

INTOXICATING LIQUOR—OHIO SOLDIERS' AND SAILORS' HOME—BOARD OF TRUSTEES—IN USE OF SOUND DISCRETION HAS AUTHORITY TO RULE CERTAIN BARS AND TAVERNS OUT OF BOUNDS OR OFF LIMITS—PERSONS ADMITTED TO HOME—DISCIPLINARY ACTION—DISCHARGE FROM HOME.

SYLLABUS:

The Board of Trustees of the Ohio Soldiers' and Sailors' Home, after determining in its sound discretion the necessity therefor, has the authority to make a rule declaring certain enumerated bars and taverns out of bounds or off limits for persons admitted to such Home, and has the further authority to enforce such a rule by disciplinary action which could culminate in discharge from the Home.

Columbus, Ohio, September 28, 1951

Mr. James L. McCrystal, Member Board of Trustees
Ohio Soldiers' and Sailors' Home
Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion, which read as follows:

"As a member of the Board of Trustees of the Ohio Soldiers' and Sailors' Home, I have been instructed, by the Board, to write you for an opinion on the following questions.

"1. Have the Board of Trustees of the Ohio Soldiers' and Sailors' Home the authority, under the laws of the State of Ohio, to declare certain bars and taverns, situated within 100 feet of the property owned by the State of Ohio and used for the Ohio Soldiers' and Sailors' Home, out of bounds or off limits for members of the institution?"

"2. If the answer to the above question is in the affirmative, would the Board of Trustees have the authority, in order to enforce the rule, to discharge from the home any violator of the rule?"

The subject of your inquiry relates to the disciplinary power of the Board of Trustees of the Ohio Soldiers' and Sailors' Home to regulate and control the conduct of its inmates. Turning, then, to the statutory authority for the establishment and control of this home, we find that it is

the subject of a special enactment found in Chapter 4, Sections 1905 to 1916 of the General Code of Ohio. Section 1905 provides for the establishment of such home, which "shall be a home for honorably discharged soldiers, sailors and marines." Section 1909, as amended, provides for the admission to the Ohio Soldiers' and Sailors' Home as follows:

"All honorably discharged officers, soldiers, sailors and marines, who served in the regular or volunteer forces of the United States or the Ohio national guard or members of the naval militia during the Civil war, the war with Spain, the Philippine insurrection, the China relief expedition, the Indian war, the Mexican expedition, the World War I, or World War II and who have been citizens of Ohio one year or more at the date of making application for admission, who are disabled by disease, wounds or otherwise, and by reason of such disability incapable of earning their living, and all soldiers of the national guard of Ohio, or members of the naval militia who heretofore have lost, or hereafter may lose an arm or leg, or their sight, or may become permanently disabled from any cause, while in the line and discharge of duty, and are not able to support themselves, may be admitted to the home *under such rules and regulations as its board of trustees adopts.*" (Emphasis added.)

Section 1910, provides for the inspection by the United States Congress of such home as a condition of making appropriations for its maintenance. Other sections of the law give preference to those who have served in Ohio military organizations, provide for the payment of transportation to the home and provide that no insane person shall be admitted to the home, etc. It is seen, from the emphasized portion of the above quoted Section 1909, that the Legislature expressly gave the power to the Board of Trustees of the home to adopt rules and regulations pertaining to the admission of veterans.

The Ohio Soldiers' and Sailors' Home, under former Section 1835 of the General Code, was under the power and control of the State Department of Public Welfare. However, this home was withdrawn from the control of the State Department of Public Welfare by an amendment to the statutes governing said home contained in Section 1905-1, which became effective January 1, 1942. This section provides, in part, as follows:

"There shall be a board known as the board of trustees of the Ohio soldiers' and sailors' home, which shall consist of five members who shall have charge and custody of the Ohio soldiers' and sailors' home at Sandusky, Ohio. * * *

“Such board shall *govern, conduct and care* for the home, the property thereof, and *the veterans residing therein* as provided in the laws governing the department of public welfare so far as the provisions thereof are not inapplicable and are not inconsistent with the provisions of the laws governing such home.
* * *”

It is noted that Section 1905-1 provides that the laws governing the Department of Public Welfare shall be controlling in so far as they be not inconsistent or inapplicable to the special laws pertaining to the Ohio Soldiers' and Sailors' Home.

From an examination of the laws governing the Department of Public Welfare, I have come to the conclusion that none, now effective, is applicable at this Home.

Present Section 1835, General Code, provides as follows:

“The director of public welfare shall appoint such employes as may be deemed necessary for the efficient conduct of the department, prescribe their titles and duties, except as otherwise provided by law. The department of public welfare shall have full power to maintain, operate, manage and govern all state institutions for the care, treatment and training of the mentally ill, psychopathic, mentally deficient, and epileptic; for the custody, control, training and rehabilitation of persons convicted of crime and sentenced to penal or reformatory institutions; for the custody, control, training and rehabilitation of minors committed by juvenile courts; for the treatment of mentally ill, mentally deficient, psychopathic and epileptic persons suffering from tuberculosis; and the Madison Home. The department may designate such institutions, present and future, by appropriate respective names, regardless of present statutory designation.”

It will be seen that the Ohio Soldiers' and Sailors' Home is not among the institutions now under the supervision and control of the Department of Public Welfare; thus, any laws applicable to these sundry institutions are inapplicable to the Ohio Soldiers' and Sailors' Home. Therefore, the special provisions of the General Code relating to this establishment are controlling in the matter at hand.

It will be noted that Section 1905-1, General Code, among other things, provides that the Board of Trustees may *govern, conduct and care* for the home and the veterans residing therein. Since there appears to be no existing laws governing the Department of Public Welfare in-

consistent with any of the rules which have been or might be adopted by such Board, the authority of such Board to adopt rules and regulations for the governing, conducting and caring for the home and such veterans would be limited only by the fundamental proposition of law that rules and regulations must not be capricious or arbitrary, but must bear some reasonable relationship to the purpose intended to be served. I, therefore, conclude that the Board of Trustees of the Ohio Soldiers' and Sailors' Home, in its sound discretion, has broad rule-making power necessarily incident to its express statutory duty provided in Section 1905-1, General Code, to govern, conduct and care for the home and for the veterans residing therein. I base this conclusion, not only on the language of Section 1905-1, General Code, but also on the rationale that the power to make rules and regulations for the admission to the home, as provided in Section 1909, General Code, necessarily implies the further authority to make rules and regulations regarding the retention or discharge from the Home after such veterans are admitted.

In the governing, conducting and caring for the Home and such veterans, the purpose of the Board necessarily must be the best interests of the veterans themselves. Thus, any rule or regulation must be tested as to reasonableness by its relation to such purpose. In the first instance, at least, such determination must be made by the Board itself, acting in its sound discretion and with its intimate knowledge of the problems peculiar to the institution. It, therefore, becomes necessary to apply these general principles to your specific questions.

You inquire as to whether you may declare certain bars and taverns, within one hundred feet of the property of the Soldiers' and Sailors' Home, off limits or out of bounds for members of the institution. I believe that an answer to your question must depend upon an interpretation of the meaning of such question. If, by such question, you mean to inquire as to your power to draw a line one hundred feet from state property and prohibit the veterans residing at the Home from patronizing any bar or tavern within such area, regardless of the nature of operation of the establishment, I am of the opinion that you lack such power. In such event, your purpose would be to make the operation of such bar difficult, if not impossible, within such prescribed area, based upon the belief that it would not be good policy to have such a bar in such close proximity to the Home, whereas the state, by the Department of Liquor

Control, has already authorized the establishment of such place of business at such location.

If, however, experience has shown that a particular bar, due to the nature of its operations or environs, is a source of recurrent disturbances involving residents of the Home to such a degree that its affects the good conduct of the Home, an entirely different situation is presented. In such case, the distance of such bar from the Home is not determinative and is of relatively minor importance. In such event, for the best interests of the veterans themselves, some or all of such veterans may be forbidden to enter such places. The fact that, in certain cases, complaint might be lodged with the Department of Liquor Control as to the operation of such establishments does not, in my opinion, mean that such is your exclusive remedy. Your immediate concern is with the conduct of those placed in your charge and it is my opinion that, in such case, under your broad rule-making power, the Board of Trustees of the Ohio Soldiers' and Sailor's Home may proceed to adopt a rule or regulation declaring certain enumerated bars and taverns out of bounds or off limits for persons admitted to said Home and that it has the further power to enforce such a rule by disciplinary action which could culminate in discharge from the Home.

Respectfully,

C. WILLIAM O'NEILL
Attorney General