3139.

NOTARY PUBLIC—WHEN PERSON HAS LEGAL RESIDENCE IN CITY, LOCATED IN ONE COUNTY AND TEMPORARY ABODE IN CITY IN ANOTHER COUNTY, HE MAY BE COMMISSIONED NOTARY PUBLIC ONLY IN CITY AND COUNTY OF LEGAL RESIDENCE.

SYLLABUS:

A person who has a legal residence in a city located in one county and a temporary abode in a city in another county can be commissioned a notary

public in only the county in which the city wherein he has his legal residence is situated.

Columbus, Ohio, December 19, 1940.

Hon. Ferdinand E. Warren, Prosecuting Attorney,
Ottawa, Ohio.

Dear Sir:

Your request for my opinion reads:

> "I have been requested to secure your opinion on Ohio General Code Section 119, relative to the appointment of notaries public, which reads as follows:
>
> 'The Governor may appoint and commission as notaries public as many persons as he may deem necessary who are citizens of this state, of the age of twenty-one years or over, and residents of the counties for which they are appointed; but citizens of this state of the age of twenty-one years or over, whose postoffice address is a city or village, situated in two or more counties of the state, may be appointed and commissioned for all of the counties within which such city or village is situated.'
>
> A man now residing in the city of Lima, Allen County, Ohio, has offices and is engaged in tax work in Lima, Allen County, Ohio, and Ottawa, Putnam County, Ohio. He has resided in Lima, Allen County, Ohio, for the past three years and prior to that time spent all his life in Ottawa, Putnam County, Ohio, and still declares Putnam County as his residence for the purpose of voting. In effect, his temporary residence is Lima, Allen County, Ohio, and his permanent residence is Ottawa, Putnam County, Ohio.
>
> Under these circumstances would it be possible for him to secure notary commissions in both counties?"

Maps on file with the State Highway Department indicate the city limits of the City of Lima are some eight miles, at least, south of the Putnam County line, while the city limits of the City of Ottawa, Putnam County, are some eight or nine miles north of the Allen County line. It is thus apparent that the person in question can not avail himself of the second provision of Section 119, General Code:

> " * * * citizens * * * whose postoffice address is a city or village, situated in two or more counties of the state, may be appointed and commissioned for all of the counties within which such city or village is situated. * * * "

We must then inquire whether a citizen may be a resident of more

than two counties within this state at the same time within the meaning of this statute.

Section 120, General Code, provides:

> "Before the appointment is made, the applicant shall produce to the governor a certificate from a judge of the common pleas court, court of appeals, or supreme court, that he is of good moral character, a citizen of the county in which he resides, and possessed of sufficient qualifications and ability to discharge the duties of the office of notary public. * * *"

As was said by the court in the case of Kaplan v. Kuhn, 8 O. N. P., 197:

> " 'Residence' is the favorite term employed by the American legislator to express the connection between person and place, its exact significance being left to construction to be determined from the context and the apparent object to be attained by the enactment."

Likewise the noun "citizen" as used in Section 120, General Code, and which must be read in pari materia with Section 119, General Code, has a rather flexible meaning to be determined dependent upon its usage in the sentence.

The legislature has defined residence with reference to the exercise of the voting right in Section 4785-31, General Code, as:

> " * * * * * * * * *
>
> a. That place shall be considered the residence of a person in which his habitation is fixed, and to which, whenever he is absent, he has the intention of returning.
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> * * * * * * * * *
>
> c. A person shall not be considered to have gained a residence in any county of this state, into which he comes for temporary purposes only, without the intention of making such county his permanent place of abode.
>
> * * * * * * * * *"

Thus the legislature has given us a definition of residence, in a political sense, the same as domicile.

In the case of Grant v. Jones, 39 O. S., 506, the Ohio Supreme Court said at page 515:

> "What constitutes a person a resident of Ohio, for the purpose of voting, of admission to the public schools and benevolent institutions of the state, for the administration of estates and in other cases, has been a frequent matter for consideration in the

> courts. There is no substantial difference between the words residence and domicile in regard to these matters, though they are not always synonymous."

And in an earlier case, Sturgeon v. Korte, 34 O. S., 525, at page 534, it will be observed:

> "The word 'residence,' as used in the constitution, has substantially the meaning of 'habitation,' 'domicile,' or 'place of abode.' "

And in Horton v. Horner, 16 Ohio, 145, at page 148:

> "In general, the term residence implies the place of domicile."

Residence, when used in statutes, is generally construed to mean domicile. This is especially true with regard to the subjects of voting, eligibility to office, taxation, jurisdiction and divorce, probate administration, etc. People v. Platt, 3 N. Y. Supp., 367. Similar constructions were placed on the term in Shaffer v. Gilbert, 73 Md., 66; Sharp v. McIntyre, 23 Colo., 99; and Hannon v. Grizzard, 89 N. C., 115. And along the same reasoning was the holding of the Rhode Island Supreme Court in the case of Greenough v. The Board of Police Commissioners, 31 R. I., 212, in deciding what construction should be given the word "citizen" as regards the right of voting. It held:

> "In American laws, a citizen is one who, under the constitution and laws of the United States has a right to vote for a representative in Congress and other public officers, and who is qualified to fill offices in the gift of the people."

That the terms "resident" and "citizen" as used in Sections 119 and 120, General Code, mean a person "domiciled" in the particular county, is further strengthened by court decisions upon the office of notary itself. In the cases of Bank v. Butler, 41 O. S., 519, State, ex rel. Robinson, v. McKinley, 57 O. S., 627, Amick v. Woodworth, 58 O. S., 86, and State, ex rel. Attorney General, v. Adams, 58 O. S., 612, the court held that a notary is a public officer.

Twice, before the adoption of Section 1 of Article V of the Constitution, the Woman Suffrage Amendment in 1923, the Supreme Court held that women were ineligible to the office of notary public because they lacked the qualifications of electors. The point raised by you was presented to

one of my predecessors in office in 1915. Opinions of the Attorney General, 1915, Volume II, page 1386. The first branch of the syllabus of this opinion reads:

> "Under section 119, G. C., a person may only be commissioned as notary public in more than one county when his postoffice address is a city or an incorporated village situated in two or more counties in the state."

In that case a resident of an unincorporated hamlet, the post office of which was located in a building on the county line, had requested a commission as notary in both counties. At page 1387 the then Attorney General said:

> "I am of the opinion, in answer to your first question, that the word 'village' as used in section 119, above quoted, means an incorporated village only *and that a person whose postoffice address is not in a municipal corporation situated in more than one county, may not legally be appointed as notary public in more than one county.*" (Emphasis mine.)

Therefore, in specific answer to your question, it is my opinion that a person, who has a legal residence in a city located in one county and a temporary abode in a city in another county, can be commissioned a notary public in only the county in which the city wherein he has his legal residence is situated.

Respectfully,

THOMAS J. HERBERT,
Attorney General.