

1, 1936. The transcript relative to this issue was approved by this office in an opinion rendered to the Industrial Commission of Ohio under date of October 2, 1936, being Opinion No. 6141.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said county.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

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1009.

DEEDS, ADMINISTRATION—SALE ABANDONED HOCKING CANAL LANDS, BERNE TOWNSHIP, FAIRFIELD COUNTY TO CHARLES D. FEDERER.

COLUMBUS, OHIO, August 9, 1939.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: I am transmitting to you herewith Administration Deeds in duplicate, wherein a portion of the abandoned Hocking Canal lands in Berne Township, Fairfield County, Ohio, are conveyed to Charles D. Federer, of Sugar Grove, Ohio.

The transcript of the proceedings was the subject of my Opinion No. 263, and I am therefore executing and approving the instrument of conveyance as of this date.

Respectfully,

THOMAS J. HERBERT,

*Attorney General.*

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1010.

CONSANGUINITY OR AFFINITY — RELATIONSHIP — DEGREES MORE REMOTELY THAN SECOND COUSINS—EMPLOYMENT LOCAL RELIEF DIRECTOR BY COUNTY AUDITOR OR COUNTY COMMISSIONERS—SECTION 3391-7 G. C.—HOUSE BILL 675, 93RD GENERAL ASSEMBLY —SECTIONS 3391 TO 3391-13 G. C.—INTERPRETATION—CERTIFYING AGENT, PERSONS ELIGIBLE FOR EMPLOYMENT BY FEDERAL RELIEF AGENCIES—PAID FROM POOR RELIEF FUNDS.

**SYLLABUS:**

1. *The provisions of Section 3391-7, General Code, permit the employment of a local relief director who is related by consanguinity or*

*affinity to the county auditor or county commissioners more remotely than second cousin.*

2. *The provisions of House Bill No. 675 (Sections 3391 to 3391-13, inclusive, General Code) do not prohibit the employment of a certifying agent to certify persons eligible for employment by federal relief agencies, who may be related to the county auditor or county commissioners, unless he be a local relief director.*

3. *Under authority of Section 3391-6, General Code, a certifying agent, appointed under authority of Section 3391-8, General Code, may be paid from poor relief funds.*

COLUMBUS, OHIO, August 9, 1939.

HON. JOHN W. HOWELL, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion which reads:

“Section 3391-7 of the General Code as enacted by the last General Assembly provides as follows:

‘Each local relief authority may appoint a relief director, who shall be exempt from the provisions of Sections 486-1 to 486-30, both inclusive, of the General Code, and such additional employes as it may deem necessary, and prescribe their duties and authority. Such director and employes shall not be related, either by affinity or consanguinity, to the county commissioners, or county auditor. In the making of such appointments no person shall be discriminated against because he may or may not have attended a college or studied social administration or because he may or may not have been connected with any relief agency or other organization.’

Will you kindly advise me as to whether or not under the provisions of this section of the General Code the county commissioners of a county may employ a person to act as certifying agent for the W. P. A., such certifying agent being paid from local relief funds and being related to the county commissioners or county auditor within the fifth degree of consanguinity or affinity.”

In order to answer your inquiry it is necessary to determine the degree of relationship to the county auditor and county commissioners which is prohibited by Section 3391-7, General Code, in the appointment of a relief director in the event that under the authority of Section 3391-8, General Code, he is designated as certifying agent to federal relief agencies.

Section 3391-8, General Code, in so far as it seems material to your inquiry, reads:

“The board of county commissioners shall appoint a certifying agent whose duty it is to certify to federal relief agencies all persons eligible for employment. Such certifying agent may be the relief director of any local relief area within the county. The board of county commissioners may employ such additional personnel as may be necessary to assist the certifying agent to carry out the duties of his position.”

You will note that Section 3391-7, General Code, does not use the term “degree of relationship” in specifying the inhibition against relationship. Yet you inquire whether such section inhibits employment within the fifth degree of relationship by consanguinity or affinity.

The degrees of relationship as determined by ecclesiastical law were adopted by the civil law. The method of computation of such relationship by civil law was to count up from one person to the common ancestor and then down to the other person, calling it a degree for each person both ascending and descending. Thus a son was related to his father by one degree, and to his brother by two degrees, cousins in the fourth degree, etc. Under the common law the method was to compute the relationship by degrees from the common ancestor. Thus brothers were related in the first degree, an uncle and a nephew were related in the second degree for the reason that the rule of common law required the relationship to be computed to the most remote collateral relationship. Cousins were related in the second degree, second cousins in the third degree, etc. 2 Bla. Com., 202.

Relationship by blood is referred to as being by consanguinity. Relationship by affinity is the relationship contracted by one spouse by reason of the marriage with the consanguinity relatives of the other spouse. *Chin v. State*, 47 O. S., 575.

Assuming the present theories of scientists and theologians with reference to the inception of the human race to be correct, if we trace genealogy mathematically to its nth degree, it is possible that we might find the whole human race to be related not only by affinity but by consanguinity. If such had been the intent of the legislature, it could have used the term “affinity” alone and have expressed the same intent. In fact, the logical conclusion would then be that no person could be employed as local relief director or an employe thereof for he, at some degree of remoteness, necessarily would be related to the county auditor and the county commissioners. Such would attribute an absurd intent on the part of the legislature which is not permissible to presume. *Moore v. Given*, 39 O. S., 661, 663; *Hill v. Micham*, 116 O. S., 549, 552, 553. As stated by Mr. Justice Stone in *United States v. Ryan*, 284 U. S., 167, 175:

“\* \* \* All laws are to be given a sensible construction. A literal application of a statute which would lead to absurd con-

sequences is to be avoided whenever a reasonable application can be given which is consistent with the legislative purpose.”

The legislative purpose in the enactment of Section 3391, General Code, is apparently to prevent the administration of any poor relief area from becoming a family affair.

In the ordinary community of today, relationship is scarcely considered beyond second cousins.

In an examination of the Ohio decisions, it would appear that our courts have not recognized relationship by affinity beyond that of second cousins, who under common law method of computation would be related in the third degree and under the civil law in the sixth degree. For example, the incest statute does not recognize the relationship beyond first cousins. (Section 13023, General Code.) The marriage statutes permit marriages when the parties are not nearer of kin than second cousins. (Section 11181, General Code.)

I find in Section 11419-51, General Code, that the legislature has prescribed as one of the grounds of challenging a juror for cause:

“5. That he is related by consanguinity or affinity within the fourth degree, to either party, or to his attorney.”

This same language was contained in old Section 5176, Revised Statutes. In the case of *Kahn v. Reedy*, 8 O. C. C., 345, the court had occasion to construe this language, in determining whether “a second cousin once removed” of the wife of a party was a competent juror. In holding that he was not prohibited by such language in Section 5176, Revised Statutes, the court said:

“\* \* \* the mode of computing the degrees of kindred adopted in this country is that of the civil law—that is, to begin with the intestate (or juror), and ascend to the common ancestor; and then descend to the other person in question, recognizing a degree for each person in both the ascending and descending lives.”

In other words, if such decision be correct, the most remote relationship which is recognized as a cause for disqualifying a juror is a first cousin.

I am informed that the Auditor of State, in the exercise of his discretion, has taken the view, for purposes of administration of the poor relief law, that persons who are not of a relationship to the county auditor or county commissioners of second cousins or closer, are not included within the inhibition of the provisions of Section 3391-7, General Code. I am unable to find any indication of legislative intent in House Bill No.

675 of the Ninety-third General Assembly which would indicate that the legislature intended to include those bearing a more remote relationship. As stated before, relationship beyond that degree is not considered among people generally and no apparent useful purpose would be served by extending the remoteness of the degree of relationship further.

It therefore appears to me that a person who is more remotely related to the county auditor or county commissioners than second cousin may be appointed as a local relief director. I find no inhibition in Section 3391-9, General Code, which would prevent the appointment of any person who legally holds the position or office of local relief director as certifying agent to certify to federal relief agencies persons eligible for employment.

Assuming, however, that the board of county commissioners have the option of designating a local relief director or some other person as "certifying agent," you ask whether such agent and the additional necessary personnel authorized under Section 3391-9, General Code, may be related to the county commissioners or county auditor. In Section 3391-8, General Code, authority is granted to each local relief authority to appoint a relief director and such additional employes as it may deem necessary. The language of that section is that "*such* director and employes shall not be related \* \* \*." The word "such" has an ordinary meaning, when used as in Section 3391-8, General Code, of "the same as previously mentioned or specified." See *Harris v. Washville, etc. R. Co.*, 153 Ala., 139, 152; *In re Hull*, 18 Idaho, 475; *Missouri Pac. R. Co. v. Board of County Commissioners*, 130 Kan. 554; *Strawberry Hill Land Corp. v. Starbuck*, 124 Va., 71; 60 C. J., 987. Nowhere in Section 3391-7, General Code, is there any mention of the employment of a certifying agent or the additional personnel specified in Section 3391-8, General Code. I am therefore of the opinion that the limitation as to relationship contained in Section 3391-7, General Code, does not have application to the officer or personnel designated in Section 3391-8, General Code. To hold otherwise, it would be necessary to take language from the one section and insert it in another. As stated by Kinkade, Judge, in *State, ex rel. Skinner Engine Co., v. Connar*, 124 O. S., 404, 406, "There is no propriety in reading into a statute a provision which the legislature did not place there." The only limitation contained in the language authorizing the appointment of a certifying agent is that he "may be" the relief director of "any" local relief area within the county. It is to be presumed that the legislature placed in the statute everything that was intended to be contained in it. *Ohio Savings & Trust Co. v. Schneider*, 25 O. App., 259. Section 3391-7, General Code, is a grant of authority to all local relief authorities. Section 3391-8, General Code, is a grant of authority to county commissioners only. I am unable to find any authority for the limitations to the grant in the one section to that contained in the other.

You further inquire whether such certifying agent may be paid from

local relief funds. In Section 3391-6, General Code, I find the following language:

“All expenses of administering poor relief by local relief areas shall be paid out of poor relief funds. The expense of maintaining the central clearing office and the certification office for federal relief agencies in each county containing one or more cities which have not by contract surrendered their power to levy taxes for poor relief, or part or parts thereof, shall be paid as incurred out of the county treasury. The aggregate amount of such expense shall be apportioned and charged back quarterly by the county commissioners among the local relief areas, or part or parts thereof, in the county, respectively, in proportion to the total number of relief persons in each during the next preceding calendar month.”

In view of the language of such section, I am of the opinion that the salary of the certifying agent is to be paid from poor relief funds.

Specifically answering your inquiries, it is my opinion that:

1. The provisions of Section 3391-7, General Code, permit the employment of a local relief director who is related by consanguinity or affinity to the county auditor or county commissioners more remotely than second cousin.

2. The provisions of House Bill No. 675 (Sections 3391 to 3391-13, inclusive, General Code) do not prohibit the employment of a certifying agent to certify persons eligible for employment by federal relief agencies, who may be related to the county auditor or county commissioners, unless he be a local relief director.

3. Under authority of Section 3391-6, General Code, a certifying agent, appointed under authority of Section 3391-8, General Code, may be paid from poor relief funds.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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1011.

CONTRACT—MAYOR OR COUNCILMAN IN CITY—MAY NOT  
CONTRACT WITH BOARD OF EDUCATION FOR COAL,  
USE, SCHOOL BUILDINGS, IN AMOUNT EXCEEDING  
\$50.00—BIDS—ADVERTISEMENT.

*SYLLABUS:*

*A mayor or a councilman in a city may not lawfully enter into a contract with a board of education for the furnishing of coal for use in the*