

legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

759.

DEPARTMENT OF PUBLIC WELFARE—AUTHORITY TO CERTIFY PERTINENT FACTS, WHEN—CERTIFY AMOUNT OWING BY DELINQUENT COUNTY, WHEN—AUDITOR OF STATE, MANDATORY COMPLIANCE WITH SECTION 5546, GENERAL CODE AS AMENDED.

SYLLABUS:

The Department of Public Welfare of the State of Ohio has authority to certify the pertinent facts, together with a copy of a statement of the amount owing by a delinquent county, whereupon the Auditor of State will comply with the mandatory provisions of Section 5546-20a, General Code, as amended by House Bill 46, upon the effective date of this act.

COLUMBUS, OHIO, June 21, 1937.

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

DEAR MADAM: I have your recent communication requesting my opinion, which reads as follows:

“On April 3, 1937, there was filed in the office of the Secretary of State an Act appropriating \$779,000 to the Department of Public Welfare to maintain and care for insane persons committed to detention hospitals who were so committed because of the crowded conditions in state institutions. The appropriation bill also set forth the fact that the rate to be paid to such detention hospitals for the care and maintenance of insane persons was to be \$2.50 per day, of which amount the State was to pay \$1.25 and the County from which the insane person or persons are committed should pay \$1.25, the State paying the full amount in the first instance and then billing the County

for the county's share. The amount of \$779,000 for the care and maintenance of insane persons in detention hospitals for the year 1937 was arrived at and calculated upon the basis of the County paying its proportionate share, and if this is not done on the part of the County there will be an insufficient amount of funds to carry through to January 1, 1938.

A further provision of the appropriation act reads as follows:

'The treasurer of each county shall pay to the treasurer of state, upon the warrant of the county auditor, the amount charged against such county for the preceding month for the maintenance and care of all such persons so committed and confined not later than fifteen (15) days after the presentation of the monthly statement by the department of public welfare of the State of Ohio.'

The Welfare Department has complied in every respect with the provisions of this act. The entire bill for Cuyahoga County for the month of April was paid by the State and a bill presented to the county auditor of Cuyahoga County for their one-half of the total amount. The county commissioners of Cuyahoga County refused to sign the vouchers, stating that they did not intend to pay this bill.

Under the provisions of amended H. B. 46 provision is made whereby the Auditor of State shall not make distribution of the local government fund to any county which is indebted, or otherwise obligated, to the State, until such indebtedness or other obligation has been paid. Does the Welfare Department have authority to authorize the Auditor of State to withhold distribution of funds to Cuyahoga County, and, if so, what in your opinion is the proper procedure to follow: May we have an opinion on this matter at an early date?"

Amended Substitute House Bill No. 542, approved April 2, 1937, and filed in the office of the Secretary of State, Columbus, Ohio, on the 3rd day of April, A. D. 1937, amends Section 3155, is an emergency measure and reads 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 cannot 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, namely, Sections 1950, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961 and 1962 of the General Code of Ohio. 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 person or persons are committed under the provisions of existing laws governing the support of patients confined in state hospitals as specified by existing Sections 1815-1, 1815-2, 1815-3, 1815-4, 1815-5, 1815-6, 1815-7, 1815-9, 1815-10 and 1816 of the General Code, the state's financial obligation to begin as of the date the application for admission to a state hospital is refused, provided that the state department of public welfare may increase the fee specified by Section 1815-2 of the General Code if in its judgment such increase is required to maintain satisfactory standards of care. The rate to be paid to such detention hospitals for the maintenance and care of the insane shall be not less than two and 50/100 dollars (\$2.50) per day for each person, of which rate the state shall pay not less than one and 25/100 dollars (\$1.25) and the county from which the insane person or persons are committed shall pay not less than one and 25/100 dollars (\$1.25) except that for the maintenance and care of those persons now or hereafter committed to an infirmary or detention hospital operated by a municipality the rate per day for each person shall be agreed upon between the state department of public welfare and those duly authorized to act for said municipality, which rate shall be paid half by the state and half by said county. Payment at the full rate specified in this act shall be made in the first instance by the state from such funds as may from time to time be provided in any act appropriating state funds therefor. The county from which the insane person or persons are committed shall have authority to expend county funds for its share of the obligation specified by this act. *The treasurer of each county*

shall pay to the treasurer of state, upon the warrant of the county auditor, the amount charged against such county for the preceding month for the maintenance and care of all such persons so committed and confined not later than fifteen (15) days after the presentation of the monthly statement by the department of Public Welfare of the State of Ohio. The state shall not be held responsible for the expense of care and maintenance of any person confined in any such detention hospital who does not have a legal settlement in the State of Ohio."

The italic portion of the above section is clear and distinct in its provision, making the payment by the county treasurer of the amount owing the State of Ohio mandatory. An act known as Amended House Bill No. 46, which was approved March 23, 1937, and filed in the office of the Secretary of State on March 25, 1937, reads as follows:

"Section 5546-20a.

The auditor of state shall not make distribution of the local government fund as provided in Section 5546-1 to 5546-22 of the General Code, both inclusive, to any county which is indebted or otherwise obligated to the state until such indebtedness or other obligation has been duly paid and satisfied. Provided, however, that no distribution of the local government fund as set out herein shall be withheld unless and until an itemized statement of such indebtedness is furnished the county auditor of the county from which said indebtedness is due at least thirty days prior to the withholding of said distribution. Provided, however, that any county which through its board of county commissioners shall enter into an agreement, which agreement shall be uniform for all counties as to time and percentage of payment of such indebtedness or other obligation, with the director of finance for the discharge of said indebtedness or other obligation over a period not to exceed ten years in duration commencing January 1, 1938, shall be entitled to receive distribution of the local government fund to which it is entitled provided its current indebtedness or obligation to the state is kept fully paid and any agreement entered into relative to past indebtedness or obligation is fully performed. The failure of a county to maintain payments under an agreement for installment payments as herein provided shall immediately make all remaining unpaid installments due and thereupon the auditor of state shall withhold all sums distributable to said county until the agreement is discharged in full. Any indebtedness or

obligation of the state to a county shall be deducted from the amount owing to the state by such county in determining the indebtedness or obligation with respect to which distribution is withheld as herein provided. Nothing herein contained shall prevent any county from discharging all or any part of the said indebtedness or other obligations prior to the time or times designated in the said agreement." (Italics the writer's.)

The italic portion of Section 5546-20a, General Code, is clear in making it mandatory upon the Auditor of State not to make any distribution of the local government fund to any county which is indebted or otherwise obligated to the State of Ohio. The language of Section 5546-20a, supra, is distinct and its provisions are logical. When a county within the State of Ohio accepts financial aid and assistance by virtue of the laws of the State, which the Department of Public Welfare obeys, then such county must likewise obey the laws of the State and cannot arbitrarily, through its officials, choose the law which is beneficial to it and reap the benefit of the provisions of such law and then refuse to obey another law of the State for the reason that it provides an obligation for such county with which compliance is mandatory.

It will be noted that Amended House Bill No. 46, supra, was not passed as an emergency measure and, therefore, its provisions will not be enforceable until the effective date of the act.

To answer your question specifically, it is my opinion that the Department of Public Welfare of the State of Ohio has authority to certify the pertinent facts, together with a copy of a statement of the amount owing by such delinquent county, whereupon the Auditor of State will comply with the mandatory provisions of Section 5546-20a, General Code, as amended by House Bill 46, upon the effective date of this act.

Respectfully,

HERBERT S. DUFFY,

Attorney General.