

1994.

APPROVAL, BONDS OF VILLAGE OF EUCLID, CUYAHOGA COUNTY,
\$36,000.00, FOR SEWER IMPROVEMENTS.

COLUMBUS, OHIO, November 24, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1995.

APPROVAL, BONDS OF GRANVILLE VILLAGE SCHOOL DISTRICT,
LICKING COUNTY, \$7,500.00, TO COMPLETE THE CONSTRUCTION
OF A FIREPROOF SCHOOL BUILDING.

COLUMBUS, OHIO, November 25, 1924.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1996.

APPROVAL, ARTICLES OF INCORPORATION OF THE AMERICAN FIRE
INSURANCE COMPANY, CINCINNATI, OHIO.

COLUMBUS, OHIO, November 25, 1924.

HON. THAD H. BROWN, *Secretary of State, Columbus, Ohio.*

1997.

STATUS OF RESIDENCE OF MARRIED WOMAN ACTUALLY LIVING IN
NEW YORK UNDER AN AGREEMENT OF SEPARATION DISCUSSED
—SPECIFIC CASE PASSED UPON.

SYLLABUS:

Status of residence of married woman actually living in New York under an agreement of separation discussed.

Under the state of facts presented the said woman is not a resident of Ohio within the meaning of the statutes referring to admission to state hospitals for the insane.

COLUMBUS, OHIO, November 25, 1924.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

Dear Sir:—

In your recent communication you request my opinion on the following:

“J. S. lived in A, Ohio, for the past three years. He owns no property,

has not an established residence but has lived at different hotels during that period. He has never voted in this state. This man's wife has for the past seven or eight years made New York her headquarters and has followed the theatrical profession. She has never lived in Ohio but has occasionally visited her husband in the summer during the closed theatrical season. These visits have not covered a period of two months all told. The last visit was for a few days in August, 1923, when she returned to New York to continue her work. When not 'on the road' she lives in New York with her mother and daughter. The husband and wife are not divorced but there is a mutual agreement to live apart, she to follow her chosen profession. Mr. S. does not contribute to his wife's support.

At the time of Mrs. S's visit to Ohio for a few days in August, 1923, her mental condition was apparently normal. Soon after her return to New York she became mentally disturbed and was sent to a New York State Hospital for the insane. This department has been requested by New York to accept this woman for hospitalization in this state, the claim being made that her legal settlement follows that of her husband in Ohio. Mr. S. does not wish his wife to be brought to Ohio for care as she is a stranger in this state. All of her friends and relatives with the exception of her husband live in New York.

The law governing hospitals for the insane in Ohio states:

'No person shall be admitted into any such hospital who is not an inhabitant of the state * * *. Within the meaning of this section no person shall be considered an inhabitant who has not resided in the state one year preceding the date of his or her application * * *. No person is entitled to the benefits of the provisions herein except those whose insanity occurred during the time of his or her residence in this state.'

The law defining 'legal settlement' is found in Section 3477.

'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, subject to the following exceptions. * * * The wife or widow of a person whose last legal settlement was in a township or municipal corporation in this state, shall be considered to be legally settled in the same township or municipal corporation. If she has not obtained a legal settlement in this state, she shall be deemed to be legally settled in the place where her last legal settlement was previous to her marriage.'

Summarizing: The woman in question has never resided in Ohio. She has visited here for a few days at a time during the past three years, but for seven or eight years she has made New York her headquarters and followed her chosen profession and has supported herself. Her mother and daughter live in New York. The man to whom she is married and from whom she has not been divorced has lived in Ohio for three years.

Query: Does this woman have a legal settlement in Ohio for the purpose of hospitalization?"

It is clear from the sections of the statute to which you refer that before one is entitled to be admitted to a hospital for the insane they must be an inhabitant or resident of this state. Whether such residence must be the equivalent of a legal settlement as referred to in Section 3477 of the General Code need not for the purposes of this opinion be considered.

Section 9996 of the General Code provides:

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

It was the common law theory that the domicile of the husband was the domicile of the wife, and this rule has generally prevailed throughout the country. However, the section above quoted clearly establishes the authority of the husband to choose place of living for himself and his wife. It is evident that if he has exercised such authority and is supporting and maintaining his wife, and they are living together, under such circumstances the residence of the wife would be that of the husband. However, after a careful examination of this section, it is believed that the construction will not be justified that the residence of the wife will be that of the husband unless he has exercised such authority. If the husband has selected an unreasonable place and mode of living, then the wife would not be bound by such selection, which indicates that in contemplation of the statutes there are separate residences possible.

In the present case it would seem that if the husband has exercised any of the authority of Section 7996 he has provided, or rather consented, to the wife establishing her residence in New York. In other words, if he has made any selection, he has made the same selection that his wife has made, which is for her to reside in New York, rather than Ohio.

In so far as your question is concerned, it may be further stated that it does not appear conclusively that the husband himself is a resident of Ohio. It does not appear that he intended to reside continuously in Ohio, and the fact that he has been here for three years, if he came to live temporarily, with the intention of returning to New York or some other state, he would not become a resident of Ohio.

The United States Circuit Court of Appeals of the Sixth District in the case of *McKnight vs. Dudley*, 148 Fed. 204, in substance held that where the husband became insane and was committed to a state institution, the wife could make her own selection of residence thereafter. In that case the wife changed her residence by moving to New York and the State of Ohio sought to tax her property as a resident of Ohio. If the choice of the husband is conclusive, then it would appear that such choice would remain the domicile of the wife, until such time as the husband legally changes such residence. However, the opposite conclusion was reached in the case above cited.

Section 8000 authorizes the husband and wife to agree to an immediate separation and make provision for the support of either of them during the separation.

It is believed that all of the foregoing discloses that upon the state of facts which you present, it cannot be said that the woman to whom you refer is a resident of Ohio within the contemplation of the sections governing admission to state hospitals for the insane.

Respectfully,
C. C. CRABBE,
Attorney General.