county control. The presence of these last words 'or under county control' following immediately, as they do, the words 'at the county infirmary' clearly means that *outside* as well as *inside* relief for those in a 'peculiar condition,' is authorized.

The provision in question is quite evidently intended to be in the nature of an exception to the policy of poor relief established by the prior provisions of Section 3476, G. C. For one thing, the first words of the provision are 'to such *other* persons,' indicating that the prior classification was not to control what was to follow. Again, the persons referred to are persons in a 'peculiar' condition—that is, a condition of such nature as to require relief different from that which the township or city is able to give.

We shall not here attempt to enumerate all the circumstances which might make proper an admission to the county infirmary of persons in a 'peculiar condition' or which might entitle such persons to outside relief. Mention might, however, be made of persons affected with a contagious or infectious disease of such character as to warrant the attention of the county authorities, who might possibly be better equipped to render the necessary relief than the township or city authorities."

Specifically answering your question, I am of the opinion that:

1. The provisions of Section 4093, and related sections of the General Code, relate only to the infirmaries of a municipal corporation, and have no application to the county home.

2. While under the provisions of Section 2544, General Code, the trustees of a township or the proper officers of a corporation, may make application to have indigent persons admitted to the county home, the power and authority to determine the eligibility of such persons for admission is vested exclusively by said section in the superintendent of the home.

For a similar holding see Opinion No. 923, to be found at page 54, Vol. I, Opinions of Attorney General for 1918.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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510.

BOARD OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS OF CUYAHOGA COUNTY—NOT AUTHORIZED TO RECEIVE OR RETAIN A PETITION FOR AN AMENDMENT TO THE CLEVELAND CHAPTER.

*SYLLABUS:*

*Where, through error, a petition for an amendment to the charter of the City of Cleveland has been filed with the Board of Deputy State Supervisors and Inspectors of Elections of Cuyahoga County, such action is without legal effect and the board is not authorized either to receive the petition or retain it upon demand for its return by those originally filing it.*

COLUMBUS, OHIO, May 19, 1927.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

> "Under Section 197 of the Charter of Cleveland a petition for an amendment to the charter shall be signed by ten per cent or more of the electors and filed with the election authorities in the manner prescribed in the charter for the submission of an initiative petition. A petition so signed was filed with the Board of Deputy State Supervisors and Inspectors of Elections of Cuyahoga County.
>
> The Supreme Court held that the petition was not filed according to the provisions of the charter for the reason that the charter provides that petitions for initiating ordinances shall be filed with the City Clerk, and, under the provisions of Section 197, this petition should have been so filed.
>
> Will you please render an opinion whether the petition filed with the election board should be retained by it or whether it should be returned to the committee named in the petition as the filers thereof on their demand."

The answer to your question involves the question of whether or not the petition now on file with the Board of Deputy State Supervisors and Inspectors of Elections of Cuyahoga County is a public record or paper in the ordinary legal significance.

Section 4876 of the General Code, in prescribing the duties of the clerk, provides in part as follows:

> "* * * to receive and keep close custody of the register and copies returned to such office, as herein provided, of records, papers and certificates of every kind, relating to the office or administration of the board. * * * "

As to the right of withdrawal of records from a public office, the rule is stated in general terms in Volume 34 of Cyc., p. 596, as follows:

> "Private persons have no right to remove public records or papers from the office or files where they belong, and when permission to do so is granted it is a matter of favor and not of right."

You will note that this statement is predicated upon the fact that the papers belong in the office from which they are withdrawn. The Supreme Court by its recent decision, to which you refer, has in my opinion conclusively answered the question as to the petition being a paper properly belonging in the office of the Board of Deputy State Supervisors and Inspectors of Elections. It was held that there was no authority for proceeding upon such petition so filed and that, under the provisions of the Constitution, the petition should have been filed with the city council.

In view of this decision, I have no difficulty in reaching the conclusion that, as the Supreme Court in effect says, the act of filing the petition with the board was a nullity. This being so, so far as the board is concerned there was never any authority to receive the petition and consequently no right to retain it as against those properly entitled to it.

I am therefore of the opinion that the petition should be returned upon demand to those persons who originally filed it with the board.

Respectfully,
EDWARD C. TURNER,
*Attorney General.*

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511.

JUSTICE OF THE PEACE— IF NO WAIVER OF TRIAL BY JURY IS FILED, JUSTICE OF THE PEACE IS EXAMINING MAGISTRATE FOR OFFENSES COMMITTED UNDER SECTION 5652-14, GENERAL CODE.

*SYLLABUS:*

*When a plea of "not guilty" is entered before a justice of the peace to an affidavit charging a violation of Section* 5652-14, *General Code, said justice is without jurisdiction to render a final judgment unless as provided in Section* 13511, *General Code, the defendant in a writing subscribed by him waives the right of trial by jury and submits to be tried by said justice. If no such waiver be filed, the justice shall inquire into the complaint in the presence of the accused and if it appear that there is probable cause to believe the accused guilty, order the accused to enter into a recognizance to appear before a proper court of the county, viz., the probate court or the common pleas court.*

COLUMBUS, OHIO, May 19, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—This will acknowledge receipt of your letter of recent date which reads as follows:

> "Will you kindly render this department your opinion upon the following question?
>
> When a person is arrested for the violation of Section 5652-14 of the General Code and brought before a justice of the peace and pleads 'not guilty', does the justice of the peace have jurisdiction to try the case and assess a fine or should he bind the party over to the grand jury in the event that he determines that the evidence is sufficient to so warrant?"

Section 5652-14, General Code, about which you inquire, reads as follows:

> "Whoever, being the owner, keeper or harborer of a dog more than three months of age or being the owner of a dog kennel fails to file the application for registration required by law, or to pay the legal fee therefor, shall be fined not more than twenty-five dollars, and the costs of prosecution. The fine recovered shall be paid by the justice of the peace, mayor or judge of municipal court to the county auditor, who shall immediately pay the same into the county treasury to the credit of the dog and kennel fund."

An examination of the act of March 21, 1917, (107 O. L. 534) which amended Section 5652, General Code, and supplemented the same by additional Sections 5652-1 to 5652-15, both inclusive, and of the act of May 9, 1919, (108 O. L. Part I,