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1. EYEGASSES — FURNISHED TO THOSE FINANCIALLY UNABLE TO OBTAIN SAME, CONSTITUTES RELIEF AS CONTEMPLATED IN SECTION 3477 G. C. — CHARITABLE ORGANIZATION OR BENEVOLENT ASSOCIATION WHICH KEEPS RECORDS OF THOSE WHO APPLY FOR OR RECEIVE RELIEF — ONE WHO OBTAINS SUCH RELIEF PREVENTED FROM OBTAINING LEGAL SETTLEMENT WITHIN A COUNTY IN THIS STATE UNDER CONDITIONS PRESCRIBED IN STATUTE.
2. LOCAL RELIEF AUTHORITIES MAY NOT AGREE WITH PRIVATE AGENCY TO BE REIMBURSED FOR ANY RELIEF FURNISHED OR TO EXPEND PUBLIC FUNDS PENDING DETERMINATION, LEGAL SETTLEMENT OF APPLICANT FOR POOR RELIEF.

SYLLABUS:

1. *The furnishing of eyeglasses to persons who are in need thereof and who are unable, by reason of their financial condition to obtain glasses in any other manner, constitutes relief as that term is used in Section 3477,*

*General Code, and one who obtains such relief from a charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief is thereby prevented from obtaining a legal settlement within a county in this state under the conditions prescribed in Section 3477, General Code.*

*2. Pending determination of legal settlement of an applicant for poor relief, local relief authorities may not enter into an agreement with a private agency whereby the authorities agree to reimburse said agency for actual value of relief provided said applicant and may not expend public funds under their control so to reimburse.*

Columbus, Ohio, June 25, 1940.

Hon. Nicholas F. Nolan, Prosecuting Attorney,  
Dayton, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion on the following:

'The Public Relief Administrations of the City of Dayton and of Montgomery County respectively differ upon the question of legal settlement of a certain family which is applying for public relief. So we are submitting same to you for your formal opinion, and also submit a copy of an opinion rendered thereon by our office, and one rendered by the City Attorney.

FACTS:

The family in question came to Montgomery County in January, 1938, and has resided in the City of Dayton continuously since. The father died in April, 1938. From August 15, 1938 until September 25, 1939, a period of twelve months and ten days, the only item granted the family which might or might not have constituted poor relief was the providing of a pair of eye glasses on November 15, 1938 to one of the children, then aged 11 years, who was a grade school pupil, by the Dayton Family Welfare Association which is admittedly a charitable organization which investigates and keeps a record of facts as set forth in Section 3477 G. C.

For the detailed statement of facts and circumstances under which said glasses were provided, we append hereto a copy of a letter from the Dayton Family Welfare Association to our office, dated March 29, 1940. Pending the determination of the legal

questions involved, the Welfare Association is now providing necessary relief, with the understanding that it will be reimbursed by the County or City when the legal issue is settled.

QUESTION NO. 1:

Did the providing of eye glasses to a pupil or child under above described facts and circumstances, having in mind Sections 3477 and 7777 G. C., constitute public relief so as to defeat the obtaining of a legal settlement by the mother?

QUESTION NO. 2:

Can the County or City legally reimburse the said Family Welfare Association for actual value of the relief provided said family pending determination of settlement, assuming the County and the City are willing to reimburse it if legal, and also assuming that such a reimbursement agreement has actually been made and is being carried out by the said Family Welfare Association?"

Your first question is prompted by Section 3477, General Code, which provides in part as follows:

"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.  
\* \* \* "

By the terms of that section, in order to obtain a legal settlement in a county for purposes of poor relief, a person must reside continuously in such county for twelve consecutive months and during said period must have supported himself or herself without assistance of a public or private agency.

As pointed out in your communication, the family in question now seeking public relief resided continuously in Montgomery County for a period in excess of twelve months without relief of any kind other than the giving to one of the minor children a pair of eyeglasses by the Family Welfare Association of Montgomery County, admittedly a charitable organization which investigates and keeps a record of facts relating to persons who receive or apply for relief.

We are now confronted with the question of whether or not the furnishing of the eyeglasses constituted such relief as would break the twelve

months' period required to obtain a legal settlement under the provisions of Section 3477, supra.

In opinion No. 1551 of the Opinions of the Attorney General for 1928, Vol. I, page 57, the then Attorney General considered a question similar in nature to the one which you have propounded. The second branch of the syllabus of the 1928 opinion reads as follows:

"Children of compulsory school age, other than those coming within the class described in Section 7777, General Code, whose eyesight is so defective that they are unable to do school work, or whose eyesight is so defective that by attempting to do school work without the use of eyeglasses their health would be impaired, and whose parents, or other persons upon whom such children are dependent, are financially unable to procure glasses for said children, should be furnished glasses by the proper municipal or township authorities, by virtue of the authority vested in them by Section 3476, General Code."

At page 59 of said opinion, the then Attorney General observed:

"A child who is compelled by law to attend school and who is unable to do school work on account of defective eyesight, or one whose health is being impaired because of a lack of eyeglasses is just as fit and proper a subject for relief as a person who is without the other necessities of life. Glasses for such a child are just as necessary to the welfare of the child as are food and clothing. A lack of eyeglasses could not be plead as an excuse for failure to comply with the laws relating to compulsory education and yet the lack of glasses makes it physically impossible for the child properly to perform his school work and is to say the least, in many cases, detrimental to the child's health."

A similar conclusion was reached in Opinion No. 1601, Opinions of the Attorney General for 1930, Vol. I, page 385, wherein the then Attorney General held as evidenced by the syllabus as follows:

"Under the provisions of Section 3476, General Code, township trustees may properly furnish glasses to a child in need thereof so as to enable such a child to attend school, providing that such child has a legal settlement in the township."

I have carefully examined the opinions referred to above and concur with the reasoning therein contained.

It is, therefore, my opinion in specific answer to your first question that the furnishing of eyeglasses to persons who are in need thereof and who are

unable, by reason of their financial condition to obtain glasses in any other manner, constitutes relief as that term is used in Section 3477, supra, and one who obtains such relief from a charitable organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief is thereby prevented from obtaining a legal settlement within a county in this state under the conditions prescribed in Section 3477, supra.

In the instant case, the relief was furnished to a minor child of the widow now applying for public relief. Said applicant, however, is charged with the legal duty of supporting said minor child and any relief furnished the child would be chargeable to the mother for purposes of determining legal settlement. In arriving at the view hereinbefore expressed, I am not unmindful of Section 7777, General Code. Said section provides in part as follows:

“When an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves, such officer must report the case to the president of the board of education of the city, exempted village, or rural school district in which such child resides. Upon proof of such fact the given board of education shall furnish free of charge textbooks and such other personal necessities for the child or persons entitled to his services and also such medical care in cooperation with the health commissioner of the district as may be necessary to enable the child to attend school. The expense incident to furnishing such relief must be paid from the contingent fund of the school district. Such child shall not be considered a pauper by reason of the acceptance of such relief. \* \* \* ”

Under the provisions of that section, a board of education is limited to rendering aid to those cases “when an attendance officer is satisfied that a child compelled to attend school is otherwise unable to do so because absolutely required to work at home or elsewhere in order to support himself or help to support or care for others legally entitled to his services who are unable to support or care for themselves”. The first branch of the 1928 opinion above referred to supports the view I have taken with respect to said limitation in the following language:

“The authority vested in boards of education by virtue of Section 7777, General Code, to furnish personal necessities or

medical care to children attending school, extends only to cases where the child in question is of compulsory<sup>a</sup> school age and is unable to attend school because absolutely required to work at home or elsewhere in order to support himself, or help to support or care for others legally entitled to his services, who are unable to support or care for themselves."

By the express terms of Section 7777, supra, those children receiving the type of assistance therein contemplated are not considered paupers by the acceptance of such relief.

The copy of the letter from the Family Welfare Association of Montgomery County which you inclosed with your request states as follows with respect to the persons now under consideration:

"In the case of J. H., daughter of Mrs. M. H., these children entered school in January, 1938, after the school year had started, and therefore missed the routine bi-annual physical examination which takes place at the school. J.'s teacher felt that this child's poor work at that time might be the result of defective vision, so asked the nurse for a special examination of her. It was reported to us on the referred blank that this child complained of 'pain in the eyes, and that she was unable to see any distance'. The examination which the school was able to give, resulted in finding that her visual defect was 20/50 - 20/50. The child was examined by Dr. L. H. C. on November 21, 1938, and her condition was diagnosed as myopicastigmatism, and glasses were prescribed."

Nowhere in that letter does it appear that glasses were furnished to J. H. because she was required to work at home or elsewhere in order to support herself or help to support or care for others legally entitled to her services who were unable to support or care for themselves. That being the situation, it clearly follows that the local board of education would have been without authority to furnish any glasses to J. H. under the provisions of Section 7777, supra, had said board so desired.

In support of the position that the furnishing of eyeglasses does not constitute relief, the copy of the opinion of your office forwarded with your request directs my attention to Opinion No. 5096, Opinions of the Attorney General for 1936, Vol. I, page 50, wherein the then Attorney General held:

"Clothing and supplies furnished children by a Board of Education, pursuant to the provisions of Section 7777, General Code, are not relief under the provisions of law for the relief of the poor within the meaning of Section 3477, General Code."

I have examined the 1936 opinion and do not find it to be in conflict with the views expressed in the instant opinion for the reason that the then Attorney General limited his views to children who came within the purview of Section 7777, supra. There is nothing in the record presented to this office which would place the child in question in that position.

Coming now to your second question, I direct your attention to Section 3391-2, General Code, which provides as follows:

“Local relief authorities shall administer poor relief in accordance with the following powers and duties:

1. In each local relief area, subject to the provisions of law, poor relief shall be furnished *by the local relief authority to all persons therein in need of such poor relief.* \* \* \* Poor relief shall be granted only after sworn application therefor and proper home investigation to ascertain facts of need and available means of support. Thereafter, so long as poor relief is continued, there shall be reapplication at intervals within three months and such further investigation and visitation from time to time as may be necessary to secure prompt information of any changes in the condition of recipients affecting their need of poor relief. Reasonable effort shall be made to secure support from persons responsible by law and from other sources as a means of preventing or reducing relief at public expense.

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6. Poor relief shall be inalienable whether by way of assignment, charge, or otherwise, and exempt from execution, attachment, garnishment, or other like process.

7. There shall be created in each county a central clearing office for the purpose of keeping records of all persons in the county receiving public assistance after the effective date of this act. Such records shall set forth the kind of public assistance granted to each person as well as any other information required by the state director; \* \* \*.

9. \* \* \*

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Local relief authorities shall not disburse any funds through any private organization.

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11. Any person who receives poor relief as a result of misrepresentation or withholding information as to his needs or resources, or who continues to accept such poor relief when no longer in need of such poor relief, shall be guilty of a misdemeanor, and shall upon conviction be fined not more than twenty-five dollars and costs or imprisoned for not more than thirty days or both. In

such case the local relief authorities may institute a civil action for the recovery of the value of such relief so received.

12. *All poor relief orders or payments shall be given to the recipient in person upon his appearance at the office of the local authority or at substations approved by the state director, unless the recipient can show to the local relief authority good cause why he cannot appear in person.*" (Emphasis mine.)

From an examination of the statute above, it clearly appears that it was the legislative intent and mandate to require local relief authorities to expend funds under their control directly to a recipient after thorough investigation and that said recipient at all times should be under the supervision and control of said authorities. To permit a local relief authority to reimburse a private agency for relief furnished persons who are eligible for public relief would defeat the plain purpose of the section above quoted and would also be in contravention therewith.

It is, therefore, my opinion that pending determination of legal settlement of an applicant for poor relief, local relief authorities may not enter into an agreement with a private agency whereby the authorities agree to reimburse said agency for actual value of relief provided said applicant and may not expend public funds under their control so to reimburse.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.