

“In municipalities having no firemen’s pension fund, and having five or more members of the fire department in addition to the presiding officer of the “Trustee of Firemen’s Indemnity Fund,” it is the duty of council under Section 4647-4, G. C. to make a levy not to exceed three-tenths of one mill upon each dollar of the taxable property of the municipality, to provide a firemen’s indemnity fund. Council may use its discretion as to the minimum rate of levy, except that the fund provided in Section 4647-3 ‘shall be raised in not less than four years.’”

With respect to your second question relating to the remedy in the event of the failure of the proper officials to establish such fund in cases where the establishment is required by law. This question is answered by the provisions of Section 12283 of the General Code defining mandamus as “a writ issued, in the name of the state, to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.”

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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547.

DETENTION HOSPITAL COUNTY INDIGENT INSANE—SUBJECT TO DEPARTMENT OF PUBLIC WELFARE—RULES AND REGULATIONS—STATE CONTRIBUTION.

*SYLLABUS:*

1. *A detention hospital owned or maintained by a county for the purpose of housing and caring for indigent insane persons properly adjudicated as such, is subject to the authority of the Department of Public Welfare to license and inspect such detention hospital.*

2. *The Department of Public Welfare may issue rules and regulations for the management of a detention hospital owned or operated for the indigent insane of a county when the State contributes to the maintenance of such detention hospital.*

3. *The Department of Public Welfare has full authority by virtue of the provisions of Sections 3155 and 3155-1, General Code, to insist on the obedience of such rules and regulations as it may promulgate in*

*order to maintain satisfactory standards of care in such detention hospital.*

COLUMBUS, OHIO, May 1, 1937.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: This is to acknowledge your recent communication, which reads as follows:

“As an outgrowth of the crowded conditions of the Cleveland State Hospital for the insane it became necessary, several years ago, for the County Commissioners of Cuyahoga County, in furtherance of their authority to contract for the maintenance or support of lunatics or the care of the indigent sick and disabled under Sections 2402 and 3138-1 of the General Code, to contract with certain private sanitariums in Cuyahoga County and vicinity for the care and maintenance of insane persons. At that time certain rates were agreed upon to be paid for such care and maintenance between the county commissioners and the owners of these so-called private sanitariums, ranging from \$3.50 to \$4.50 per day per person, which provided a satisfactory patronage awarding device and a source of profit to the owners of the sanitariums. This continued for some time, or until the burden became quite heavy on Cuyahoga County, the cost of which amounted to over one million dollars in the year 1934.

In order, therefore, to shift the responsibility for the care and maintenance of these insane persons upon the State, there was passed in the 91st General Assembly an act, known as the McIntyre Act, which amended Section 3155 of the General Code, referring to county detention hospitals for the insane, to provide that the support of persons confined in detention hospitals, as defined by Section 3154, G. C., should be borne by the state under certain conditions; viz., that such persons had previously been adjudged insane by the probate court and their admission to a state hospital refused because of lack of room. In the year 1936 there was appropriated by the legislature \$1,022,000 to pay for the care and maintenance of these people at the rate of \$2.50 per day per person.

The Department of Public Welfare felt that if the State is obligated to pay such an amount of money for the care of insane persons in private sanitariums, the Department of Public Welfare should have some authority in setting standards

and establishing rules and regulations whereby these private sanitariums should be conducted. Accordingly, the Department was instrumental in having passed H. B. 683, in the 91st General Assembly, further amending Section 3155 G. C. and enacting supplementary Section 3155-1, permitting the Department of Public Welfare, through its authorized representatives, to require that certain prescribed standards be maintained.

On November 17, 1936, under the authority granted by H. B. 683 (Sec. 3155-1 G. C.), certain rules and regulations were adopted by the Department of Public Welfare governing detention hospitals, in which persons adjudged insane by the Probate Court were confined at the expense of the State of Ohio. Because of a lack of appropriation for this purpose, the Department of Welfare did not attempt to enforce or put into operation the rules and regulations previously adopted until early in the year 1937. Among other regulations adopted by the Department in its Bulletin (Publication No. 42) issued November 17, 1936, setting up standards of inspection and licensing detention hospitals, was the regulation to prevent over-crowded conditions. This regulation reads as follows:

‘Not less than 125 square feet of floor space per patient, including living, sleeping and bathing quarters, but excluding dining, kitchen and service rooms, shall be provided.’

Dr. Guy H. Williams, Superintendent of the Cleveland State Hospital, and Hugh Carney of Cleveland, employed by the Department as Supervisor of Detention Hospitals, were assigned to the task of putting into effect the licensing of these private institutions and to correct some of the existing irregularities. While it was recognized at the outset that all the rules and regulations could not be complied with, it was felt that as many as possible should be adopted whereby the patients of these private sanitariums should have the maximum amount of care and treatment. Over-crowding was one of the conditions which Dr. Williams and Mr. Carney tried to correct. Unfortunately, as fast as these men removed patients from overcrowded sanitariums the Probate Court would immediately proceed to replace those persons removed from such crowded conditions, with new commitments. This resulted in a conference in the office of the county commissioners of Cuyahoga County, Friday, April 16, 1937, which conference was called for the purpose of trying to arrive at a reasonable working arrangement whereby over-crowding could be corrected. This

conference was attended by the Probate Judge of Cuyahoga County, Nelson J. Brewer, two of the county commissioners, the Prosecuting Attorney of Cuyahoga County, Dr. Guy H. Williams, Superintendent of the Cleveland State Hospital, Mr. Hugh Carney and myself.

At this conference, the argument was advanced by the Probate Judge that these private sanitariums in Cuyahoga County were not detention hospitals, that there existed but one detention hospital in Cuyahoga County, which was the City Hospital where a psychopathic ward had been in operation for many years. One of the arguments that Judge Brewer brought forth to substantiate his contention that there was but one detention hospital in Cuyahoga County, which was the City Hospital, was that detention hospitals are hospitals where the Probate Judge may commit persons alleged to be insane, whose cases are doubtful, or whose insanity is likely to be temporary, and are to be kept under observation until it is definitely decided whether the person so committed is cured or is a fit subject for a state hospital. The Judge further contended that because these private sanitariums are not detention hospitals the Department of Public Welfare had no authority to say which sanitariums should have patients removed from them, nor could it establish rules and regulations governing the conduct of these private sanitariums, apparently basing his contention on the provisions of Sections 2402 and 3138-1 of the General Code.

Inasmuch as the State is obligated only for the support of certain persons confined in *detention hospitals*, as provided for by Sections 3154, 3155 and 3155-1 G. C., we do not see that Sections 2402 and 3158-1 G. C. have any application to the subject of the state's responsibility. The Department of Public Welfare contends that the state is required to bear the support of persons committed to detention hospitals as defined in Sections 3154, 3155 and 3155-1 G. C., only; and that in paying the bill for the care and maintenance of such persons, the State should have the right to license and set up standards, rules and regulations whereby these private sanitariums should be rated.

The opinion I am asking to have rendered at this time, therefore, should be based on the following questions:

1. Under what conditions and circumstances is the State of Ohio obligated to pay any of the expense of the care and maintenance of persons adjudged insane or alleged to be insane

when such persons are not admitted to state hospitals for the insane?

2. Are the so-called private sanitariums provided or contracted for by the county commissioners under Sections 2402 and 3138-1 G. C., *detention hospitals* in the sense specified by Sections 3154, 3155 and 3155-1 G. C., obligating the state to pay the cost of care and maintenance of patients confined therein. Can Sections 2402 and 3138-1 be construed to be applicable in any way to Sections 3154, 3155 and 3155-1?

3. Under what conditions and circumstances may the State require that such places of confinement provided by the County Commissioners under Section 2402 and 3138-1 G. C. shall be subject to inspection and licensing by the State Department of Public Welfare and subject to other requirements placed on the State by Sections 3155 and 3155-1 of the General Code ?

4. Are not the provisions of Sections 3134, 3155 and 3155-1 G. C. consociate: that to obligate the State to bear the expense, the sanitarium or other place of confinement must first have been designated by the county commissioners as a 'detention hospital'; that upon any place of confinement being designated by the County Commissioners as a 'detention hospital' after the effective date of amended Section 3155 G. C., and supplementary Section 3155-1 G. C., the State Department of Public Welfare automatically was permitted and required to carry out the provisions of Section 3155-1 on the subject of inspection and licensing of such hospitals and to have complete jurisdiction over any patients confined therein at the expense of the State."

Section 2402, General Code, reads as follows:

"Special sessions of the board may be held as often as the commissioners deem it necessary. At a regular or special session, the board may make any necessary order or contract in relation to the building, furnishing, repairing or insuring the public buildings or bridges, the employment of janitors, the improvement or inclosure of public grounds, the maintenance or support of idiots or lunatics, the expenditure of any fund, or provide for the reconstruction or repair of any bridge destroyed by fire, flood, or otherwise, and do any other official act not, by law, restricted to a particular regular session."

The above section of the General Code applies, of course, to the authority of a board of county commissioners in special session and is

an addition to their regular authority under Section 2401, General code, which provides for four regular sessions of the board of county commissioners each year.

Section 3158-1, General Code, reads as follows:

“That the board of county commissioners of any county may enter an agreement with one or more corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining a hospital in any county where such hospital has been established, for the care of the indigent sick or disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners, shall provide for the payment of the amount agreed upon, either in one payment, or installments, or so much from year to year as the parties stipulate. Nothing herein shall authorize the payment of public funds to a sectarian institution. County commissioners shall have authority to employ the necessary and properly qualified employes to assist them in carrying out all responsibilities devolving upon them by reason of any agreement, or agreements, entered into in accordance with the provisions of this section.”

Reference is made to O. A. G. 1933, Vol. II, p. 1365, Opinion No. 1510, the third branch of the syllabus of which reads as follows:

“3. Under the provisions of Section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed. Opinions of the Attorney General for 1929, Vol III, page 1784, approved and followed.”

In accordance with the provisions of Section 3154, General Code, the county commissioners, upon request of the probate judge, may establish a place to be known as a detention hospital for alleged insane persons.

The foregoing authorities are well established and vest ample authority in a board of county commissioners to provide a detention hospital for the care and maintenance of the indigent disabled.

Amended Substitute House Bill No. 342 was approved April 2, 1937, as an emergency law necessary for the preservation of the public

peace, health and safety and is now in effect and known as Section 3155, General Code, and reads in part as follows:

“The probate judge may commit to detention hospitals all persons brought before him, alleged to be insane, whose cases are doubtful or whose insanity is likely to be temporary, and also all insane persons who can not be committed to or received into the state hospital. A person so committed, shall be detained in the detention hospital until the superintendent and the probate judge determine that the person so committed is cured, or is a fit subject for the state hospital. When it is determined that such person is cured, he or she shall be discharged; and when it is determined that such person is a fit subject for the state hospital, application shall be made for his or her admission thereto as is provided by laws governing the commitment and admission to state hospitals for the insane, \* \* \*. In all cases of patients now confined in such detention hospitals as insane under adjudication and commitment to a state hospital by the probate court, or who shall hereafter be so adjudicated and committed, and whose admission to the state hospital is denied by reason of lack of room the cost of maintenance and care shall be borne jointly by the state and the county from which such insane persons are committed under the provisions of existing laws governing the support of patients confined in state hospitals \* \* \*.”

The act further provides that the State's financial obligation is to begin as of the date the application for admission to a State hospital is refused and further authorizes the State Department of Public Welfare to increase the fees specified by Section 1815-2, General Code, if in the exercise of discretion it is thought necessary to maintain satisfactory standards of care.

The act further provides that the rate per day to be paid shall be not less than \$2.50 and that the State shall pay \$1.25 thereof and the county from which the insane person is committed shall pay not less than \$1.25.

The act further provides that where a person is committed to a detention hospital operated by a municipality, the rate per day shall be agreed upon between said Department of Public Welfare and those duly authorized to act for said municipality.

Section 3155-1, General Code, reads as follows:

“Any and all detention hospitals established and operated under the provisions of Sections 3154 and 3155 of the General

Code shall maintain such standards as to numbers and qualifications of employees, equipment, food and nursing care as may be prescribed by the state department of public welfare. Such detention hospital shall be open, at all times, to and subject to inspection by the state department of public welfare through its authorized representatives and such department shall at all times have authority and jurisdiction to require that prescribed standards be maintained. This act shall require that each such detention hospital caring for patients at state expense shall be licensed in writing by the state department of public welfare; and the state department of public welfare shall have authority at its discretion to discontinue the use of such detention hospital for state cases and to withdraw any license granted. The state department of public welfare shall also have authority at any time to remove a patient to another institution; to order his discharge, trial visit, or other disposition as in the judgment of such department appears to be for the best interest of the patient and the state. The management of each such detention hospital shall keep such records and file such reports as may be prescribed by the state department of public welfare."

The last mentioned section of the General Code clothes the State Department of Public Welfare with ample authority to supervise such a detention hospital where the State is paying a portion of the fee to the end that satisfactory standards of care shall be maintained.

By virtue of the provisions of Section 1835, General Code, the Department of Public Welfare has full power to manage and govern all state institutions for the insane and by virtue of Section 3155-1, General Code, supra, the Department is specifically authorized to maintain satisfactory standards and care in detention hospitals wherein mental patients are maintained. It would be unreasonable in the extreme to interpret the intention of the Legislature as appropriating Seven Hundred Seventy-Nine Thousand Dollars for the purpose of such maintenance and care for insane persons, according to the provisions of Section 3155, General Code, if the Department were not to have the right to control the type of care in the detention hospital such as you describe.

Specifically answering the questions set forth in your request, I am of the opinion that:

1. The State of Ohio is obligated to pay one-half of the expense, which shall be in the sum of \$1.25 per day, for any one patient in any detention hospital, the inmate being cared for in a detention hospital by reason of being denied admission to a state hospital because of lack of room therein.



2. Such private sanitariums as described in your request, being under contract with the board of county commissioners, are detention hospitals in the sense specified by Section 3154, 3155 and the State is obligated to pay its portion of the cost of the care and maintenance of the patients confined therein.

3. Whenever a person now confined in a detention hospital under proper adjudication, is denied admission to a State hospital for such patient because of lack of room therein, and whenever a person is alleged to be insane but the diagnosis of insanity is doubtful or whose sanity is likely to be temporary, the probate judge having jurisdiction, may commit such person to a detention hospital and any such detention hospital is subject to inspection, licensing and obedience to the rules and regulations set up by the Department of Public Welfare by virtue of Sections 3155 and 3155-1, General Code.

4. Whenever the State is obligated to contribute to the cost of the maintenance and care of an inmate of a detention hospital, by virtue of Sections 3155 and 3155-1, General Code, the State has full authority, through its Department of Public Welfare, to license and inspect such detention hospitals and to insist that the personnel thereof obey such rules and regulations as the State Department of Public Welfare may issue in order to maintain satisfactory standards of care and the Department of Public Welfare is charged with the duty of maintaining such satisfactory standards of care to the end that any inmate therein shall be adequately treated in an attempt to effect a cure.

Respectfully,

HERBERT S. DUFFY,

*Attorney General.*

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548.

APPROVAL—LEASE EXECUTED BY THE MASONIC TEMPLE COMPANY OF ELYRIA, OHIO, GRANTING CERTAIN PREMISES TO THE DEPARTMENT OF PUBLIC WORKS FOR USE BY THE DIVISION OF AID FOR THE AGED.

COLUMBUS, OHIO, May 1, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by The Masonic Temple Company of Elyria,