

for a year's support and homestead right are in the same class with dower, save as the former is expressly made in part a taxable succession by the provisions of section 5332-1 of the General Code, which need not be quoted.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1557.

BLIND RELIEF—RESIDENTIAL QUALIFICATIONS—INFIRM BLIND—
WHERE APPLICANT MOVED FROM ONE COUNTY TO ANOTHER.

On the facts stated, Mr. A. H. G. has the residential qualifications for blind relief, in Franklin county.

COLUMBUS, OHIO, September 10, 1920.

HON. HUGO N. SCHLESINGER, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—Hon. Ralph J. Bartlett, assistant prosecuting attorney of Franklin county, recently wrote this office, asking for a ruling on the question of whether Lucas county or Franklin county should furnish blind relief to one A. H. Gackenhaimer. Mr. Bartlett's letter contained the following statement of facts, which he and Hon. Allen J. Senev, the prosecuting attorney of Lucas county, agree upon as correctly stating the situation:

"Mr. A. H. Gackenhaimer while living in Lucas county applied for blind relief in 1916 which was granted and Lucas county continued to pay said relief until July, 1918. In February, 1918, he was sent to Columbus by the Lucas county authorities to work in the state broom factory where he worked until July, 1918, earning about \$6.00 per week; he then became sick and was taken to the Protestant hospital of this city as a charity patient where he remained a period of six weeks. Upon leaving the Protestant hospital, he was taken to the State Hospital for Insane located in this city where he was confined until the 31st day of May, 1919. On being released from the state hospital he remained in the city of Columbus and was partly supported by the Seventh Day Adventist church, which contributed \$5.00 per week to his landlady for board and room. Since July, 1919, except about four months during the winter, he has been selling books and pamphlets for this church and making about \$1.25 per day, when working.

In June, 1919, he filed an application with the board of commissioners of this county for blind relief which was denied on the ground that he did not have the proper residential qualifications. In May of this year, the commissioners of this county requested an opinion from this office as to whether Mr. Gackenhaimer had the proper residential qualifications for blind relief. On May 11th this office advised said board that Mr. Gackenhaimer had 'not gained a residence in Franklin county, Ohio, and is therefore not entitled to relief from this county, but instead is still entitled to blind relief from Lucas county.' We also advised said board of commissioners that the proper course to pursue was to notify the authorities of Lucas county of the facts herein and request them to either continue to furnish Mr. Gackenhaimer the blind relief to which he was entitled or that they remove him to Lucas county at the expense of that county; and if Lucas county failed to furnish the relief and he thereby becomes a public charge, Franklin county should follow the provisions of section 3482 G. C., and send him

back to Lucas county and have the probate judge of this county issue a warrant for his removal to Lucas county at the expense of said county.

Mr. Gackenhaimer was perfectly willing to return to Lucas county and accordingly on May 27th of this year he was returned to Lucas county, without a warrant from the probate judge of this county, and on the following day he was furnished with a ticket from the prosecuting attorney of Lucas county and returned to Columbus, the authorities of Lucas county having refused to consider him entitled to relief from said county. It is also agreed that since July, 1918, Mr. Gackenhaimer has received no relief from either Lucas or Franklin counties, and during his residence in Franklin county he registered as a voter from that county with no intention of returning to Lucas county to reside."

Following the statement of facts, Mr. Bartlett says:

"The prosecuting attorney of Lucas county seems to take the position that since he has not received relief from either county since July, 1918, that he has therefore acquired a legal residence in Franklin county and therefore this county is bound to support him. This office takes the position that during the time he was being furnished with relief by Lucas county and also during the time he was in the State Hospital for Insane, he could not acquire legal settlement in Franklin county; that one year had not elapsed from the date of his release from the State Hospital for Insane until he was returned to Lucas county and that therefore the obligation of Lucas county to furnish such relief still exists, notwithstanding that the Lucas county authorities have neglected to furnish relief during the time he was entitled to same; and that the Lucas county authorities cannot change the obligation from Lucas county to Franklin county by merely sending him back to Franklin county, after the authorities of this county had returned him to Lucas county, in accordance with section 3482 of the Poor Relief Law."

In a recent letter to this office, Mr. Seney says:

"However, it is not my position that the mere fact that Gackenhaimer has not received relief from either county since July, 1918, causes him to acquire a legal residence in Franklin county; but it is my position that, waiving all other points, he acquired a legal residence in Franklin county by residing there from May 31, 1919, to May 31, 1920, and, having had no relief from either county during that period of one year, and having lost his residence in Lucas county, that Franklin county is under legal obligation to furnish him with relief.

I wish to also call your attention to the fact that he was not removed to this county under section 3482 of the General Code, but was simply furnished with a ticket and boarded the train and came up here at the suggestion of the Franklin county authorities, coming with no intention to abandon Franklin county and reside in Lucas county, but simply to see whether or not he could gain relief from this county."

The residential qualifications for receiving blind relief are set forth in section 2966 G. C., which says:

"In order to receive relief under these provisions, a needy blind person must become blind while a resident of this state, and shall be a *resident of the county for one year.*"

In opinion number 36, dated February 10, 1919, addressed to Hon. Walter S. Ruff, prosecuting attorney, Canton, Ohio, and found in 1919 Opinions of Attorney-General, Vol. I, page 53, the Attorney-General had occasion to consider the question of how to determine residential qualifications in the case of a needy blind person who removes from one county to another. In that opinion (page 55) it was said:

"The phrase 'shall be a resident of the county for one year' in section 2966 G. C., supra, in my opinion, has the same significance as the term 'legal settlement' in the statutes relating to the general administration of poor relief."

In the chapter of the code providing for the public relief of the poor, section 3477 G. C. says, in part:

"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 * * *."

It is clear that if Mr. Gackenhaimer can be said to have continuously resided in Franklin county for twelve consecutive months and to have continuously supported himself therein for such period, without receiving poor relief, he is entitled to make application for blind relief in Franklin county, and if found to be in a condition requiring it, to receive such relief from said county.

It appears from the agreed statement of facts that Mr. Gackenhaimer, upon leaving the Protestant hospital in the city of Columbus, in the summer of 1918, was taken to the Columbus State Hospital for the Insane. In a subsequent letter to this office, Mr. Bartlett advises that Mr. Gackenhaimer was committed as an insane person to said state hospital by the probate court of Franklin county, under authority of section 1953 G. C., et seq. One of the necessary allegations in the lunacy affidavit provided for by section 1953 G. C. is that the alleged lunatic "* * * has a legal settlement in _____ township, this county," which supports the theory that the probate judge has, except as to non-residents of the state, no jurisdiction to make an adjudication of lunacy unless the person who is the subject of the inquest is a resident of the county wherein the probate court is situate (See Opinions of Attorney-General for 1919, Vol. I, page 426). While a determination in a lunacy case of the question of a person's legal settlement is possibly not conclusive of the same question arising in connection with an application by that person for poor relief, such determination is at least suggestive.

The principal thing to be considered in this matter is, of course, the legal effect of the action of Mr. Gackenhaimer in going to Lucas county on May 27th, 1920. If that action can be considered as having been taken pursuant to section 3482 G. C., then the contention of the prosecuting attorney of Lucas county that Mr. Gackenhaimer "acquired a legal residence in Franklin county by residing there from May 31st, 1919, to May 31st, 1920" would not be tenable.

Section 3482 G. C. (108 O. L., Part I, page 273) says:

"When it has been so ascertained that a person requiring relief has a legal settlement in some other county of the state, such trustees or officers shall immediately notify the infirmary superintendent of the county in which the person is found, who, if his health permits, shall immediately remove the person to the infirmary of the county of his legal settlement. If such person refuses to be removed, on the complaint being made by the infirmary superintendent, the probate judge of the county in which the

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