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Poor Relief Laws

By PAUL M. BUTLER

Not in the past twenty years has there been such frequent resort to poor relief statutes as in the past eight months, in the face of overwhelming demand upon the poor relief agencies of each community. The infrequency with which both the lawyer and the student of law come into contact with statutes designed to provide for the relief of paupers under certain conditions has prompted the conclusion that a brief discussion of an actual case and the nature and method of relief, and the conditions upon which it is to be given, involved therein, would prove interesting and illuminating.

The history of such legislation takes us back to the time of King Henry VIII in the early part of the sixteenth century when the English parliament imposed upon society as a whole the legal duty of relieving the poor, thus making paupers a charge upon the community in which they lived. Prior to the enactment of this measure, at common law, the poor were not entitled to aid as a matter of right. Charity was considered to be a function of the church, and the state did not concern itself with the relief of those in need. It is said that the ancient rulers had decreed that "the poor should be sustained by parsons, rectors of the church, and by parishoners, so that none of them die for want of sustenance."¹ The advent of legislation, however, along these lines, affected a change in popular sentiment, and it soon became universally recognized that the poor should be relieved and sustained by society through the agency of some governmental unit.

On this subject, Blackstone is quoted as having made the following statement in 1765: "The law not only regards life and member and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the com-

munity, by means of the several statutes enacted for the relief of the poor."² We may conclude, therefore, that the legal obligation was created only by statute, and that, in the absence thereof, no such obligation exists.

Fifteen years after the passage of an act of Congress in 1816, authorizing the formation of a state by the people of the Territory of Indiana, and the adoption of an ordinance by the representatives of the people of the territory in the same year to form such state to be known as the State of Indiana, the General Assembly thereof in its session of 1831 enacted a complete statute, entitled "An Act for the Relief of the Poor."³ By this act, the township overseers of the poor, which office was created by Section 20 of Chapter XX of the Revised Laws of Indiana, 1831,⁴ were directed to investigate the condition of poor people within the township; to farm adult paupers out for hire on contract each year; to put "out as apprentices, all poor children whose parents are dead" or whose parents were unable to keep them; to keep a poor record; to remove from the township any pauper who had not a legal settlement therein to the place" where he, she or they, was or were last legally settled" through certain proceedings prescribed. The act also included provisions concerning litigation by the poor "in forma pauperis," temporary aid to transient poor, poor asylums, and other elements of poor relief.

Perhaps, the most interesting phase of such legislation which has been adopted by practically every state in the Union, is the matter of the removal of a pauper who, by virtue of certain conditions, is not entitled to relief from the township in which he resides at the time of his request or need for aid. The question of the constitutionality of such a statute is often raised and presents an interesting study. Despite the objections frequently made, only one case directly considering the constitutional rights of a pauper sought to be removed thereunder has been found.

Under the present statutes of Indiana, which were enacted in 1901,⁵ "upon complaint of any overseer of the poor, any justice of the peace may, by his warrant directed

² 1 Blackstone Comm. 131.

³ Rev. Laws of Indiana, 1831, P. 380.

⁴ P. 133.

⁵ Burns' Indiana Statutes—1926—Sec. 12279.

to and to be executed by any constable, or by any other person therein designated, cause any poor person found in the township of such overseer, *likely to become a public charge and having no legal settlement therein*, to be sent and conveyed, at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she can not be so removed, such person shall be relieved by such overseer whenever such relief is needed."

For the purposes of this poor relief act, the legislature declared a legal settlement⁶ to be acquired by a male adult within a township by a residence therein for the period of one year, without interruption. Any male adult, therefore, who had not resided in the same township uninterruptedly for one year, had no legal settlement therein, and, if he was likely to become a public charge, was subject to the proceedings for removal "to the place where he belongs."

In order to make an application of these statutory provisions, let us take the actual facts of a proceedings of this nature recently instituted, using exact circumstances of the case, and consider the matter from its inception to its final determination.

After due investigation and examination into the condition of a family of seven children and father and mother, the overseer of the poor filed in the proper justice court his affidavit to the effect that the father of said family had no legal settlement within the township, but had a legal settlement in Smith county, Missouri, and that said father was likely to become a public charge. The defendant pauper appeared by an attorney who demanded a trial upon the affidavit. The statute, as above quoted, contained no provisions as to a hearing or trial. The request was granted, however, and a full and complete hearing was had, with witnesses testifying on behalf of the overseer of the poor and the pauper himself.

It was the contention of counsel for the person sought to be deported that: 1. The defendant was not a public charge, and was not likely to become one; 2. The poor deportation statute of Indiana was violative of the Constitu-

⁶ Burns' Indiana Statutes—1926—Sec. 12259.

tion of the United States, the fifth and fourteenth amendments being specifically mentioned. The basis of the latter contention was that the statute did not provide for a hearing or trial; gave the pauper no relief from the final order of the justice such as an appeal; and, in general, was a denial of liberty without due process of law.

The trial justice found from the evidence that the defendant had no legal settlement within the township; that his last legal settlement had been in Smith county, Missouri, where he had resided for a period of twenty years; that he had been absent from Missouri for a period of fourteen months, during which time he had lived in Terre Haute, Indiana, one month, Bedford, Indiana, one month, Troy, Ohio, two months, and in the township of his residence at the time for the past ten months. The evidence disclosed that he had left his legal settlement in December, 1928; that his family had not left there until February 27, 1929; that his family had gone from Missouri to their then place of residence and, therefore, had not yet acquired a legal settlement within the township where the proceeding was instituted.

The evidence preponderated to show that the defendant and his family were likely to become public charges upon the township.

The justice court held that the statute did not violate the Constitution of the United States. The function to be performed by the justice of the peace was held to be merely an administrative one, prescribed by statute, and the issuance of the warrant for the deportation of the pauper was not the exercise of a judicial power. Because of this fact, it was not necessary that the statute provide an appeal for the aggrieved party, and the failure to so provide a hearing and appeal was not a denial of due process. Any person aggrieved by the exercise of an administrative function by any public officer has a proper and adequate remedy.

The only case touching upon the constitutionality of a similar statute is *Lovell v. Seebach*, 46 N. W. (Minn.) 23, in which the court refused to sustain the objections to the statute on the ground that it was a denial of due process.

In that statute the board of county commissioners and chairman thereof were each given the right to issue an order to the sheriff or constable of the same county directing that the pauper be deported, if, prior to that time, the poor person had been requested to remove from the county and had failed so to do. The court held that the issuance of the warrant was in the exercise of an administrative power, and that the term "due process" is "Not strictly limited to judicial process or proceedings"; that, in other words, the administrative function of issuing the warrant was due process.

The Supreme Court of Minnesota cites the opinion of Justice Cooley of the Supreme Court of Michigan in *Weimer v. Bunbury*, 30 Mich. 201, as follows: ". . . Administrative process of the customary sort is as much due process of law as judicial process. . . . A day in court is a matter of right in judicial proceedings, but administrative proceedings rest upon different principles. The party affected by them may always test their validity by a suit instituted for that purpose, and this is supposed to give him ample protection."

The justice court, in final determination upon the application for deportation, issued a warrant for the removal of the pauper to his last legal settlement on the ground that the person was in such a state of poverty that he was likely to become a public charge; that it was not merely a possibility, which is insufficient basis for deportation, but a strong probability. Upon the issuance of said warrant, the pauper prayed an appeal to the Circuit Court of the county in which the township was situated, which appeal was denied, inasmuch as the statute made no provision therefor. The pauper then made application to the circuit court for a temporary restraining order and permanent injunction against the constable charged with the execution of the warrant.

The restraining order was issued and, upon a hearing upon the affidavits of the pauper and the poor-overseer, the circuit court granted a permanent injunction against the execution of the warrant, thus prohibiting the deportation of the pauper. The court did not touch upon the constitutionality of the statute or the question of likelihood of the

pauper becoming a public charge, but based its conclusion upon a plain misapplication of the well-settled principles of law to the actual facts of the case in regard to the acquisition and loss of legal settlement.

The court held that legal settlement in a township is acquired by one who resides continuously within the township for a period of twelve months and that the statutes of Missouri provided such a provision for legal settlement. The court said: "It is noted by the statute that no person shall be deemed an inhabitant within the meaning of the statute, who has not resided in the county for the space of twelve months next preceding the time of any order being made respecting such poor person." That is the provision of the Missouri statutes, referring to the condition essential to the acquisition of a legal settlement for the purposes of poor relief in that state, that condition being inhabitation within the county for the space of twelve months before the time any order is made (by a Missouri court) respecting such poor person. But such a statute was never intended to be construed as affecting legal settlement once acquired in Missouri by reason of twelve months of inhabitation. It referred to the acquisition of legal settlement in that state,—not its loss.

Construing this statutory provision to mean a loss of legal settlement in any county of Missouri by not having been a resident of the Missouri county for the space of twelve months next preceding the time of entry of any order being made respecting such poor person, and construing the order referred to as meaning the order of a court of any state, and applying such an interpretation to this case, the court concluded as follows: The pauper left Missouri in December, 1928, leaving his family of six children and his wife in the place of their residence for the past twenty years; went to Terre Haute, Indiana, and stayed there for a period of two months; thereafter, went to Bedford, Indiana, where he remained for one month; next, he went to Troy, Ohio, and remained there for about thirty days, leaving there and going to the township in Indiana in which the proceedings were instituted, arriving there April 12, 1929. In the meantime, March 1, 1929, his family had moved to said township.

The original proceedings were begun about February 8, 1930, which time the family had lived in the township eleven months, and the father himself approximately ten months. The basic conclusion of the court was that the pauper had been away from Smith county, Missouri, for fourteen months, and had, therefore, lost his legal settlement therein, because, according to the interpretation given to the statute, the pauper had not been an "inhabitant of said county for the space of twelve months next preceding"; that under the Indiana statute a pauper who had no legal settlement actually or whose last legal settlement could not be determined, could not be deported.

The general proposition of law, contrary to the conclusion of the court, is that a person's legal settlement is not lost except upon the acquisition by him of a new settlement.⁷ According to this general rule, the pauper did not lose his legal settlement in Missouri, as he had not acquired one in the township of his residence.

The circuit court held that a Missouri statute provided that a legal settlement in any county in said state may be lost by absence or abandonment for a period of twelve months next preceding. But the family of the pauper had remained in Missouri and was receiving relief and aid from poor agencies in that state within one year next preceding the application for deportation, and during the period of the father's absence and temporary residence in Terre Haute and Bedford, Indiana.

The intent of a party must be considered in the determination of acquisition or abandonment of a legal settlement.⁸ And that intent to acquire a new, or abandon an old, legal settlement may be determined from circumstances indicating the true intention. In this case, the absence of the father and his short stays in each of the three towns mentioned and the fact that his family remained in Missouri, indicate no intention on his part to abandon his legal settlement in Missouri,—at least, not until March 1, 1929, when his family moved from Missouri to the township where deportation proceedings were begun, or to maintain any other

⁷ Paupers—48 C.J. 486—Followed by thirteen states and England.

⁸ Paupers—48 C.J. 469 et seq

place of residence for the purpose of acquiring a legal settlement until after joining his family in the township about April 1, 1929. It has been repeatedly held that the residence (settlement) of a person having a family is usually determined by the place where his family resides.⁹ The pauper himself, in this case, testified that he had no intention of abandoning his home in Missouri when he first left there and went to Terre Haute, and that he had no intention of acquiring a legal settlement or permanent place of residence until he joined his family in the township. It seems, therefore, that the facts and circumstances of the case justly warranted a finding that the pauper had not lost his legal settlement in Missouri, had acquired none in the township of his then residence, and that he should be returned to the place where he belonged, so as not to deprive others in the township who had legal settlements therein of relief sorely needed, which relief was not, at the time, available in proportion to the unusual demand.

The statutory laws of the various states governing the means and methods of relief for poverty-stricken people through a governmental unit such as the township, and the history forming a background for such legislation provide an interesting story for anyone interested in the vital problems of social welfare of the present day. Much in the way of supplement and amendment of the existing laws may yet be anticipated and desired.

⁹ Paupers—48 C.J. 470.