

state in your letter that in approving the amount of traveling expenses which may be allowed to you and your appointees, your judgment will be tempered by an intelligent economy consistent with good service and sound business methods. Under such circumstances, the conclusion is inescapable that whether or not per diem traveling expenses of your office exceed any fixed maximum established by some other office can have nothing whatsoever to do with the legality of the claims, and it is the mandatory duty of the Auditor of State to issue warrants in payment thereof in the absence of a clear showing of gross abuse of discretion on your part in approving them.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

488.

CHILDREN—DIVORCED PARENTS—CUSTODY—RESIDENCE
OF CHILDREN DURING MINORITY—CHANGE OF LEGAL
RESIDENCE.

SYLLABUS:

1. *Where the care, custody and control of minor children are given to a mother under decree of divorce, such children have the legal residence of their mother during minority, even though such children actually live in a county other than the legal settlement of their mother.*
2. *A minor child has no power to change his legal settlement.*

COLUMBUS, OHIO, April 20, 1937

HON. LESTER W. DONALDSON, *Prosecuting Attorney, Painesville, Ohio.*

DEAR SIR: I am in receipt of your recent communication which reads as follows:

“We would appreciate your opinion upon the following matter: Mr. and Mrs. S. were divorced in Geauga County, Ohio, and Mrs. S, to whom the decree was granted, was given the custody by the court of four minor children, A, B, C and D. After the divorce decree the father remained in Geauga County for a short time and with him remained two of the four children A and B. The father then moved to Lake County and on

to Ashtabula County, keeping A and B with him, even though their custody had been awarded to the mother.

Following the decree the mother moved into Cuyahoga County and took with her the two minor children, C and D. While the mother and C and D lived in Cuyahoga County, the father took A and B and moved up into the State of Michigan, where they lived for two years, following that the father and A and B moved back to Ashtabula County, Ohio, where they lived for three years, the father then going to Ashtabula County Home to live and A and B went to live with a half brother in Lake County, Ohio. All during this time Mrs. S, the mother, and the other two minor children, C and D, were residing in Cuyahoga County. The mother married again to a Mr. K of Cuyahoga County and she together with her new husband and two minor children, C and D, continue to reside in Cuyahoga County, where they have lived since the divorce decree was granted.

All four of the children, A, B, C and D are still minors at this time.

The question of law involved is as to whether or not the two minor children, A and B follow the residence of their Mother, Mrs. S, 'now Mrs. K,' so that their residence is now Cuyahoga County and as to whether or not these two children, A and B, are under the jurisdiction of the Child Welfare Organization of Cuyahoga County or under the Child Welfare Jurisdiction of Lake County."

Section 3477, General Code, reads 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."

Reference is made to the case of *Board of Commissioners of Summit County vs. Board of Commissioners of Trumbull County*, 116 O. S. 663, the syllabus of which reads as follows:

"When the parents of minor children are divorced and the decree gives to the mother the sole and exclusive care, custody and control of the minor children, the legal settlement of the mother thereby becomes the legal settlement of the minor children; and when the mother thereafter, acting in good faith, moves to another county, taking the minor children with her, and intending to make the latter county the permanent home of herself and her minor children as well, and, pursuant thereto the mother acquires a legal settlement in the county to which she thus moves, the minor children thereby acquire, through their mother, a legal settlement in the same county."

The question in the case of *Board of Commissioners of Summit County vs. Board of Commissioners of Trumbull County, supra*, was discussed in Attorney General's Opinion 3260 (1934), Vol. II, p. 1405, in which the then Attorney General commented as follows:

"In the above cited case, it is apparent from the study of the facts involved, that the mother acquired the legal settlement of the second husband and the children also obtained the same legal settlement as their mother.

The first part of the syllabus would seem to indicate that the legal settlement of the mother becomes the legal settlement of the children, irrespective of where the children are actually residing, although it can be argued with some plausibility that the latter part of the syllabus modifies such conclusion. In other words, the latter part of the syllabus would seem to indicate that the conclusion of the court as a whole is based upon the mother taking the children with her, with the intention of making her permanent home in the county to which she has migrated. However, I do not think it can plausibly be argued that the minor children must immediately accompany the mother into her new legal settlement territory and in the instant case the minor child did join the mother, who has the sole and exclusive custody of the child, was there supported from September, 1933, to the present time."

It may be suggested that in the instant case the children, A and B, at no time followed their mother into Cuyahoga County for the purpose of gaining a residence therein but since their residence is in the same county as that of their mother, nothing has been done to change that status by the fact that they actually lived in another county.

In the case of *Board of Commissioners of Summit County vs. Board of Commissioners of Trumbull County, supra*, on page 667, the Court sets forth the inability of a minor child to acquire residence other than that of his legal custodian in the following language:

“Manifestly the minors of themselves could not change their legal settlement by going from one county to another without their parents, but it is quite another thing to say that if a parent, having exclusive control and custody of the children by decree of Court, changes legal settlement, that does not change the legal settlement of the children who have accompanied such parent into the new settlement territory.”

As to the question of jurisdiction of the child welfare organization of either Cuyahoga County or Lake County, your attention is directed to Section 1359-34, General Code, which reads in part as follows:

“Application for aid under this act shall be made by a parent or by one of the relatives in whose home the child is residing, to the county administration of the county in which the child or children in respect of whom such application is made, resides.”

For the purpose of aid to dependent children, the foregoing section of the General Code would apply. It is, therefore, my opinion that the legal residence of the children, A and B, referred to in your request, is that of their mother in Cuyahoga County.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

489.

APPROVAL—BONDS OF YORK TOWNSHIP RURAL SCHOOL DISTRICT, ATHENS COUNTY, OHIO, \$7,000.00 (Limited).

COLUMBUS, OHIO, April 20, 1937

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN:

RE: Bonds of York Twp. Rural School Dist., Athens County, Ohio, \$7,000.00 (Limited).