722.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE CROSSING AT BELLEFONTAINE, OHIO.

COLUMBUS, OHIO, August 10, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter under date of August 8, 1929, enclosing copy of a contract providing for the elimination of the grade crossing, as part of the plan of the reconstruction of the Sandusky Avenue Bridge, S. H. No. 130, Ext. with the C. C. C. & St. L. Railway, at Bellefontaine, Ohio.

I have carefully examined the agreement, and find it correct in form, and hereby approve the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

723.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON, PICKAWAY AND MERCER COUNTIES.

COLUMBUS, OHIO, August 10, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

724.

ADOPTION—CHILD PERMANENTLY COMMITTED TO DIVISION OF CHARITIES—WHEN PROCEEDINGS MUST BE INSTITUTED BY PETITIONER.

SYLLABUS:

When a child who had a legal residence in any county of the state, other than Franklin, is permanently committed or transferred to the Board of State Charities, the bringing of that child by the board to Franklin County does not affect the former legal residence of the child in such a way as to give the Probate Court of Franklin County jurisdiction in proceedings which may be instituted for the adoption of the child. Such proceedings must be instituted in the Probate Court of the county where the child had a legal residence before it became a public charge, or in the county where the petitioner has a legal settlement.

COLUMBUS, OHIO, August 10, 1929.

HON. H. H. GRISWOLD, *Dirctor, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"A child is permanently committed by the court to the Division of Charities under Section 1672 of the General Code or has been transferred by the board of trustees of the County Children's Home to the State Division of Charities. In such case several questions arise as to the legal residence of the child with reference to determining the jurisdiction of the Probate Court over adoption proceedings.

1. Assuming that the residence of the child before commitment was in a county other than Franklin and that the child is brought to Franklin County by the Division of Charities, does this change the residence of the child in such way as to give the Probate Court of Franklin County jurisdiction?

2. What is the effect if the child is placed in a foster family in a county other than Franklin and other than the county of original residence although the child is not legally adopted by the foster family. In other words, does the fact of placing in a foster family change the legal residence to the county in which such foster family resides?"

When a child or children are permanently committed to the Board of State Charities by a juvenile court, by authority of Section 1672, General Code, and when a child or children are transferred by the trustees of the county, district or semi-public children's home or other institution to the Board of State Charities, by authority of Section 1352-3, General Code, the said board thereupon, ipso facto, becomes vested with the sole and exclusive guardianship of such child or children and must be made a party to any proceedings thereafter had for the adoption of such child or children. The board is authorized to assent to the adoption of such child or children in any proceedings instituted for that purpose.

Section 8024, General Code, provides in part:

"Any proper person, or a husband and wife jointly, may petition the probate court of the county in which he or they have a legal settlement, of the county in which the child resides or of the county in which the child had a legal residence when it became a public charge, for leave to adopt a child and for a change of the name of such child. * * * "

It will be observed from the terms of the foregoing statute that the jurisdiction of a probate court in adoption proceedings may be invoked in any county where the child sought to be adopted resides or in the county where the child had a legal residence when he became a public charge. The language used in the statute is susceptible of two different interpretations. One possible interpretation is that proceedings for the adoption of children, whether such children are public charges or not; may be in the county where the child resides, and proceedings for the adoption of children who are public charges may be in either the county where the child resides or in the county where the child had a legal residence when he became a public charge. Another possible interpretation is that proceedings for the adoption of a child who is not a public charge may be in the county where the child resides, and for a child who is a public charge, in the county where he had a legal residence when he became a public charge.

Children permanently committed by a juvenile court to the Board of State Charities, or transferred to said board by the trustees of the children's home or other institution, are public charges. If proceedings for the adoption of those children may be either in the county where they reside or in the county of their legal residence before they became such public charges, it becomes pertinent to inquire where they do reside and what is their actual residence while they are wards of the board.

There is a distinction between the "residence" of a person and his "legal residence"

or "domicile." The Legislature apparently has recognized this fact in the use of the terms in the statute. Clearly, the jurisdiction of the court in adoption proceedings, for children who are not public charges, is the county of their residence, not necessarily that of their legal residence.

"Residence" is defined as place of abode or actual residence, though temporary, while "legal residence" or "domicile" imports permanency of residence, coupled with the intention to remain. See Jacobs on Domicile, Sections 73 et seq.; Minor on Conflict of Laws, Section 20.

Children committed or transferred to the Board of State Charities may or may not reside in Franklin County, although the situs of the board is Franklin County. Whether or not they are domiciled or have a legal residence in Franklin County is a question. The authorities are in hopeless conflict on the question of whether or not the domicile of an infant follows that of his guardian. See Jacobs on Domicile, Sections 249, et seq.; Minor on Conflict of Laws, Section 41.

The nearest to any direct authority on the subject in Ohio is the dictum of the court in *James Pedan* vs. *Administrator of Robb,* 8 Ohio 227, 229, where, in speaking of guardians of minors, it is said:

> "He may remove from the state where he was originally appointed to any other, and, although it was once a greatly controverted question, yet it is now settled that he has even a right to change the domicile of his ward. *Pittinger* vs. *Wightman,* 3 Meriv. 67."

However, in any view of the statute, it is not necessary to determine whether the legal residence or domicile of children committed or transferred to the Board of State Charities is Franklin County, simply because the Board of State Charities is located in Franklin County, because if proceedings may be had for adoption of the wards of the Board of State Charities in any county where the child actually resides, which may or may not be Franklin County, the legal residence or domicile of the ward is not important. When the wards of the board are placed in foster homes or boarding homes, their actual residence is in the county where the home is located, which may or may not be Franklin County.

As I interpret the language of the statute, however, it was not the intention of the Legislature to provide that proceedings for the adoption of children who are public charges may be in either the county where the child resides or in the county of the child's legal residence when he became a public charge. I do not find that the statute, as it affects this question, has ever been construed by the courts of Ohio. It is difficult to give a logical reason for the interpretation of the statute either way. It seems to me, however, that had it been the intention of the Legislature to vest jurisdiction in the probate courts of two different counties concurrently, for the institution of proceedings for the adoption of children who are public charges, it would have said so in more specific language. I am of the opinion that the provision of the statute, that proceedings for adoption shall be instituted in the probate court of the county where a child had a legal residence when it became a public charge, is a specific provision for the adoption of children who are public charges and that the other provision, to the effect that proceedings may be instituted for the adoption of a child in the county where he resides, has no application to children who are public charges.

The above conclusion is sustained by the fact that the clause in Section 8024, General Code, supra, "or of the county in which the child had a legal residence when he became a public charge," was inserted in Section 8024, by amendment, in 1921 (109 O. L. 177), and, it will be observed, at the time of its insertion the Legislature did not separate it from the clause, "or the probate court of the county in which the child resides," by a comma, as would no doubt have been done if it had been the in-

tention that it should be construed as a correlative or complementary clause to the clause immediately preceding it, thereby providing an additional or concurrent method for the adoption of children who are public charges.

The omission of a comma between the two clauses may not, on first impulse, appear significant, inasmuch as some writers omit a comma when the conjunction is used between the last two members of a series, but careful writers use the comma, and we must consider that the Legislature omitted the comma advisedly and in accordance with the best recognized usage, thus indicating that the clause "or of the county in which the child had a legal residence when it became a public charge" was not to be considered as a separate member of the series wherein it was inserted, but rather as supplementary to and a limitation on the clause "of the county where the child resides" and a part of the same member of the series, the series consisting of two members instead of three. Prior to the amendment of the statute in 1921, it read as follows:

> "Any proper person not married, or a husband and wife jointly, may petition the probate court of their proper county, or the probate court of the county in which the child resides, for leave to adopt a minor child not theirs by birth, and for a change of name of such child." (102 O. L. p. 305.)

By the amendment of 1921, in the manner in which it was done, the Legislature intended, in my opinion, to limit the broad language of the clause, extending jurisdiction in adoption proceedings to probate courts in the county where the child resided, by providing that, if the child is a public charge, only the probate court in the county in which such child had a legal residence when it became a public charge should have jurisdiction in adoption proceedings, unless the petitioners therefore instituted the proceedings in the county where they had a legal settlement.

I am of the opinion, therefore, in specific answer to your inquiry:

1. When a child who had a legal residence in any county of the state, other than Franklin, is permanently committed or transferred to the Board of State Charities, the bringing of that child by the board to Franklin County does not affect the former legal residence of the child in such a way as to give the probate court of Franklin County jurisdiction in proceedings which may be instituted for the adoption of the child. Such proceedings must be instituted in the probate court of the county where the child had a legal residence before it became a public charge, or in the county where the petitioner has a legal settlement.

2. In view of the answer to your first question, your second question need not be answered.

Respectfully,
GILBERT BETTMAN,
Attorney General.

725.

APPROVAL, BONDS OF BOWLING GREEN TOWNSHIP, MARION COUNTY—$2,977.49.

COLUMBUS, OHIO, August 10, 1929.

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