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WIFE, LIVING WITH AND SUPPORTED BY HUSBAND, WHO RECEIVES AID FOR THE AGED — SECTION 1359-1 G.C. — MAY NOT OBTAIN “LEGAL SETTLEMENT” IN ANY COUNTY IN THIS STATE AS TERM IS DEFINED, SECTION 3477 G.C.

SYLLABUS:

A wife living with and receiving support from her husband who receives aid for the aged under authority of Section 1359-1, et seq., General Code, may not obtain in any county in this state a “legal settlement” as that term is defined in Section 3477, General Code.

Columbus, Ohio, April 14, 1941.

Hon. H. Lloyd Jones, Prosecuting Attorney,
Delaware, Ohio.

Dear Sir:

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

“A husband has been receiving aid for the aged which was granted to him before he came to this county. He has been living

in this county with his wife for several years on this income.

Since this income is considered as 'relief' for the purpose of gaining legal settlement, could the wife gain a legal settlement in this county."

In answering your inquiry I am assuming you are concerned with "legal settlement" as that term is defined in Section 3477, General Code, wherein are set forth the residence requirements which must be met to obtain such settlement for purposes of poor relief. Said section provides 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. No adult person coming into this state and having dependents residing in another state, shall obtain a legal settlement in this state, so long as such dependents are receiving public relief, care or support at the expense of the state, or any of its civil divisions, in which such dependents reside."

The question you present is whether the wife of one who is the recipient of aid for the aged under authority of Sections 1359-1 to 1359-30, both inclusive, General Code, is precluded from gaining a legal settlement in a county in which she has continuously resided for twelve consecutive months by reason of the fact she has been supported by the husband with the money he has received from the Division of Aid for the Aged.

Pertinent to your inquiry are Sections 7996 and 7997, General Code, which provide as follows:

Section 7996, General Code:

"The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto."

Section 7997, General Code:

"The husband must support himself, his wife, and his

minor children out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able."

By force of these statutes the husband may choose the situs of the family home and is under duty to support the wife to the best of his ability. In the instant case, the husband is supporting the wife with money allowed him as aid for the aged (Sections 1359-1 to 1359-30, both inclusive, General Code).

It is clear that the husband under such circumstances can not obtain a "legal settlement" as above defined by reason of the "relief under the provisions of law for the relief of the poor" he is receiving. See Opinion No. 2417, Opinions of the Attorney General for 1940; also Opinion No. 1902, Opinions of the Attorney General for 1940.

It appears to be the general rule in Ohio that a wife can not have a "legal settlement" different from that of her husband if the husband and wife are living together. The duty to support the wife rests with the husband and in so far as the "poor laws" are concerned assistance to either the husband or the wife is considered as assistance to the husband, the legal head of the family, and is chargeable to him in determining his "legal settlement" as above defined.

The general rule was noted by one of my predecessors in Opinion No. 716, Opinions of the Attorney General for 1927, Vol. II, page 1214, wherein at page 1217 he said:

" * * * It has always been recognized that the legal settlement of the parent is the legal settlement of the minor children, and it is also true that the legal settlement of the husband is the legal settlement of the wife."

In further support of this proposition your attention is directed to the second syllabus of Opinion No. 1518, Opinions of the Attorney General for 1933, Vol. II, page 1370, which reads as follows:

"Where a woman marries a person who has a legal settlement and residence in a county, she thereby acquires by her marriage such legal settlement and residence without living therein for twelve consecutive months without charitable relief."

Commenting on his 1933 opinion, supra, the then Attorney General

stated in Opinion No. 2380, Opinions of the Attorney General for 1934, Vol. I, page 303, at page 307, as follows:

“An opposite conclusion to that of Opinion No. 1518 might lead to great hardship if a woman did not by her marriage acquire the legal settlement of her husband, inasmuch as a particular county might be charged with the relief of the husband while another county might be charged with the relief of the wife and much confusion would inevitably result.”

The 1933 opinion, *supra*, relied upon the case of Board of Commissioners of Summit County vs. Board of Commissioners of Trumbull County, 116 O.S. 663. The facts of that case reveal that a wife divorced her husband and was given custody of the minor children. At that time the wife and children had a legal settlement in Trumbull County. Some nineteen months later the mother moved with her children to Summit County where she married a man who had a legal settlement in the latter county. About three months thereafter the husband abandoned this woman and she and her children were forced to seek relief. The question of their legal settlement then arose. The court held that the legal settlement of the wife and that of her minor children was in Summit County by reason of the second marriage. This holding of our Supreme Court appears to be authority for the proposition originally urged, namely, that the “legal settlement” of the husband and wife is the same.

As previously pointed out, the husband referred to in your inquiry would not have a “legal settlement” in your county. Since the wife’s “legal settlement” is that of her husband’s, it must follow that if a husband is not eligible to obtain a “legal settlement” in a given county, his ineligibility extends to his wife providing, of course, there has been no separation or the wife has not become a “femme sole.”

Specifically answering your inquiry, it is my opinion that a wife living with and receiving support from her husband who receives aid for the aged under authority of Section 1359-1, et seq., General Code, may not obtain in any county in this state a “legal settlement” as that term is defined in Section 3477, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General