

person is found shall issue a warrant for such removal, and the county wherein the legal settlement of the person is, shall pay all expenses of such removal and the necessary charges for relief and in case of death the expense of burial if a written notice is given the county commissioners thereof within twenty days after such legal settlement has been ascertained."

The statement of facts fails to show that the matter of Mr. Gackenhaimer's legal settlement was investigated by either the township trustees or the proper officers of the municipal corporation; neither does it show that such trustees or officers notified the infirmary superintendent of Franklin county; nor that such superintendent removed Mr. Gackenhaimer to Lucas county, either with or without a warrant issued by the probate judge of Franklin county.

It thus appears that Mr. Gackenhaimer was not "removed" by any one in authority to Lucas county, but that he simply went there voluntarily, as any person would go from one county to another, returning to Columbus in a like manner on May 28th, the following day. It would seem, therefore, that on the facts stated, Mr. Gackenhaimer must be regarded as having resided continuously in Franklin county for twelve consecutive months, namely, from May 31st, 1919, to May 31st, 1920.

During such period it appears that he was without relief under the provisions of law for the relief of the poor. The relief accorded him by the Seventh Day Adventist church was, of course, *private* relief and its receipt would not affect his status as an applicant for blind relief.

You are, therefore, advised that Mr. Gackenhaimer has the residential qualifications for blind relief in Franklin county.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1558.

ROADS AND HIGHWAYS—WHERE COUNTY COMMISSIONERS GRANT PETITION FOR ROAD IMPROVEMENT UNDER SECTION 6906 G. C.—COMMISSIONERS NOT AUTHORIZED TO ENTER INTO ARRANGEMENT WITH TOWNSHIP TRUSTEES FOR LATTER TO DO IMPORTANT WORK BY FORCE ACCOUNT.

Where county commissioners have granted a petition for road improvement under sections 6906 et seq. G. C., they are not authorized either by section 6948-1 or elsewhere in the statutes, to enter into an arrangement with township trustees for the latter to do the improvement work by force account.

COLUMBUS, OHIO, September 10, 1920.

HON. C. A. WELDON, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

"A petition under section 6906 G. C. and 6907 G. C. has been presented to the county commissioners asking for the improvement of a certain county road and the prayer of the petition has been granted. The expenses of the improvement are to be paid in part by the county, part by the township and part assessed against the abutting property owners.

The contract for the improvement has not yet been awarded. Section 6948-1 provides that if the county commissioners deem it for the best

interest of the public they may, in lieu of constructing such improvement by a contractor, proceed to construct the same by force account and section 3373 provides that the township trustees may proceed either by contract or force account in the maintenance and repair of roads. Section 7467 provides that 'either the county or township may, by agreement between the county commissioners and the township trustees, contribute to the repair and maintenance of the roads under the control of the other.'

The township trustees of a certain township have proposed that the county commissioners shall pay over to them the money that will be raised by assessments on the abutting property owners, or the money received from the bonds issued in anticipation of the collection of the assessment, and that the trustees will construct the road by force account, whereby the trustees would gain for the township the profits, if any, in the construction of the improvement, the trustees to do the repairing by force account.

I would like to be informed whether it would be legal for the commissioners and trustees to make an agreement of this kind and carry it into execution. I would also like to have your opinion whether such an arrangement if carried out would impair the right to assess for the improvement."

Section 6948-1 reads:

"If the county commissioners deem it for the best interest of the public they may, in lieu of constructing such improvement by contractor, proceed to construct the same by force account."

Said section is part of the series beginning with section 6906, providing for road improvement by county commissioners, and of course must be construed in connection with said series. You state that the improvement in question has been undertaken in conformity with the provisions of said series.

The meaning of the term "force account" was considered in an opinion of this department of date December 13, 1919 (Opinions of Attorney-General, 1917, Vol. III, p. 2332), with the result that the following conclusion was reached as shown in the fourth paragraph of the headnotes:

"The term 'force account' implies that the department, officer or board having work to do, instead of entering into a contract for the performance of the work, assumes a direct oversight of the same, employing men with teams, purchasing material and paying for the same without reference to any contract whatever."

Applying this definition to the situation stated by you, the commissioners if they do not desire to do the work under a formal contract (section 6945), may themselves employ necessary labor and purchase necessary material and thus do the work in conformity with section 6948-1. There is not, however, conferred on the commissioners in said series of sections, 6906 et seq., authority to arrange with township trustees for the performance of the improvement work by the latter. You make mention of section 3373; but that section has reference to maintenance and repair work which, by statute, the township trustees are charged with performing, and has no connection with projects undertaken by county commissioners. You also mention section 7467, which reads:

"The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; provided,

however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto."

This section, while general in its terms as to the use of which road funds may be put, does not contain authority for the transfer of the administrative functions of one board to another.

You are therefore advised in specific answer to your inquiry, that where county commissioners have granted a petition for road improvement under sections 6906 et seq. G. C. they are not authorized either by section 6948-1 or elsewhere in the statutes, to enter into an arrangement with township trustees for the latter to do the improvement work by force account.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1559.

INHERITANCE TAX LAW—WHERE THERE IS A DEVISE TO A. FOR LIFE AND AT HIS DEATH TO HEIRS OF HIS BODY SECTION 5343 G. C. REQUIRES THAT CONTINGENT REMAINDERS BE VALUED ON HYPOTHESIS THAT IT WILL BECOME VESTED IN SINGLE HEIR OF H'S BODY AS REMOTELY RELATED AS POSSIBLE TO TESTATOR.

Where there is a devise to A for life and at his death to the heirs of his body, section 5343 G. C. requires that the contingent remainder be valued on the hypothesis that it will become vested in a single heir of H's body as remotely related as possible to the testator.

COLUMBUS, OHIO, September 10, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—You have recently requested the opinion of this department upon the following question:

"L in his will makes the following provision:

'I give, devise and bequeath to my son, H, during the term of his natural life my home farm containing 130 acres, and at his death I give, devise and bequeath the same to the heirs of his body.'

On the death of L how shall inheritance tax be assessed against the remainder devised to the heirs of the body of H?"

The remainder inquired about is clearly contingent. The maxim of law and common sense is expressed in a Latin phrase, translated as follows:

"No one can be an heir of a living person."