

ing, moving, heating and lighting polling places and of placing and removing ballot boxes and other fixtures and equipment thereof; the cost of printing and delivering ballots, cards of instruction and other election supplies; and all other expenses of conducting primaries and elections in the odd numbered years shall be charged to the subdivisions in and for which such primaries or elections are held. \* \* \*

Under this section the compensation of such guards would be payable from the county treasury, except in the case of elections in the odd numbered years.

I am of the opinion therefore that:

1. Where there is a recount of votes cast at an election in pursuance of section 4785-162, General Code, the board of elections may, if it deems it advisable, employ guards necessary to protect the ballots until said ballots are recounted when it finds there is no other method of adequate protection, and pay the cost thereof from the county treasury out of its appropriation. If the recount is of votes cast at an election in an odd numbered year, such cost should then be charged to the subdivision for which the election is held.

2. The cost of such guards is properly a part of the cost of such recount and should be taken out of the deposit made by the person demanding the recount, except where the deposit is refunded.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4075.

MARRIAGE—MOTHER'S PENSION MAY BE AWARDED TO MOTHER OF CHILDREN BORN IN COMMON LAW MARRIAGE WHEN.

**SYLLABUS:**

*The mother of children born in a common law marriage relationship is eligible to receive a mother's pension if all other requirements of law are met.*

COLUMBUS, OHIO, MARCH 20, 1935.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

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

"In response to a letter from the Juvenile Court of this County, I respectfully request an opinion from you concerning the right to a mother's pension under the facts enclosed herewith which are self-explanatory."

The attached memorandum states:

"A. and B. were husband and wife, being legally married, and lived together as such until about April 1925. From April 1925 to October 14, 1933, A., the husband of B., lived and cohabited with C. as husband and wife, A, dying on October 14, 1933. June 30, 1926 B, the wife of A, applied for and secured a divorce from A, naming C as co-respondent.

There was born to A and C four children as the result of their alleged relationship of husband and wife, from April 1925 to October 14, 1933, the oldest being eight years of age and the youngest 7 months old. C, on October 20, 1933 applies for a mother's pension for her four children, alleging in her application that she married A in Detroit, August 31, 1925, which was about ten months before A was divorced by his wife B on June 30, 1926.

Investigation shows that no marriage license was issued by the Probate Court of Detroit, Mich., and C admits that she cohabited with A for over a year prior to his divorce and until his death October 14, 1933, and that she was never married to him. During the time A and C lived together they were known as Mr. and Mrs. A. C's application for mother's pension was dismissed on the ground of false statement made by her. C now makes application for mother's pension on the ground of a common law marriage.

There is no evidence in the record of an agreement or contract between A and C that they would live together as husband and wife.

Having in mind the opinion of your office, Vol. I, page 885, No. 1016, paragraph 5, issued in 1914, holding that the unmarried mother of illegitimate children is not entitled to a mother's pension, and the opinion of your office VOL. II, page 1821, No. 854 issued in 1915, distinguishing the ruling of 1914, please favor us with your opinion as to whether or not C is entitled to a mother's pension on the statement of facts herein."

Section 1683-2, General Code, provides in part:

"For the support of women whose husbands are dead, or become permanently disabled by reason of physical or mental infirmity, or whose husbands have deserted, and such desertion has continued for a period of three years, when such women are poor, and are the mothers of children not entitled to age and schooling certificates, and such mothers and children have a legal residence in any county of the state for two years, the juvenile court may make an allowance to each of such women as follows; not to exceed thirty-five dollars a month when she has but one child not entitled to an age and schooling certificate, and if she has more than one child it shall not exceed thirty-five dollars a month for the first child and ten dollars a month for each of the other children not entitled to an age and schooling certificate. \* \* \*

The 1914 opinion to which you refer in your inquiry is to be found in the Annual Report of the Attorney General for 1914, Vol. I, page 885 and held as disclosed by the fifth branch of the syllabus:

"5. The unmarried mother of illegitimate children is not entitled to an allowance under section 1683-2, General Code."

It was stated at page 887:

"Your fifth question may be answered, generally, by the statement that the unmarried mother of illegitimate children is clearly not entitled to an allowance. It is only those women 'whose husbands are dead or \* \* \* permanently disabled or \* \* \* prisoners or \* \* \* have deserted' who are entitled to relief. Therefore, if a woman was never married and has illegitimate children, she is not entitled to a pension to enable her to remain at home with them."

The 1915 opinion to which you refer in your inquiry is to be found in Reported

Opinions of the Attorney General for 1915, Vol. II, page 1819 and it held as disclosed by the syllabus:

"A mother of illegitimate child is eligible to receive mother's pension, if requirements of sections 1683-2 and section 1683-3, G. C., are met."

This opinion was in response to a request asking whether or not a woman was entitled to a mother's pension if she had an illegitimate child and then later married a man not the father of the child, such husband later dying. At pages 1821 and 1822 it is stated:

"The section just quoted (referring to section 1683-2, G. C.) provides who shall be eligible to receive mothers' pensions, the particular requirements to be met being that the husband of the mother must be dead, permanently disabled, or a prisoner; that the mother shall be poor, a legal resident in any county of the state for two years and that the child or children shall not be entitled to an age and schooling certificate. \* \* \*

The woman referred to in your inquiry appears to possess the necessary requirements to render her eligible for a mother's pension in so far as her husband is dead, and if she is a proper person to have charge of her child, and the child is not entitled to an age and schooling certificate, and it is my opinion that the fact that the child is an illegitimate one should not render her ineligible to receive an allowance from the juvenile court, provided all the conditions prescribed in sections 1683-2 and 1683-3, of the General Code, *supra*, exist."

Later in the course of the above opinion it was stated:

"The case under consideration is to be distinguished from the one referred to in opinion No. 1016 rendered by my predecessor, Mr. Hogan, to Honorable Charles Krichbaum, probate judge and juvenile judge of Stark County, under date of June 29, 1914, and to be found in the annual report of the Attorney General for 1914, at page 885. In that case it appeared that the mother had never married at all."

I am in accord with both the conclusion and reasoning of the two opinions of my predecessors in office referred to *supra*, inasmuch as Section 1683-2, General Code, quoted in part *supra*, evidently requires a marriage relationship before a mother could claim a mother's pension by virtue of the clause "for the support of women whose *husbands* are dead." Although I am unable to find former opinions stating that a common law marriage would be sufficient, nevertheless it is my opinion that if there were a common law marriage and all other conditions of the mothers' pension law were complied with that such mother would be entitled to a mother's pension. This by virtue of the fact that Section 1683-2, General Code, although it refers to a "husband" does not imply that a statutory and ceremonial marriage is necessary, but on the other hand it is broad enough to include the common law type of marriage. This is also in accord with a liberal construction which should be given to laws affecting juveniles in order to accomplish the purpose of their enactment. Your inquiry narrows itself down to the question of whether or not there is a valid common law marriage in the case you present.

I believe that the question of whether or not there was a valid common law marriage should be ascertained by the Court and not by this office, since it would be difficult to give an unequivocal answer to such question from the facts presented in your inquiry.

It was held with respect to common law marriages in the case of *Lumas vs. Lumas*, 26 O. App. 502, 160 N. E. 480, that where parties lived together in illicit relationship before the plaintiff procured a divorce that it was presumed their living together thereafter continued to be illicit and such cohabitation shows no relation on which the common law marriage might be predicated. In the case of *Dirion vs. Brewer, Admr.* 20 O. App. 298, 151 N. E. 818, a suit concerning the legitimacy of a child, the court held that when the parties agreed to live together as husband and wife and followed that by cohabitation, irrespective of the illicit relation which may have started their relationship, it would constitute a common law marriage. See also *Umbenhower vs. Labus*, 85 O. S. 238, and a recent more liberal decision, *Industrial Commission of Ohio vs. Miller* in an unreported opinion of the Court of Appeals of Mahoning County, being case No. 2137, decided December 5, 1934, the motion to certify being overruled on February 21, 1935 in case docketed No. 25176.

However, in answer to your question it is my opinion that the mother of children born in a common law marriage relationship is eligible to receive a mother's pension if all other requirements of law are met. The question of whether or not a valid common law marriage was entered into should be determined by the Court.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4076.

APPROVAL, CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION, OF THE AMERICAN INSURANCE UNION, INC.

COLUMBUS, OHIO, MARCH 20, 1935.

*Hon. George S. Myers, Secretary of State, Columbus, Ohio.*

DEAR SIR:—I have examined the certificate of amendment to the articles of incorporation of the American Insurance Union, Inc., which has been submitted to me for my approval, and finding the same not to be inconsistent with the Constitution or laws of the United States, or of the State of Ohio, I have endorsed by approval thereon.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4077.

APPROVAL, TWO CERTAIN DEEDS TO LAND IN MILTON TOWNSHIP, JACKSON COUNTY, OHIO, KNOWN AS "BUCKEYE FURNACE", EXECUTED BY EARL E. RAIS AND S. H. SQUIRE, SUPT. OF BANKS, ACT-