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THE TERMS "LEGAL RESIDENT" AND "LEGAL RESIDENCE" ARE NOT SYNONYMOUS WITH "LEGAL SETTLEMENT"—A PERSON WHO LIVES IN A CERTAIN PLACE IN A CERTAIN COUNTY FOR ONE YEAR WITH THE INTENTION OF MAKING THAT HIS HOME AND DIED THERE, WAS A LEGAL RESIDENT OF SAID PLACE EVEN THOUGH RECEIVING POOR RELIEF FROM ANOTHER COUNTY—§§5113.15, 5113.05 R.C., OPINION NO. 5912, O.A.G., 1936.

SYLLABUS:

1. The terms "legal resident" and "legal residence" as used in Section 5113.15, Revised Code, are not synonymous with the term "legal settlement" as defined in Section 5113.05, Revised Code. (Opinion No. 5912, Opinions of the Attorney General for 1936, Volume II, page 1183, overruled.)

2. A person who lived in a certain place in a county for one year with the intention of making that place his home, and died in that place, was a legal resident of such place within the purview of Section 5113.15, Revised Code, even though at the time of death he may have been receiving poor relief from another county; and such person should have been buried in accordance with the provisions of division (A) of that section.

Columbus, Ohio, April 6, 1962

Hon. Clarence J. Waugh, Secretary-Treasurer
The Board of Embalmers and Funeral Directors of Ohio
21 West Broad Street
Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Board of Embalmers and Funeral Directors of Ohio would appreciate an opinion on the following isolated case, however several other cases have been brought to our attention, if we have an opinion in our file we will be able to answer similar cases. Namely the party responsible for making payment of welfare cases.

"Example—Mr. X, Zanesfield, Ohio, welfare case, lived in Logan County, moved to Mechanicsburg, Ohio, lived there one year, during this time was in University Hospital, Columbus,

Ohio, off and on, and the welfare department of Logan County paid the University Hospital.

“Funeral Director who made the burial has contacted the Trustees of Mechanicsburg, Welfare, Urbana, County Superintendent of Home at Urbana, County Welfare of Logan County, Jefferson Township, Zanesfield. All agreed that bill should be paid but no one will take the responsibility of making payment. Also contacted County commissioners and County auditor of Champaign County, no results.”

Although you do not so state, I assume that the person here involved died in Mechanicsburg, Ohio, that he was an indigent at the time, and that his body was not claimed by any private person for interment at his own expense.

I further assume that the undertaker who handled the burial did so without any express direction from a public official.

Ohio law makes provision for the burial of certain dead persons at public expense. In this regard, Section 5113.15, Revised Code, reads as follows:

“When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent, or charitable institution in this state, and such body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:

“(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

“(B) If such person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

“(C) If such person had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county.

“Such officials shall provide, at the grave of such person, a stone or concrete marker on which his name and age, if known, and the date of his death shall be inscribed.”

There is no statutory definition of the term "legal residence" as used in Section 5113.15, *supra*, nor have I found any general statutory definition of that term. For election purposes, the residence of a person is the place where his habitation is fixed and to which, whenever he is absent, he has the intention of returning (division (A) of Section 3503.02, Revised Code).

In general, residence, or legal residence, may have various meanings that usually depend upon the purpose for which term is used. In *United States v. Twelve Ermine Skins*, 78 F. Supp., 734 (1948), it was concluded that the word residence can mean almost anything. Usually, however, that word is defined as meaning a person's physical presence in a place plus an interest or some degree of choosing to make the place his home. (*Sturgeon v. Korte*, 34 Ohio St., 525; *Saalfeld v. Saalfeld*, 86 Ohio App., 225; *Casper v. Wales*, 223 App. Div., 89, 227 N.Y. Supp.)

In Reese and Green "That Elusive Word, 'Residence,'" 6 Vand. L. Rev., 561 (1953), the author's note that while legislatures constantly use the word "residence," courts usually define this to mean domicile, and conclude that "residence" usually refers to the one place among all others with which a person is most intimately connected.

Your statement that the welfare department of Logan County paid the hospital bills while said person resided in Champaign County does, however, raise another question.

The payment of hospital bills implies that the person was receiving poor relief in Logan County. Accordingly, such person must have been considered to have had a "legal settlement" in Logan County for the purpose of poor relief.

As to "legal settlement," Section 5113.05, Revised Code, reads in pertinent part as follows :

"Legal settlement for the purposes of sections 5113.01 to 5113.14, inclusive, of the Revised Code, is acquired by residing in one county for a period of one year without receiving poor relief or relief from a private agency which maintains records of relief given. A person having a legal settlement in any county in the state shall be considered as having legal settlement in the township or municipal corporation therein in which he has last resided continuously for three consecutive months without receiving poor relief. * * * Settlement once acquired shall continue until acquired in another county or until a person has been con-

tinuously absent from Ohio for a period of one year or has acquired a legal residence in another state * * *.

“* * *

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It is obvious that a person's legal residence could be the same as, or different from, this legal settlement. The immediate question is whether “legal residence” as used in Section 5113.15, *supra*, should be construed to mean “legal settlement.”

In Opinion No. 5912, Opinions of the Attorney General for 1936, Volume II, Page 1183, the then Attorney General stated at page 1185:

“Section 3496, General Code, (Now Section 5113.15, Revised Code), quoted in part *supra*, is a part of the Chapter of the General Code of Ohio on Poor Relief Laws and consequently, the term of the statute quoted *supra*, namely ‘legal residence,’ is to be construed in *pari materia* with the other sections in this permanent chapter of Poor Relief, *viz.*, Sections 3476, *et seq.*, General Code of Ohio. It would appear, therefore, that the term ‘legal residence’ employed in Section 3495 should be construed as synonymous with the term ‘legal settlement’ defined in Sections 3477 and 3479, General Code. In other words, there is believed to be no reason why the burial of indigents should be placed in any different category from other forms of poor relief under the chapter of Poor Relief Laws. This construction of Section 3495, General Code, is also in accord and re-inforced by the long administrative practice adopted by the Bureau of Inspection and Supervision of Public Offices.” (Parenthetical matter added)

My predecessor in 1936 concluded that the term “legal residence” as then contained in the burial statute, Section 3495, General Code, should be construed as synonymous with the term “legal settlement,” then defined in Sections 3477 and 3479, General Code, because all of those statutes were then in the chapter dealing with poor relief laws.

I note, however, that in 1949 (123 Ohio Laws, 607), Sections 3477 and 3479, General Code, were repealed and the definition of “legal settlement” for poor relief purposes was inserted in the newly enacted Section 3391-16, General Code, in the chapter entitled “Administration of Poor Relief.” At the same time, Section 3495, General Code, was taken from the chapter on Administration of Poor Relief and was put in the chapter entitled “Poor.” Thus, the legislature indicated a clear intention to separate the burial section from the poor relief sections.

In the code revision of 1953, Section 3495, General Code, was recodified as Section 5113.15, Revised Code, and Section 3391-16, General Code, was recodified as Section 5113.05, Revised Code (House Bill No. 1 of the 100th General Assembly). Although these sections were again put in the same chapter of the code, such did not make the burial section a part of the poor relief laws as the definition of "legal settlement" as contained in Section 5113.05, Revised Code, was specifically made to apply only to Sections 5113.01 through 5113.14, Revised Code, and was not extended to Section 5113.15, Revised Code. Further, Section 1.24, Revised Code, specifically states that the 1953 amendments made by said House Bill No. 1 did not change the law as existing at the date of enactment of the amendments.

In view of the above, I find that I am in disagreement with the conclusion reached by my predecessor in 1936 as I do not construe the terms "legal resident" and "legal residence" as found in Section 5113.15, Revised Code, to be synonymous with the term "legal settlement" as defined in Section 5113.05, Revised Code.

In the instant case, since the person involved did live in Mechanicsburg, Champaign County, for a year, it would seem that he had chosen that place as his home, that it was his domicile, and that it was the place among all others with which he was most intimately connected. Accordingly, on the facts given, I can only conclude that at the time of his death he was a legal resident of Mechanicsburg, Champaign County, within the provisions of Section 5113.15, Revised Code, and should have been buried in accordance with division (A) of that section.

To conclude, it is my opinion and you are advised:

1. The terms "legal resident" and "legal residence" as used in Section 5113.15, Revised Code, are not synonymous with the term "legal settlement" as defined in Section 5113.05, Revised Code. (Opinion No. 5912, Opinions of the Attorney General for 1936, Volume II, page 1183, overruled.)

2. A person who lived in a certain place in a county for one year with the intention of making that place his home, and died in that place, was a legal resident of such place within the purview of Section 5113.15,

Revised Code, even though at the time of death he may have been receiving poor relief from another county; and such person should have been buried in accordance with the provisions of division (A) of that section.

Respectfully,
MARK McELROY
Attorney General