

tance often may desire to have such a proceedings consummated within their own state wherein they are familiar with the effect of the same in view of the law, and the refusal of consent might be the means of depriving an unfortunate child of a real future opportunity.

In view of the foregoing, it is my opinion that under the provisions of Section 1352-12 of the General Code a child caring institution approved by the Division of Charities of the Department of Public Welfare of the State of Ohio, to which there has been surrendered a child under an agreement which authorizes such institution to consent to the adoption of the child, may consent to the adoption of said child in a proceeding for adoption instituted in a state other than Ohio if, in the judgment of the managers of said institution, such a procedure is for the welfare of the child. The effect of such consent, however, as to the ultimate legal status of the child, is, of course, a matter depending upon the provisions of the laws of the state in which such a proceeding is had.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1804.

AFFIDAVIT OF INSANITY—FILED AGAINST NON-RESIDENT OF COUNTY
—SANITY FINDING BY PROBATE COURT—COSTS NOT CHARGE-
ABLE TO PERSON'S COUNTY—COURT'S DETERMINATION OF RES-
IDENCE BINDING UPON OTHER OFFICIALS.

SYLLABUS:

1. *When an affidavit charging insanity is filed against a person, under the provisions of Section 1950-1 of the General Code, and upon hearing, the court finds such person not to be insane, the fees and costs incident to said hearing and determination may not be charged back against the county in which said person has a legal residence.*
2. *It is one of the duties of the Probate Court in conducting hearings in insanity cases to inquire into and determine the residence of the patient and such determination is binding upon other county officials.*

COLUMBUS, OHIO, April 22, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion upon the following:

“Section 1950-1 of the General Code provides for the commitment of an insane person, having a legal residence in the State of Ohio, but who may be temporarily residing or detained in a county other than that of his legal residence, may be legally committed to the state hospital by the probate judge of the county in which such person is temporarily residing or detained. It further provides that the regular Probate Court fee incident to commitment shall be charged against the county of his or her legal residence. In a former opinion of your department it was held that the proper method of procedure was to pay these fees out of the treasury of the county where the commitment was made and the fiscal officer of that county should recover the same from the county of the person's residence.

Question 1. When an affidavit of insanity is filed against a person and

after expenses have been incurred, such as doctor's fees, and Probate Court costs, it is determined that such person is not insane and is not committed, may such costs legally be taxed and collected from the county of the legal residence of such person?

Question 2. Who is to determine the legal residence of the person under such circumstances, and is the auditor of the county, which is said to be the legal residence, authorized to demand evidence to that effect before payment of the bills?"

In considering your inquiries it is essential to keep in mind that the statutes of Ohio, in connection with the jurisdiction of Probate Courts with reference to the commitment of persons to institutions for the insane, treat of two classes of cases. That is to say, there are certain definite provisions that relate to persons who are known to have a residence in the state; and other sections which make provision for those who are non-residents of the state or whose residence is unknown.

Section 1950 of the General Code, as amended by the 88th General Assembly 113 O. L. 87, provides in substance that an insane person who has a "legal residence" in the state for more than one year and whose insanity occurred during the time of his residence in said state shall be entitled to admission to a state hospital. Said section further provides that no person who is not a legal resident of the state shall be admitted to a state institution except upon the order of the Department of Public Welfare.

Section 1950-1, General Code, to which you refer and which was first enacted by the 88th General Assembly, 113 O. L. 88, reads:

"Any insane person having a legal residence in the State of Ohio, but who may be temporarily residing or detained in a county other than that of his legal residence, may be legally committed to a state hospital by the probate judge of the county in which such person is temporarily residing or detained. The department of public welfare shall at once be notified of such commitment, and, through its secretary, or other officer, shall immediately notify the probate judge of the county in which such person has a legal residence, of such commitment. The regular Probate Court fees incident to commitment and the expenses of clothing and incidentals furnished such patient in a state hospital to which he or she has been committed, shall be charged against the county of his or her legal residence. The Department of Public Welfare may at its discretion direct the transfer of such patient to another state hospital."

Section 1953, General Code, sets forth the form of affidavit that must be filed with the Probate Court in a county before such a court may take jurisdiction. Said form requires to be set forth therein the township and county in which the one charged with insanity has a "legal settlement".

In my Opinion No. 1737, issued to Hon. J. F. Kuhns, Prosecuting Attorney, New Philadelphia, Ohio, under date of April 5, 1930, consideration was given to the sections hereinbefore mentioned, among others. It was pointed out in that opinion that an opinion found in the Opinions of the Attorney General for the year 1920, p. 265, held that prior to the amendment of said sections it was necessary that a patient have a "legal settlement" in the county before a court could take jurisdiction to determine his sanity, except in those instances in which such a patient was a non-resident or his residence was unknown, as provided for in Sections 1819 and 1820 of the General Code. In my said opinion it was not decided whether the term "legal residence", referred to in Section 1950 of the General Code, was synonymous with the term legal settlement, as mentioned in Section 1953 of the General Code, and it is believed

unnecessary to definitely decide this point for the purposes of this opinion for the reason that your inquiry necessitates interpretation of the terms of Section 1950-1, General Code, rather than the terms of the other sections mentioned.

It has frequently been enunciated by the courts that the intention of the Legislature is the polestar of all judicial interpretation. It is evident that the enactment of Section 1950-1, General Code, was for the purpose of supplying a jurisdiction in those cases in which a resident of Ohio is found to be insane while temporarily out of the county in which he resides. In construing this Section we are not limited to the term "legal residence" alone, but there is used in connection therewith the term "detained". The term "detain", as ordinarily used in legal contemplation, has reference to one who is deprived of his liberty, when such term is used in connection with a person, as distinguished from the detention of property. While the term "legal residence", if used alone in said section, might be construed to mean one who had taken up his abode for some definite period in a county other than that in which his permanent residence is established, when the other language used in said section is taken into consideration, it seems clear that the intent of the Legislature is to confer jurisdiction in such cases when such person is found to be insane within a county. As hereinbefore pointed out, under other sections of the General Code there was already power and authority for a probate court to assume jurisdiction of persons whose residence was unknown or persons who were known to be non-residents of the state.

Section 1818 of the General Code makes it the duty of the Probate Court, when an application is made for the commitment of a person to a hospital for the insane, to require answers to the following questions:

1. Where was the person born.
2. When did he become a resident of this state.
3. When did he become a resident of the county.
4. If not a legal resident of state and county, on what ground is the application made."

Section 1819, General Code, provides:

"If the judge or superintendent finds that the person whose commitment or admission is requested has not a legal residence in this state, or his legal residence is in doubt or unknown, and is of the opinion that such person should be committed or admitted to such institution, he shall notify without delay the Ohio Board of Administration giving his reasons for requesting commitment or admission."

From the foregoing it clearly appears to be one of the duties of a probate judge, upon assuming jurisdiction in insanity cases, to determine the residence of the patient. When such residence is determined and a proper finding made by the court to that effect it is believed to be conclusive upon other officials unless, of course, such ruling is invalidated in another proceeding by a court of competent jurisdiction.

In analyzing the provisions of Section 1950-1, General Code, *supra*, it would appear that when a person is committed to an institution for the insane from a county in which he is temporarily residing or detained, it is the duty of the county in which he has a legal residence to pay the expenses of such commitment as set forth in said section. Clearly commitment is a condition precedent to any obligation on the part of the county of his residence. If there is no such commitment, no obligation arises in so far as the county of his legal residence is concerned and the county in which the proceedings are had must bear the cost incident thereto.

In view of the foregoing citations and discussions and in specific answer to your inquiries, it is my opinion:

1. When an affidavit charging insanity is filed against a person, under the pro-

visions of Section 1950-1 of the General Code, and, upon hearing, the court finds such person not to be insane, the fees and costs incident to said hearing and determination may not be charged back against the county in which said person has a legal residence.

2. It is one of the duties of the Probate Court in conducting hearings in insanity cases to inquire into and determine the residence of the patient and such determination is binding upon other county officials.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1805.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE ROBERT H. EVANS AND COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF COTTAGE No. 2, INSTITUTION FOR FEEBLE-MINDED, APPLE CREEK, OHIO, AT AN EXPENDITURE OF \$190,400.00—SURETY BOND EXECUTED BY THE AMERICAN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, April 23, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for and on behalf of the Department of Public Welfare, and The Robert H. Evans & Company, of Columbus, Ohio. This contract covers the construction and completion of General Contract for Cottage No. 2, Institution for Feeble-Minded, Apple Creek, Ohio, and Alternates G-1, G-2-B, G-6, G-8-C, G-9 and G-12, as set forth in Form of Proposal dated March 25, 1930. Said contract calls for an expenditure of one hundred and ninety thousand, four hundred dollars (\$190,400.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the Controlling Board has properly consented to and approved the expenditure of the moneys appropriated by the 88th General Assembly, for the purpose covered by this contract, in accordance with Section 4 of House Bill No. 203 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the American Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same to you herewith, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.