

it would be necessary to disregard the law relative to the board of county commissioners.

County commissioners, like their clerks, are creatures of statute. They have only such powers as are expressly delegated by the General Assembly, and such incidental powers as are necessary to carry into effect the powers expressly delegated. The board of county commissioners has power to require its clerk to perform his legal duties and no more; nor can such board require of an assistant clerk that which it could not lawfully require of its clerk.

In my opinion the Board of County Commissioners is without power under Section 2409, General Code, to appoint an assistant clerk of the board, whose duties would be to make trips to Columbus, Ohio, for the purpose of conferring with legislative committees relative to proposed legislation which would affect the county and its subdivisions.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

135.

SUPERINTENDENT OF COUNTY INFIRMARY—DISCRETION  
IN ADMITTING A COUNTY CHARGE—ACTION TO COM-  
PEL, WHEN—LEGAL SETTLEMENT—DUTY OF TOWN-  
SHIP TRUSTEES, RELIEF, WHEN.

*SYLLABUS:*

1. *Under the provisions of Section 2544, General Code, the superintendent of the infirmary of a county must be satisfied that a person should become a county charge before accepting him as an inmate from a township and such superintendent is authorized to use discretion as to such admission. There is no type of action which the township trustees can bring to compel such superintendent to admit a person to the county infirmary; unless and until said superintendent is so satisfied.*

2. *Where legal settlement is had by a person in need of relief within a township, it continues to be the duty of township trustees of such township to grant the necessary relief to that person after he has been refused admission to the county infirmary by the superintendent thereof, for the*

*reason that the superintendent is not satisfied that such person should become a county charge.*

COLUMBUS, OHIO, February 16, 1937.

HON. A. ROSS SILVERLING, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR: I am in receipt of your recent communication, which reads as follows:

"Jackson Township in our county has had a relief family to take care of during the past six years. The legal settlement of the family isn't questioned, although the family has actually lived outside the township for four years. The township trustee attempted to have the family declared paupers and committed to the County Home, which was refused by the superintendent under G. C. 2544 and O. A. G. 509, due to the fact that the father is able-bodied and has work during short intervals. The township trustees now refuse to take care of this family and have asked if the superintendent's ruling under G.C. 2544 is final.

Question: Is there any type of action that the township trustees can bring to compel the superintendent to take in this family, and under the above conditions are not the township trustees compelled to continue caring for this family until their legal settlement is changed, as set out in G.C. 3477?"

Section 2544, General Code, reads as follows:

"In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge, he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

In Attorney General's Opinion No. 509, 1927, which commented on the duties and the authority of the superintendent of a county home with

regard to admission of indigents, it is stated that such superintendent *may* grant relief and that he may approve or reject applications made for admission to the county home. It may be reasonably concluded that such superintendent is bound under the provisions of Section 3481, General Code, to consider the application, which is completed by the township trustees and which must set forth various points of information, but the language of the statute clearly gives him discretionary power to accept or refuse admission.

Again referring to Section 2544, General Code, when investigation is made by the township trustees and they are of the opinion that the person complained of is entitled to admission to the county infirmary and have then transmitted a statement of the facts to the superintendent thereof, that superintendent, among other requirements, must be satisfied that such person should become a county charge, and he shall receive such person as such county charge.

It is well established that where discretion is given an officer, he may be compelled to use discretion and consider the application, but the result of the exercise of his discretion cannot be compelled in any type of action which the township trustees could bring, unless the decision of such officer is unreasonable, tyrannical, arbitrary, savors of fraud or constitutes in fact an obvious abuse of discretion. The superintendent is bound to act with due discretion with relation to the rights and interests of the board of trustees and the applicant, *State ex rel, Columbus Gas & Fuel Co. vs. Public Utilities Commission of Ohio*, 122 O. S. 473.

In your request you state that there is no question but that the legal settlement of this family is in Jackson Township, in your county, and that the reason for the refusal by the superintendent to admit the applicant, was based on the fact that the father was able bodied and had intermittent employment. Such superintendent being clothed with authority to make that decision and presuming that it is not arbitrary, tyrannical, unreasonable, tainted with fraud or an abuse of discretion, no action could be successfully maintained by the township trustees against such superintendent. *Ex parte Black*, 1 O. S., p. 30. *State, ex rel, Leonard and Straton vs. Crawford County*, 17 O.C.C., p. 370.

The fair and lawful use of discretion vested in an officer cannot be controlled or limited by writ of mandamus. (25 O. Juris., p. 1003, Sec. 28 and authorities therein quoted).

The trustees of said township having given this family relief under the laws for the relief of the poor, over a period of the past six years, cannot avoid continuing the granting of such relief, if the facts upon which they originally justified the same remain unchanged.

Section 3478, General Code, provides that it shall be sufficient defense for the township trustees in an action based on the refusal of such

officers, to afford support or relief to any person, to show that such person, during the period necessary to obtain a legal settlement therein, has been supported in whole or in part by others, with the intention to thereby make such person a charge upon such township.

It is, therefore, my opinion, upon the facts stated in your request, that there is no type of action that the township trustees can successfully maintain to compel the superintendent to admit the family in question and that the township trustees are bound in law to continue the granting of aid to the family in question.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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136.

COUNTY SHERIFF—AUTHORITY FOR DEPUTY, ENFORCE  
TRAFFIC RULES AND REGULATIONS—NO AUTHORITY  
UNDER SEC. 7251-1—DETAIL OF REGULARLY APPOINT-  
ED DEPUTY WHEN, UNDER SEC. 7251-1 .

*SYLLABUS:*

*A sheriff is granted no authority to appoint a deputy sheriff to enforce traffic rules and regulations under Section 7251-1, General Code. The sheriff is authorized under such section to detail a deputy sheriff appointed in compliance with Section 2830, General Code, to perform such duty if and when the county commissioners have created a road fund out of which such deputy sheriff can be equipped and compensated as provided by Section 7251-1, General Code.*

COLUMBUS, OHIO, February 17, 1937.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR: I am in receipt of your communication of recent date as follows:

“Under the provisions of Ohio General Code, Section 2830, the Sheriff of Seneca County has appointed two deputies, whose salaries total the amount appropriated by the County Commissioners for this purpose. The Sheriff is now desirous of appointing a special deputy under the provisions of Ohio General Code, Section 7251-1. It's admitted that this County has more