

It has been held in a somewhat analogous opinion by my predecessor in office to be found in the reported Opinions of the Attorney General for 1929, Vol. III, page 1780, as disclosed by the second branch of the syllabus:

“2. County commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective of whether such person is indigent or otherwise.”

However, that opinion was based upon the reasoning that since an elaborate hospital system for the treatment of tuberculosis has been established in this state that it appeared that the whole Act contemplated the furnishing of tubercular treatment in some hospital or other institution within the State of Ohio.

However, in border localities in the state, in the case of non-contagious diseases, the closest hospital facilities for the particular treatment in question might be located outside the State of Ohio. Therefore I do not arbitrarily conclude that in the case of non-contagious diseases that the township trustees are authorized to furnish hospital care for indigents only in hospitals within the territorial limits of the state. However, it is apparent that the township trustees would have no authority to pay hospital bills or traveling expenses to distant hospitals if reasonable facilities are present at a less distant point, inasmuch as reasonable requirements would dictate that such medical care and hospital service be furnished by a hospital situate near the person to be treated. In other words, it would be unreasonable to incur a greater expense in transporting an indigent person to a hospital at a greater distance or to pay hospital expenses for such indigent if a suitable doctor and hospital are near at hand and available for such type of care.

Consequently it is my opinion that an indigent person suffering from a non-contagious disease who has a legal settlement within a township is entitled to hospitalization at the expense of the township trustees, if the same is necessary in any case where he is entitled to free medical attention, but there is no authority to transport such indigent and to pay his hospital expenses to a distant hospital if reasonable facilities for the particular type of care in question are available at a hospital less distant.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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4136.

APPROVAL, CORRECTED ABSTRACT OF TITLE TO LANDS IN FLATROCK TOWNSHIP, HENRY COUNTY, OHIO, FOR PARK PURPOSES, EXECUTED BY THE SUPERINTENDENT OF BANKS.

COLUMBUS, OHIO, APRIL 9, 1935.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—Some months ago Hon. William H. Reinhart, then Conservation Commissioner, submitted to me for examination and approval an abstract of title covering certain parcels of land in Flatrock Township, Henry County, Ohio, which were then owned by Henry Weddelmann and Ida Weddelmann and by Charles Cordes, respective-

ly, and which the State proposed to purchase for the use of the conservation council in the development of the property for park purposes.

The title of Henry Weddelmann and Ida Weddelmann to the property owned by them was approved at that time and the transaction for the purchase of their property was closed very soon after the approval of the proceedings by this office.

The purchase of the tract of land then owned by Charles Cordes could not be made at the time above referred to for the reason that Charles Cordes and his wife had executed a mortgage to the Metropolitan Life Insurance Company upon the parcel of land which the State desired to purchase, as well as upon other lands then owned by Charles Cordes; and Charles Cordes was at the time unable to secure from the Metropolitan Life Insurance Company a release of this mortgage as to the parcel of land which the State desired to purchase. In the meantime the abstract of title and other files relating to the purchase of this property have been in my office.

A few days ago I received from the abstractor further information relating to the title to this property. From the information received, it appears that under date of Nov. 14, 1934 Charles Cordes conveyed the property here in question to The Commercial State Bank of Napoleon, Ohio. This property is described as follows:

Situated in the Township of Flatrock, County of Henry, and State of Ohio, and known as:

A part of the northerly part of the fractional south half of Section Four in Township Four north of range Six east, in Henry County, Ohio, more particularly described as follows:

Beginning at a point in the north line of said Section Four that is 247.5 feet east of the north and south half-section line and thence south on a line parallel to and fifteen rods east of said half-section line 3057.3 feet to the southerly right-of-way line of the U. S. Highway No. 24, said point being the true place of beginning; thence westerly along the southerly line of said highway south  $77^{\circ} 30'$  west, 279.5 feet to a concrete marker; thence south  $77^{\circ} 40'$  west 501.0 feet to a concrete marker; thence south  $77^{\circ} 43'$  west 59.5 feet to a point; thence south  $23^{\circ} 59'$  east 16.5 feet to a point; thence south  $77^{\circ} 43'$  west 133.4 feet to a point; thence south 23 degrees  $59'$  east 103.9 feet to the northerly property line of the Miami and Erie Canal Lands; thence easterly along the said northerly line of said Canal Lands, north  $74^{\circ}$  east 336.8 feet to a point; thence north  $80^{\circ} 15'$  east 272.6 feet to a point; thence north  $74^{\circ} 42'$  east 423.3 feet to a point in the easterly line of the lands of the grantor herein; and thence north 89.1 feet to the place of beginning, containing 2.47 acres of land, be the same more or less, but subject to all legal highways.

Reserving herein, however, the right of ingress and egress over the lane now running from U. S. Highway No. 24 to and over the present bridge over said former Miami and Erie Canal, to the lands of grantor situated on the southerly property line of the former Miami and Erie Canal Lands, until a permanent highway from said U. S. Highway No. 24 across said Miami and Erie Canal Lands is dedicated to the public use.

And also: a part of the northerly part of the fractional south half of Section Four in Township Four North of Range Six East, in Henry County, Ohio, more particularly described as follows:

Beginning at a Point in the north line of said Section Four that is 247.5 feet east of the north and south half-section line and thence south on a line parallel to and fifteen rods east of said Half-section line 3060.9 feet to a point; thence south  $75^{\circ} 09'$  west 572 feet to a point; thence south  $14^{\circ} 51'$  east 32.5

feet to the southerly line of the Miami and Erie Canal property; and the true place of beginning; thence south  $14^{\circ} 51'$  east 161.6 feet to the low water mark of the Maumee River; thence north  $58^{\circ} 55'$  east along said water line 442 feet to the point of intersection of the southerly line of said canal property and said Water line; thence south  $87^{\circ} 52'$  west 251 feet; and thence south  $75^{\circ} 01'$  west 176 feet to the place of beginning, containing .87 acres of land, be the same more or less, but subject to all legal highways.

On December 11, 1934 The Commercial State Bank of Napoleon, Ohio, by the hand of one A. W. Pleister as Conservator of said bank, conveyed this property by deed to the State of Ohio. However, it appears that no part of the consideration was paid to said bank or to its Conservator for this conveyance and thereafter the Superintendent of Banks took over the property and assets of the bank for liquidation and obtained title to this property under the provisions of Section 710-91 General Code.

On February 7, 1935 the Metropolitan Life Insurance Company executed and acknowledged a proper instrument of release in and by which the property above described was released from the operation of the mortgage executed to said company by Charles Cordes.

Not being entirely certain as to the authority of the Conservator of The Commercial State Bank of Napoleon, Ohio to execute the deed above referred to, I requested Hon. S. H. Squire, Superintendent of Banks, to execute a deed for this property to the State. The Superintendent of Banks complied with my request and executed this deed under date of April 1, 1935 and submitted with the deed a certified copy of the Journal Entry of the Common Pleas Court of Henry County authorizing him, as Superintendent of Banks, to execute this deed.

Upon examination of the corrected abstract of title with respect to this property and of the other instruments above referred to, which have been recently submitted to me, I am of the opinion that S. H. Squire, as Superintendent of Banks, and as such, holding for liquidation the property and assets of The Commercial State Bank of Napoleon, Ohio, has a good and indefeasible fee simple title to the above described property subject only to the following possible exceptions:

In the first place the abstract of title submitted to me does not show what, if any, taxes or assessments stand as a lien against this property or against the larger tract of land formerly owned by Charles Cordes, of which the property here in question is a part. Before the transaction for the purchase of this property is closed, any taxes or assessments which are a lien upon this property, should be segregated with respect to the parcels of land above described, and such taxes and assessments so aggregated, should be paid so that the State will obtain an unincumbered title to the property.

On August 27, 1928 Charles Cordes, then the owner of the above described and other real property in Flatrock Township, Henry County, Ohio, executed a deed to the State of Ohio in and by which he conveyed to the State an easement in 1.98 acres of land for State Highway purposes.

Without having before me a plat of this property, I am unable to determine whether this easement affects the property above described. The deed by which the easement here in question was conveyed, has been recorded in Volume 118, Page 87 of the Deed Records in the office of the Recorder of Henry County, Ohio, and if it be deemed a matter of any importance, this deed can be examined by one of your engineers to see, how, if at all, the easement therein granted will affect the property here in question. However, the deed by which S. H. Squire, as Superintendent of Banks, conveyed this property to the State recites that the property thereby conveyed is subject to all legal highways, and I assume from this recital that the exception above noted with respect to the

easement deed theretofore executed by Charles Cordes to the State of Ohio, is not a matter of any importance.

Upon examination of the deeds executed to the State of Ohio by the Conservator of The Commercial State Bank of Napoleon, Ohio and by the Superintendent of Banks, as liquidator of this bank, I find that said deeds have been executed and acknowledged in the manner required by law. Although, as above noted, there is some question in my mind as to the authority of the Conservator of The Commercial State Bank of Napoleon, Ohio to execute a deed for the property here in question, there is, of course, no question with respect to the authority of the Superintendent of Banks to execute a deed for this property and I am quite clearly of the opinion that the form of this deed is such that it is legally sufficient to convey this property to the State of Ohio by fee simple title. Such deed is accordingly hereby approved by me.

Upon examination of Contract Encumbrance Records Nos. 22 and 23, which have been submitted as a part of the files relating to the purchase of this property, I find that the same have been executed in the manner required by law and that there is shown thereby a sufficient unencumbered balance in the property appropriation account to pay the purchase price of the above described parcels of land which purchase prices are \$200.80 and \$95.70, respectively.

I further find from the files submitted to me in connection with the purchase of the property here in question, that this purchase has been approved by the Controlling Board and that the amounts of money necessary to pay the purchase prices of these respective parcels of land, above described, have been released by said Board from the appropriation account.

In the consideration of the abstract of title and other files relating to the purchase of the above described property, I assume that the Conservation Council, acting under the authority conferred upon it by Section 472 General Code, has authorized and provided for the purchase of this property by the adoption of a proper resolution for the purpose, which has been duly entered in the minutes of said body in your office. A copy of such minutes showing this resolution and the adoption thereof by proper vote of the council, should be made a part of the files when the same are submitted to the Auditor of State for warrant pursuant to the voucher covering the purchase price to be issued by you.

Subject to the possible exception above noted with respect to outstanding taxes and assessments, the title of the Superintendent of Banks of the above described property is hereby approved, and the corrected abstract of title, deeds, contract and encumbrance records and other files relating to the purchase of this property are herewith returned to you.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4137.

#### SALES TAX—WHAT CONSTITUTES SALE IN INTERSTATE COMMERCE.

##### SYLLABUS:

1. *A state cannot tax interstate commerce nor tax business or sales which constitute such commerce or the privilege of engaging in interstate commerce.*
2. *In determining what constitutes interstate commerce, regard must be had in*