

question is the only one in the township where gasoline can be obtained could not affect the application of this section, as no exceptions are to be found in the section.

I am therefore of the opinion, in specific answer to your question, that a township clerk who is clerk of the board of township trustees of the township, and owner and operator of the only store in the township where gasoline may be obtained, violates section 12910, General Code, if he sells gasoline to the township trustees for the use of the township, in small quantities not exceeding \$50.00 a month.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4172.

JUVENILE COURT—JURISDICTION TO DECLARE CHILD DEPENDENT—
COUNTY WHEREIN CHILD DECLARED DEPENDENT RESPONSIBLE
FOR SUPPORT—(O. A. G. 1929, VOL. II, P. 1151, FOLLOWED).

SYLLABUS:

1. *The juvenile court has jurisdiction to declare any child dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents, or those standing in loco parentis does not determine the jurisdiction of the court. (O. A. G. 1929, Vol. II, page 1151 approved and followed.)*

2. *The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of such child.*

COLUMBUS, OHIO, April 20, 1935.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

“I should like to submit the following set of facts for your consideration and opinion.

In 1926 one A. F. who was at that time the mother of two children, H. and G., married one A. Z. in Alabama. In 1926 A. and A. Z. together with the two children, both of whom are still minors, moved to Cincinnati, Ohio. Z. worked in Cincinnati for the Cincinnati Street Railway Co. and we are not certain whether or not he had gained a residence when he was killed in 1927.

However, the widow with the two children continued to live in Hamilton County until February 1928, without obtaining relief from any source.

In February, 1928, the mother, A. Z., together with the two children came to Butler County. She was investigated by the Butler County Juvenile authorities and in June, 1928, it was determined that she was not a fit person to take care of these children, this complaint coming from Mr. P. representing the Industrial Commission of Ohio.

In June, 1928, the Juvenile Judge of Butler County made the following order:

“This day this cause came on to be heard, it appearing all papers had

been duly served and a return made and all parties interested present in Court.

Upon hearing the evidence from several witnesses, and being duly advised in the premises, the Court finds the aforesaid minor children are dependent as charged in complaint filed, and upon consultation with Attorney Mr. Ben Bickley, who represented their mother, Mrs. A. Z., the Court is of the opinion that for best interest and welfare of aforesaid dependent children, that they be removed from present custody and control of their mother.

Therefore, the Court orders that the said H. and G. F. be temporarily placed into the care, custody and control of the Hamilton County Juvenile Court, Cincinnati, Ohio subject to their supervision and further order of this Court.'

There seems to be nothing in the files in the way of correspondence to show what action was taken by the Hamilton County Juvenile Court under this order. Nevertheless the children were taken to Hamilton County and have been there since that date.

In the meantime a claim had been filed with the Industrial Commission for the death of A. Z.; the claim was allowed and an amount of something over \$5000.00 was awarded to the children.

It was, of course, necessary that a guardian be appointed for the children through the intervention of Mr. P. of the Industrial Commission, the Probate Court of Butler County, Ohio, appointed the Citizens Savings Bank and Trust Company of Hamilton, County, to be the guardian of the estate and the person of these children.

After the children had been declared dependent they were sent to Hamilton County where they were taken by the Children's Home, a semi-private institution. The children were placed in private homes under the supervision of the Children's Home of Cincinnati and their board and lodging have been paid for since that time by the guardian.

We understand that some time ago A. Z. married a resident of Highland County, Ohio, and is now living in that county.

The funds in the hands of the guardian have become depleted and there is only enough to pay for the support of these children for another month. The question now arises as to who is liable for the support of these children and I would like to have you answer the following questions:

1. Assuming that the mother had not gained a residence in Butler County, would the fact that the children were declared dependent in Butler County and that a guardian was appointed in that county make them residents of Butler County so as to charge Butler County with their support?

2. Assuming that A. and A. Z. had gained a residence in Hamilton County and that the mother, A. Z., has not since that time gained a residence in any other county, would Hamilton County now be responsible for their support, provided, of course, your answer to Question No. 1 is 'No'.

3. Assuming that A. Z. has remarried in Highland County and gained a residence there, would Highland County be responsible for the support of these children?"

Additional memoranda was furnished which I have considered in the rendition of this opinion.

The facts may be briefly summarized as follows:

1. The mother and children had a "legal settlement" in Cincinnati, Hamilton

County, established by twelve consecutive months' residence without receiving relief at the time they moved to Hamilton, Ohio, Butler County around February, 1928.

2. On June 22, 1928 (about six months after living in Butler County), the children were declared dependent in Hamilton, Butler County, Ohio by the Judge of the Juvenile Court of that County, taken out of the custody of their mother and temporarily committed to a semi-private children's home in Cincinnati, Ohio.

3. Recently the mother has moved to Highland County and has married a man who has a "legal settlement" in Highland County.

For the purpose of simplification I shall answer your third question first.

I call your attention to the case of *Trustees of Bloomfield vs. Trustees of Chagrin*, 5 Ohio 316, the syllabus of which reads:

"The mother of an infant pauper settled in one township, does not change the infant's residence, by marrying a second husband settled in another township, and there residing without the infant pauper."

A careful study of the case of *Board of County Commissioners of Summit County vs. Board of County Commissioners of Trumbull County*, 116 O. S. 663, (1927) will show that the "Bloomfield" case was not overruled by this later decision. Consequently in specific answer to your third question it is my opinion that even though A. Z., the mother, has remarried in Highland County and gained a "legal settlement" there it would not make Highland County responsible for the support of the children in question.

Section 1642, General Code, provides that the Juvenile Court:

" * * * shall have jurisdiction over and with respect to delinquent, neglected and *dependent* minors under the age of eighteen years, not inmates of a state institution, or any institution incorporated under the laws of the state for the care and correction of delinquent, neglected and dependent children. * * *"
(Italics the writer's)

It was held in the reported Opinions of the Attorney General for 1933, Vol. II, page 1264 as disclosed by the second branch of the syllabus:

"2. A juvenile court has jurisdiction to declare any child a dependent which is found within the county under facts and circumstances constituting dependency. The legal residence of the child or its parents, or those standing in loco parentis, does not determine the jurisdiction of the court. (O. A. G. 1929, Vol. II, page 1151 approved and followed)"

In Opinions of the Attorney General for 1929, Vol. II, page 1151 at page 1153 and page 1154 it is stated:

"The purpose of the juvenile law is for the protection of children and to prevent them being in the custody of improper persons irrespective of the legal settlement or residence of the child or its parents. It follows therefore, that when a child is found to be dependent within the jurisdiction of the court, such court may properly assume jurisdiction for commitment of such child in the manner provided by law either permanently or temporarily."

You state in your request for my opinion that the commitment of the child by the Judge of the Juvenile Court of Butler County was a "temporary" commitment. In Opinions of the Attorney General for 1922, Vol. I, page 125 at page 128 it is stated:

"Section 1672 G. C. provides the procedure when the child or dependent minor is temporarily or permanently committed by the juvenile court, and it is apparent from an examination of the provisions of this section, as well as those contained in section 1643 G. C., that dependent minors so committed by the juvenile court are contemplated as of two classes, to-wit: Those committed for *permanent* care and custody, and those committed for *temporary* care and custody, and the court is required by the provisions of section 1672 G. C. to designate in its award which of said commitments shall obtain. *If such dependent child is committed temporarily, it becomes evident that the jurisdiction of the juvenile court is continuing until the minor attains the age of twenty-one years.*
* * * " (Italics the writer's)

From the preceding discussion it is apparent that the Judge of the Juvenile Court of Butler County had jurisdiction to declare the children in question dependent when the act of dependency took place in Butler County, and consequently the commitment was legal. It is also apparent that since the commitment was temporary that the Juvenile Court of Butler County had continuing jurisdiction over these children.

The question now presented is what county should be liable for the care and support of these children. Although it appears that the children in question never acquired a "legal settlement" in Butler County, I call your attention to Opinions of the Attorney General for 1930, Vol. II, page 1315, which held as disclosed by the first three branches of the syllabus:

"1. Where a child is born to a feeble-minded mother while she is out of the Institution for Feeble-minded on a trial visit in a county other than Franklin and other than the county from which said mother was committed and such child is now in the Institution for the Feeble-minded with said mother, the Juvenile Court of the county in which said child was born has no jurisdiction over said child.

2. Under such circumstances, the Juvenile Court of the county in which the child is found clearly has jurisdiction. It is also probable that the court of the county from which the mother was originally committed may have jurisdiction.

3. *The county in which such court assumes jurisdiction and declares such child to be dependent, will be responsible for the support of said child.*" (Italics the writer's)

The above opinion was followed with approval in reported Opinions of the Attorney General for 1933, Vol. II, page 1264 as disclosed by the second and third branches of the syllabus:

"2. A juvenile court has jurisdiction to declare any child dependent which is found within the county under facts and circumstances constituting dependence. The legal residence of the child or its parents, or those standing in loco parentis does not determine the jurisdiction of the court. (O. A. G. 1929, Vol. II, page 1151 approved and followed.)

3. *The county in which such court assumes jurisdiction and declares such*

child to be dependent, will be responsible for the support of such child.' (O. A. G. 1930, Vol. II, page 1315 third branch of the syllabus followed.) (Italics the writer's)

Summarizing it appears that the children in question never acquired a legal settlement in Butler County, but that the act of dependency took place in Butler County and the Juvenile Court of that county had ample jurisdiction to commit such children and since the commitment was temporary that court has continuing jurisdiction over the children until they are twenty-one years of age. Under such circumstances, it is my opinion that the county in which jurisdiction has been taken would be liable for the support of the children.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4173.

APPROVAL, BONDS OF CITY OF AKRON, SUMMIT COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, April 20, 1935.

State Employes Retirement Board, Columbus, Ohio.

4174.

APPROVAL, BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY, OHIO,
\$3,000.00.

COLUMBUS, OHIO, April 20, 1935.

Industrial Commission of Ohio, Columbus, Ohio.

4175.

APPROVAL, BONDS OF VILLAGE OF WILLOWICK, LAKE COUNTY, OHIO,
\$5,000.00.

COLUMBUS, OHIO, April 20, 1935.

State Sinking Fund, Columbus, Ohio.