

said bonds, within the fifteen mill limitation, and to reduce the amount required by the city for operating expenses and general purposes accordingly. The far better procedure would, in my opinion, be to abandon the \$600,000.00 of bonds authorized by a vote of the electors in 1923 and proceed under the provisions of House Bill No. 1 of the 87th General Assembly to submit the questions both of issuing the bonds and for a levy of taxes outside of existing limitations at the same election and on the same ballot. Sections 2293-19 to 2293-23, General Code, both inclusive, as enacted by the General Assembly in said House Bill No. 1, grant the authority for such election, set out the procedure to be followed, prescribe the form of ballot to be used and the majority required to authorize the issue and the exemption of the levy.

For the reasons above stated, it is my opinion that unless the City of ----- proceeds to issue, and issues the \$600,000.00 of bonds referred to in your communication, it may not submit the question of exempting the levy for their redemption and interest at the November, 1927, election.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1000.

PROBATE COURT—JURISDICTION TO ADMINISTER ESTATE—DECEASED OF OHIO SOLDIERS' HOME.

*SYLLABUS:*

1. *Upon the death of an inhabitant of this state, under the terms of Section 10604, General Code, the Probate Court of the county in which he was an inhabitant or resident at the time he died has sole jurisdiction to administer said inhabitant's estate.*
2. *The question of the jurisdiction of the Probate Court to appoint executors or administrators for soldiers who die in the Ohio Soldiers' Home is a question of fact to be determined by the court before which the application for administration is made.*
3. *If the Probate Judge of any county makes a finding that it has jurisdiction of the estate of a deceased soldier who died at the Ohio Soldiers' Home, and issues letters testamentary or letters of administration, it is the duty of the Treasurer of said Home to turn over to the executor or administrator, appointed by such court, as the case may be, any monies or other property belonging to said deceased soldier which may be in his possession.*

COLUMBUS, OHIO, September 14, 1927.

MR. C. B. DENNIS, *Treasurer, Ohio Soldiers' and Sailors' Home, Sandusky, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion, as follows:

"Kindly inform me as to the following situation: A man who has been a member of this Home, and in the hospital most of the time, since 1894, has recently died and his remains taken to his former home—Coshocton, O. He left a considerable amount of money which will no doubt be demanded by his

relatives very soon. What I want to know is this: Has the Probate Judge of the county in which Coshocton is located jurisdiction to issue letters of administration, or does the jurisdiction lay with the Probate Judge of this—Erie County?

I have opinions of former attorneys general which differ somewhat on this point, and would like to be advised so that in case they are demanded I may surrender the monies and other valuables of this dead veteran to the properly legalized official."

Upon inquiry as to where the opinions referred to could be found, you advise that you referred to two paragraphs in a letter of my predecessor addressed to you, which read as follows:

"Jurisdiction to appoint an administrator of the estate of a deceased soldier of the Ohio Soldiers' Home, who entered said Home with the intention of making same his permanent place of abode, and who dies while in said Home, is vested in the Probate Court of Erie County, and no other court in the state has jurisdiction."

"The matter of an appointment of an administrator or guardian is to be determined by the Probate Judge of the county in which the decedent had his residence. Whether the decedent had his residence in Erie County is a question which is determined by the Probate Judge when application is made for letters of administration, and if the Probate Judge of any county makes a finding to the effect that a decedent is a resident of that county and issues letters of administration, such letters when presented to you are authority for payment to said administrator of the funds in your hands belonging to the decedent."

The statements in these paragraphs are not at all in conflict with each other. Assuming that my predecessor referred to "place of abode" in the first quoted paragraph as synonymous with "residence," and that the deceased soldier had not changed his residence before his death, the letter contains a correct statement of the law.

Section 10604 of the General Code provides as follows:

"Upon the death of an inhabitant of this state, letters testamentary, or letters of administration on his estate, shall be granted by the probate court of the county in which he was an inhabitant or resident at the time he died. When a person dies intestate in any other state or county, leaving an estate to be administered within this state, administration thereof shall be granted by the probate court of a county in which there is any estate to be administered. The administration first lawfully granted, in the last mentioned case, shall extend to all the estate of the deceased, within the state; and exclude the jurisdiction of any other court."

Section 10521 of the General Code provides, among other things, that "the decision of the court as to its jurisdiction may be reviewed on error." This provision refers to the decision of the probate court.

The Supreme Court of Ohio in the case of *State ex rel. Barbee, Executor, vs. Allen, Probate Judge*, 96 O. S. 10, held:

"1. The probate court, vested by the constitution with jurisdiction in probate and testamentary matters and recognized as competent to decide on

its own jurisdiction, has power to determine whether a will is entitled to probate and whether letters testamentary thereon shall issue.

2. When, upon the hearing of an application for the probate of a will and for letters testamentary, the probate court finds that the testator at the time of his death was a resident of the county in which the application is made, an order or judgment of the court admitting the will to probate and issuing letters testamentary thereon, however erroneous the conclusions of law and fact upon which the judgment or order is based may be, cannot be reviewed or set aside by a superior court in a proceeding in prohibition."

In your last letter you also state:

"All soldiers who enter the Ohio Soldiers Home say in their applications that they will make it their permanent place of abode. If there is anything to this promise in the application, hasn't the Probate Judge of Erie County jurisdiction in all cases where the soldier dies in the Home?"

This is only one fact for the court to consider in determining the jurisdictional question before it. The soldier may have changed his residence after entering the Home.

It is therefore my opinion that:

1. Upon the death of an inhabitant of this state, under the terms of Section 10604, General Code, the Probate Court of the county in which he was an inhabitant or resident at the time he died has sole jurisdiction to administer said inhabitant's estate.
2. The question of the jurisdiction of the probate court to appoint executors or administrators for soldiers who die in the Ohio Soldiers' Home is a question of fact to be determined by the court before which the application for administration is made.
3. If the probate judge of any county makes a finding that it has jurisdiction of the estate of a deceased soldier who died at the Ohio Soldiers' Home, and issues letters of administration thereon, it is your duty to turn over to such administrator or executor, as the case may be, any monies or other property belonging to said deceased soldier which may be in your possession.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1001.

PUBLIC MONEYS—UNLAWFUL EXPENDITURES—CERTIFICATE OF CHIEF FISCAL OFFICER OF TAXING SUBDIVISION—VOID CONTRACTS—TAXING SUBDIVISION CANNOT RECOVER FROM CONTRACTOR UNLESS CONTRACTOR IS PLACED IN STATUS QUO—PUBLIC FUNDS IN HANDS OF BOARD OF EDUCATION NEEDED FOR PUBLIC PURPOSES CANNOT BE ATTACHED BY JUDGMENT CREDITORS.

**SYLLABUS:**

1. *When public authorities expend or authorize the expenditure of public moneys in pursuance of any contract, agreement, obligation or order without first having ob-*