

1329

LEGAL SETTLEMENT—PERSON LIVED IN B COUNTY—RECEIVED AID FOR AGED—MOVED TO D COUNTY—RESIDED THERE UNTIL OCTOBER 20, 1949—EFFECTIVE DATE OF ACT WHICH REPEALED SECTION 3477 G.C.—SECTION 3391-1 ET SEQ., G.C. ENACTED—LIABILITY OF B COUNTY FOR POOR RELIEF AND HOSPITALIZATION CONTINUED UNTIL NEW LEGAL SETTLEMENT ACQUIRED—SECTION 3391-1 ET SEQ., G.C. NOT RETROACTIVE—SECTION 1359-2 ET SEQ., G.C.

SYLLABUS:

Where a person having a legal settlement in B County and receiving aid for the aged under Section 1359-2 et seq., General Code, moved to D County, and there resided until October 20, 1949, the effective date of an act which repealed Section 3477, General Code, and enacted Section 3391-1 et seq., General Code, the liability of B County for poor relief, including hospitalization furnished to such person, continued until a new legal settlement was acquired after the effective date of said act. The provisions of Section 3391-1 et seq., relating to poor relief were in no way retroactive.

Columbus, Ohio, April 7, 1952

Hon. Howard G. Eley, Prosecuting Attorney
Darke County, Greenville, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

“Your opinion is respectfully requested on the following set of facts:

“Mr. P. moved from A County to Darke County, Ohio, in the early part of the year 1948. At this time he had a legal settlement in B County and was receiving aid from the Division of Aid for the Aged. In March, 1950, Mr. P. died in Darke County, Ohio, after a lingering illness, necessitating hospital care and treatment. B County and Darke County are in dispute as to which is responsible for the hospital charges. Prior to October 20, 1949, aid for the aged was generally accepted as relief, which would have prohibited Mr. P. from claiming legal settlement in Darke County. With the passage of General Code Section 3391-16, effective October 20, 1949, aid for the aged was not considered as poor relief. B County contends that this section was retroactive, and that Mr. P. has legal settlement in Darke County, due to the fact that he has supported himself for more than 12 months with no other aid than aid for the aged. Darke County contends that Mr. P. had to support himself for a period of 12 months from October 20, 1949, the effective date of General Code Section 3391-16, before he could obtain legal settlement in Darke County. It will be noted that Mr. P. died a little more than four months after the passage of this section.”

Since you state that at the time Mr. P. removed from A County to Darke County, he had a legal settlement in B County, and was then receiving public assistance, I assume that we may drop A County out of the consideration. The question, as you state, is between B County and Darke County, as to the responsibility for his hospital charges, which were incurred after he became a resident of Darke County.

It is well settled that where one has a legal settlement in one county, he cannot acquire a legal settlement in another county, until he has there resided for the length of time and under the conditions prescribed in the statute. *Stoecklein v. Priddy*, 31 N.P. (N.S.) 369; Opinion No. 3945, 1932 Opinions of the Attorney General, page 53; Opinion No. 815, Opinions of the Attorney General for 1933, page 698.

On the face of your statement it appears that the controversy grows out of the change in the law effective October 20, 1949, whereby aid for the aged, which prior thereto was regarded as public relief, ceased to have that character for the purpose of the law relative to "poor relief." The claim of Darke County is, that Mr. P. could only begin to acquire a legal settlement after October 20, 1949, and since his death occurred within four months thereafter, plainly the period of twelve months could not have elapsed. The claim of B County is that the change in the law was retroactive and that Mr. P. has a legal settlement in Darke County.

Coming to an examination of the law relative to legal settlement as conditioning the right to poor relief, I note the provisions of former Section 3477, General Code, which read 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." (Emphasis added.)

That aid for the aged as provided in Section 1359-1 et seq., General Code, was regarded as "relief under the provisions of law for the relief of the poor" within the contemplation of Section 3477 supra, seems to have been well settled so far as opinions of the Attorney General were concerned. In Opinion 4291, Opinions of the Attorney General for 1935, page 622, it was held :

"1. A person receiving an Old Age pension is not entitled to blind relief while receiving such Old Age Pension by virtue of the inhibition against such contained in section 2967, General Code."

This holding was made on the basis of the provisions of Section 2967, General Code, which as it then stood, read in part as follows :

"If the board of county commissioners be satisfied that the applicant is entitled to relief hereunder, said board shall issue an order therefor in such sum as said board finds needed, not to exceed four hundred dollars per annum, to be paid quarterly from the funds herein provided on the warrant of the county auditor, *and such relief shall be in place of all other relief of a public nature;*" *** (Emphasis added.)

In the course of that opinion the Attorney General said :

“Although it may be stated that an Old Age Pension is not strictly poor relief to ‘paupers’, nevertheless it is a form of public relief to a designated class of the public, that class being composed of persons of sixty-five years of age and upwards whose incomes do not exceed three hundred dollars per year.”

In Opinion No. 2417, Opinions of the Attorney General for 1940, page 586, it was held :

“Moneys received as aid for the aged under authority of Sections 1359-2 to 1359-15b, both inclusive, General Code, moneys received as aid to dependent children under authority of Sections 1359-31 to 1359-45, both inclusive, General Code, and moneys received as aid to the blind under authority of Sections 2965-1 to 2968-3, both inclusive, General Code, constitute relief to the poor within the meaning of that term as used in Section 3477, General Code.”

In Opinion No. 1607, Opinions of the Attorney General for 1950, page 183, it was said, at page 185 :

“Numerous Attorney General’s opinions have been written interpreting former Section 3477, General Code, so as to deny individuals the right to acquire a legal settlement where they are recipients of various forms of relief, including aid for the aged. It will be observed, however, that those opinions evolve around that portion of the section which read ‘and supported himself or herself for twelve consecutive months.’”

It seems clear, therefore, that so long as said Section 3477 remained in force, Mr. P. continued to hold his legal settlement in County B. Section 3477 was repealed by an act which became effective October 20, 1949, whereby the laws relating to poor relief were completely overhauled. In the 1950 opinion just referred to, it was held as shown by the syllabus :

“Aid for the aged does not constitute poor relief, as that term is defined in Section 3391-1 et seq., General Code, as enacted by Amended Substitute House Bill No. 277 of the 98th General Assembly.”

I reached the same conclusion as to the status of aid for the aged under the new law, in Opinion No. 1083, issued January 18, 1952. However, I do not deem it necessary to analyze that law, for whether the status of old age aid was or was not changed, it is manifest that Mr. P.

could not have acquired a legal settlement in Darke County in the space of four months. Nor can I see any merit in the suggestion that the new law is retroactive. There is certainly no language in it which expresses any such intention. There was no attempt to shorten the period of residence necessary to obtain a legal settlement, although Section 3391-16, General Code, does make a slight change as to the reception of public relief. That section, in so far as pertinent reads as follows:

“Except as otherwise provided by law, legal settlement shall be acquired by residing in one county for a period of one year *without receiving poor relief* or relief from a private agency which maintains records of relief given. * * * Settlement once acquired shall continue until acquired in another county or until a person has been continuously absent from Ohio for a period of four years or has acquired a legal residence in another state.”

(Emphasis added.)

In the new law, as in the old, the liability of any county or subdivision thereof for providing relief is based on “legal settlement.” An attempt to impose an obligation or liability based on past events would have been retroactive and expressly forbidden by Section 28, of Article II of the Constitution. *Rairden v. Holden*, 15 Ohio St., 207; *Miller v. Hixon*, 64 Ohio St., 39; *Aid for the Aged v. Breskvar*, 155 Ohio St., 15.

Accordingly, it is my opinion that where a person having a legal settlement in B County and receiving aid for the aged under Section 1359-2, et seq., General Code, moved to D County, and there resided until October 20, 1949, the effective date of an act which repealed Section 3477, General Code, and enacted Section 3391-1 et seq., General Code, the liability of B County for poor relief, including hospitalization furnished to such person, continued until a new legal settlement was acquired after the effective date of said act. The provisions of Section 3391-1 et seq., relating to poor relief were in no way retroactive.

Respectfully,

C. WILLIAM O'NEILL

Attorney General