CHARITIES, BOARD OF STATE: Status of legal settlement of adult feeble-minded persons; whether their legal settlement follows that of parent or guardian.

April 24, 1933.

J. A. Brown, Secretary,
Board of State Charities,
416 State House,
Indianapolis, Indiana.

Dear Sir:

Replying to your letter of April 22d asking for an opinion on the status of the legal settlement of adult feeble-minded persons, and as to whether their legal settlement follows that of the parent or guardian, I desire to advise you as follows:

It is well settled by authorities throughout the United States that when a person is confined in an institution, his legal residence is not affected by his confinement in such institution and hence, in order to determine the legal settlement of an insane person, idiot or feeble-minded person, the fact of his confinement in an institution at any particular place will not establish his residence at the location of such institution.

At common law a parent is under no legal obligation to support an adult child, nor does the fact that such adult child is insane, idiotic or feeble-minded, impose such obligation for support.

Sussex Co. v. Jacobs, 11 Del. 330;
Monroe Co. v. Teller, 2 N. W. 533;

Section 12259 of Burns’ Revised Statutes of 1926 (Acts of 1901, page 323, Chapter 147, Section 5) sets out the manner in which legal settlement may be acquired or lost in the case of poor persons. Paragraph 2 of said Section 5 provides that legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if the father has no settlement, they shall, in like manner, follow and have the settlement of their mother, if she has any. The word “children” as used in this paragraph undoubtedly refers to minor children, since paragraph 4 of the same section relates to male persons and unmarried women over the age of twenty-one years and provides that every male person and every unmarried person over the age of twenty-one years who shall have resided in any
township of this state one whole year, without interruption, shall thereby gain a settlement in such township.

Again we find in paragraph 5 of this section that every minor whose parent has no settlement in this state, who shall have resided one whole year, without interruption, in any township in this state, shall thereby gain a settlement in such township. Paragraph 7 of this section provides that when a settlement is once legally acquired, it shall continue until it shall be lost or defeated by acquiring a new one in this state or by wilful and uninterrupted absence from the township in which such legal settlement had been gained for one whole year or upwards, or upon acquiring a new settlement, or upon the happening of such wilful or uninterrupted absence, all former settlements shall be defeated or lost.

Section 4110 of Burns’ Revised Statutes of 1926 (Acts of 1917, page 142) as amended by Chapter 55 of the Acts of 1923, page 169, provides that legal settlement shall be acquired by insane, feeble-minded, epileptic and poor persons in the same manner as is provided for the relief and support of poor persons under Section 5, Chapter 147, of the Acts of 1901, being the chapter referred to in the preceding paragraph of this letter.

An analysis of the above provisions of law would indicate that where a minor who is feeble-minded or insane, lives with his father in a township in the State of Indiana continuously for one year, he thereby acquires a legal settlement in such township. If thereafter the father should take such minor and go to another state to live, and resided in such other state a sufficient length of time to acquire a settlement under the laws of such state, the settlement in Indiana would be lost. On the other hand, if the father went to another state and acquired a settlement there, leaving the minor child in this state, the settlement of the minor child would remain in this state.

Again, if a minor acquires a settlement in another state and the father would come to Indiana and lived here for a period of one year, leaving such child in the other state, under the provisions of paragraph 2 above referred to, the settlement of the child would follow the father and since the father had lived the required time in Indiana, such child would be deemed to have acquired a settlement in this state.

It is evident, however, from the language of paragraph 4
above referred to, that the settlement of an adult male person or an adult female unmarried person is not affected by the settlement of the parent and hence the migration of the parents from one state to another after the child has arrived at the age of twenty-one years, would not affect the settlement of such person, but the settlement thereafter would be determined by the actual residence of such person, and in order that such person over the age of twenty-one years acquire a settlement in Indiana, it would be necessary that such person live the required period of one year in the State of Indiana. Such being the case, under the laws of Indiana, if a minor has a settlement in another state after such minor has reached the age of twenty years, the fact that the father or mother, as the case may be, moves to Indiana, leaving such child in such other state, would not give the child a legal settlement in this state, since the child would arrive at the age of twenty-one before the required year has elapsed and hence, the residence of the father in this state for less than one year before such child arrived at the age of twenty-one could not confer the required one year settlement upon the child.

In the particular case of Bessie Munger, now confined to the Lincoln State School and Colony in Illinois, the correspondence indicates that she had a legal settlement in the State of Illinois on December 29, 1899, when she was admitted to this institution and that her father came to Indiana in 1919. It is to be presumed that at the time of his removal to Indiana, she was more than twenty years old and hence, his residence in Indiana for less than one year at the time she reached the age of twenty-one years, would not be sufficient to confer upon her a settlement in Indiana and it is therefore my opinion that she retains her settlement in Illinois.

In the case of Helen Hess, who is now confined in the Rome State School of New York, and who was admitted to that institution in 1914 at the age of seven years, and whose father moved to Richmond, Indiana, in December, 1923, when she was but sixteen years of age, and has lived there since such time, it is my opinion that her settlement as a minor followed that of her father to Richmond, Indiana, and became complete in one year while she was still a minor. Hence, in her case, it is my opinion that her settlement is in Indiana and the fact that she arrived at the age of twenty-one years after her
settlement was completed in Indiana, would not change her status, since her confinement to the institution has no effect upon her settlement.

In the third specific case submitted relating to one Esther Kestabaum, who was admitted to the Rome State School in New York at the age of five years and is still confined there and whose father moved to Indianapolis about three years after the date of her confinement and has since resided here, it is my opinion that the removal of her father to Indiana while she was a minor began her legal settlement in Indiana, and since this was completed when she was but nine years of age, and has never been changed since such time, her legal settlement would be in Indiana.

INDIANA UNIVERSITY: Legal status of Professor continuing duties at University and accepting appointment as Assistant Secretary of State Board of Health.

April 22, 1933.

Mr. Thurman B. Rice, M.D.,
Professor of Bacteriology and Pathology,
Indiana University of Medicine,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an opinion as to the legality of your status in case you shall accept an appointment as Assistant Secretary of the Indiana State Board of Health while still continuing your duties as Professor of Bacteriology and Pathology at Indiana University School of Medicine.

I do not think your connection with the Indiana University School of Medicine as Professor of Bacteriology and Pathology is an office within the meaning of Section 9 of Article 2 of the Indiana Constitution which provides, among other things, that no person shall hold more than one lucrative office at the same time except as in the Constitution expressly permitted, and I do not think there is any other constitutional provision which has even a remote bearing on the question.

In my opinion, therefore, there are no constitutional objections to your continuing your present relations with the University and at the same time filling the position as Assistant Secretary of the Indiana State Board of Health.