person is appointed justice of the peace to fill a vacancy in a term commencing January 1, 1928, and expiring December 31, 1931, the first election at which a successor can be chosen is the November, 1929, election and such appointee may serve until such successor is elected and qualified provided that where no successor is chosen at the 1929 election, the term shall not in any event extend beyond four years.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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1038.

DEPENDENT CHILD—COMMITTED TEMPORARILY OR PERMANENTLY TO PRIVATE INSTITUTION OUTSIDE COUNTY—LEGAL RESIDENCE IN SUCH FOREIGN COUNTY—EXPENSES NOT CHARGEABLE AGAINST ORIGINAL COUNTY PRIOR TO JULY 21, 1929.

*SYLLABUS:*

1. *When the Juvenile Court of a county finds a child to be dependent and permanently commits that child to a private institution as provided in Section* 1653, *General Code, said child thereby becomes the ward of said private institution and the trustees thereof become the guardian of the person of said child.*

2. *If the said commitment is temporary, the trustees of the institution are the guardian of the person of the child so long as it is permitted to remain in said institution.*

3. *During the time the child remains in said institution its legal residence is the county in which the institution is located.*

4. *There is no authority under Section* 4438, *General Code, as it existed previous to its amendment by the* 88th *General Assembly, to charge the county from which the child was committed for the expenses incurred by the quarantine of said child on account of contagious diseases.*

COLUMBUS, OHIO, October 16, 1929.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

> "The Juvenile Department of this county, through Honorable Frank L. Baldwin, Juvenile Judge, has been sending a number of dependent children to a private institution located in Cleveland, and erected for the purpose of caring for dependent and neglected children, under the provisions of Section 1653 of the General Code. In a number of cases children, who have been sent to the Cleveland Institution, have contracted contagious diseases and have been confined to the Cleveland City Hospital, resulting in the City Hospital of Cleveland forwarding to the county commissioners of this county, several bills for hospital care amounting approximately to the sum of $800.00, these statements being rendered under the provisions of Section 4438 of the General Code.
>
> We feel, after a careful consideration of the statutes applicable to this matter, and in view of an opinion rendered by your predecessor in the 1922 Ohio Attorney General's Opinions at page 149, that the provision of Section

1653 of the General Code does not contemplate a situation whereby the county commissioners of the forwarding county are to be held liable for a hospital attendance of the children committed."

Your inquiry involves a consideration of the question of the "legal residence" of a minor who has been found to be dependent and committed to a private institution as provided for in Section 1653, General Code, because the City Hospital of Cleveland has been forwarding bills for payment to your county under provisions of Section 4438, General Code, which section reads as follows:

"When a person with a contagious disease quarantined in a county is a legal resident of another county of the state, and is unable to pay such expenses, they shall be paid by the county in which he has a legal residence, if notice and a sworn statement of the amount of such expenses are sent to the infirmary directors of such county within thirty days after the quarantine in such case was discharged."

You will note that this section provides that when a person has been quarantined for a contagious disease in a county of which the person is not a legal resident, and said person is unable to pay the expenses of such quarantine, such expenses shall be paid by the county wherein such person has a "legal residence".

You refer to an opinion of the Attorney General rendered in 1922, found in the Opinions of the Attorney General for that year, at page 149. That opinion deals with the question of whether or not the county in which a child had its legal settlement at the time it was committed "shall pay reasonable board" for the upkeep of that child in a private institution. That opinion held that under the provisions of Section 1653 the county in which the child had a legal settlement at the time of commitment was not liable for board of the child so committed.

Your question, however, does not involve a consideration of that subject. It relates to children who have been placed in the City Hospital under quarantine for contagious diseases, such children having been brought into the county by virtue of a commitment to a private institution by the Juvenile Court after determination that said children were dependent. Under Section 4438, supra, it therefore becomes pertinent to determine whether or not a child so committed has a legal residence in Cuyahoga County or elsewhere.

There is a great deal of difference between legal settlement and legal residence, but that difference need not be discussed in this opinion.

Legal settlement is defined in Sections 3477, et seq., General Code, as amended in 112 Ohio Laws, 157.

It is a well established principle of law that ordinarily the legal residence of a minor child is at the situs of the legal residence of the parent or guardian. We, therefore must consider what the status of the child is when committed by the Juvenile Court, as in this case.

In that connection, Section 3093, General Code, is pertinent and reads in part as follows:

"All wards of a county or district children's home, or of any other accredited institution or agency caring for dependent children who by reason of abandonment, neglect or dependence have been committed by the Juvenile Court to the permanent care of such home, or who have been by the parent or guardian voluntarily surrendered to such an institution or agency, shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age. The board of trustees may by contract or

otherwise provide suitable accommodations outside of the home and may provide for the care of any child under its control by payment of a suitable amount of (for) board, to a competent person, whenever the interests of such child require such an arrangement. Children committed for temporary care or received by arrangement with parent or guardian shall be considered under the custody and control of the trustees only during the period of such temporary care, except as hereinafter provided."

It will be noted that this section specifically provides that when the Juvenile Court has committed a dependent child to such an institution as the one in question for permanent care by such institution, then the child "shall be under the sole and exclusive guardianship and control of the trustees until they become of lawful age." "Trustees" as therein used evidently means "trustees of the institution". Therefore, if the children in question were committed to the permanent care of the institution in Cuyahoga County, the guardian of each child is the board of trustees of that institution. They have their situs in Cuyahoga County and the children thereafter would be legal residents of that county and no charge should be made to Mahoning County under Section 4438, supra.

If a child is only temporarily committed to an institution, a more difficult question arises. The statute is not so clear upon this subject as it is in the case of a child permanently committed. Section 3093, supra, provides:

"Children committed for temporary care * * * shall be considered under the custody and control of the trustees only during the period of such temporary care."

It will be noted that the statute does not use the word guardian in this instance. The question then arises as to whether or not the Legislature intended that the trustees should have the same power while a child is temporarily residing in the institution during the terms of such residence as in permanent commitment. I cannot find that this question has ever been decided. I am of the opinion, however, that this language means the same as the language found in the first part of the section relating to children permanently committed. That is, so long as a child remains in the institution the trustees have exactly the same relationship to such child as to children who have been permanently committed, the difference being, however, that if a child has been permanently committed to the institution, there is no authority for any one to terminate the care afforded by the institution and the institution has full authority over the child thereafter. However, in temporary commitment the court could terminate that commitment at any time and by terminating the commitment thereby terminate the control of the trustees over the child by virtue of the act of the court. However, the court has nothing to do with controlling the child as long as it is permitted to remain in the institution, and full control and authority over the child is vested in the trustees during that time.

There are two kinds of guardians—guardian of the person, and guardian of the property of a person. Both guardianships do not necessarily rest in the same person but may be exercised by two different persons or authorities. In this instance, we are considering the guardianship of the person; this is uniformly defined as one who has control and management of the person. Therefore, if the statute gives to the trustees of an institution the "custody and control of the child", "during the period of such temporary care", it has vested that authority with the guardianship of the person of that child during that period of time. Therefore, in your case, the legal residence of the children would be Cuyahoga County and there would be no liability for Mahoning County to pay under the provisions of Section 4438, General Code.

In construing Section 4438, supra, this discussion is limited solely to said section as it was previous to the amendment by the 88th General Assembly, in House Bill No. 13, filed in the office of the Secretary of State on April 22, 1929, becoming effective ninety (90) days thereafter. Our discussion has no bearing upon the section as amended because you have advised me orally that these bills were rendered under the section as it existed previous to the amendment herein referred to.

It is therefore my opinion that (1) when the Juvenile Court finds a child to be dependent and permanently commits that child to a private institution as provided in Section 1653, General Code, said child thereby becomes the ward of said private institution and the trustees thereof become the guardian of the person of said child; (2) if the said commitment is temporary, the trustees of the institution are the guardian of the person of the child so long as it is permitted to remain in said institution; (3) during the time the child remains in said instituton its legal residence is in the county in which the institution is located; and (4) there is no authority under Section 4438, General Code, as it existed previous to its amendment by the 88th General Assembly, to charge the county from which the child was committed for the expenses incurred by the quarantine of said child on account of contagious diseases.

Respectfully,
GILBERT BETTMAN,
*Attorney General.*

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1039.

APPROVAL, BONDS OF CITY OF MARION, MARION COUNTY—$59,000.00.

COLUMBUS, OHIO, October 16, 1929.

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

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1040.

APPROVAL, BONDS OF WASHINGTON TOWNSHIP RURAL SCHOOL DISTRICT, SANDUSKY COUNTY—$68,000.00.

COLUMBUS, OHIO, October 16, 1929.

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

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1041.

APPROVAL, NOTES OF PLAINVILLE RURAL SCHOOL DISTRICT, HAMILTON COUNTY—$175,000.00.

COLUMBUS, OHIO, October 16, 1929.

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