of the legitimate children in question abandoned them and they were supported by relatives for twelve months or more after such abandonment, he may have acquired a legal settlement in the county and state to which he went at the time of such abandonment, which settlement is also the legal settlement of his wife and minor children; (2) If, upon the

abandonment of such children, Geauga County began to furnish relief to them within the period of twelve months and has continued to furnish it, the father could not obtain a legal settlement outside of Geauga County and he could not obtain a legal settlement for himself and family at some other place; (3) Since the legal settlement of the wife is that of her husband and is not changed by his abandonment unaccompanied by a divorce, her legal settlement is that of her husband, and (4) Since the legal settlement of the illegitimate children is that of their mother, it would seem that the legal settlement of the illegitimate child in question is the same county as that of the husband of its mother.

Specifically answering your inquiry, it is my opinion that:

1. When a minor child which does not have a legal settlement in the county becomes in need of poor relief at public expense, it is the primary duty of the county, as distinguished from the county relief authority, to furnish such relief, the cost of which may be recovered in the manner prescribed by Sections 3482, 3483, 3484, 3484-1 and 3484-2, General Code.

2. Where a father abandons his wife and minor children in the county of their legal settlement and thereupon or within twelve months thereafter such children are adjudicated dependent children and continuously receive relief at county expense, the undivorced father or mother of such children can not obtain a new legal settlement in any other county of the state by reason of the provisions of Section 3477 of the General Code.

3. Where a mother, having a legal settlement in one county of the state, gives birth in another county to illegitimate children, such illegitimate children acquire derivatively the legal settlement of the mother in such other county.

Respectfully,

THOMAS J. HERBERT

Attorney General