

railway to sell the same in the manner provided for in the act "at a price and upon terms of payment satisfactory to said trustees of the sinking fund." (84 O. L. 82).

In pursuance of this act, the City of Cincinnati sold the Cincinnati Southern Railway. Suit was brought to enjoin the sale, it being contended among other things, that the attempted sale was invalid because it was not made for cash. The case was carried to the Supreme Court, where it was held (*City of Cincinnati vs. Dexter*, 55 O. S. 93):

"Payment of the purchase price in cash is not essential to a valid sale under the statute; the sale is authorized to be made upon terms of payment satisfactory to the designated municipal board."

I am therefore of the opinion that in the absence of a statutory provision authorizing and directing a board of education to effectuate sales of property of the value of more than \$300.00 upon terms and conditions, such sales may not be made otherwise than for cash.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1028.

HOSPITAL SERVICES—TOWNSHIP TRUSTEES MAY CONTRACT THEREFOR WITH PRIVATE HOSPITAL TO BE FURNISHED TO INDIGENT RESIDENTS HAVING LEGAL SETTLEMENT WITHIN TOWNSHIP—NOT PROHIBITED BY CONSTITUTIONAL PROVISIONS.

SYLLABUS:

Township trustees are authorized to contract with a private hospital to furnish hospital services to the indigent residents having a legal settlement within the township, provided the contract price for the furnishing of such services is commensurate with the services rendered.

COLUMBUS, OHIO, July 13, 1933.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion which reads as follows:

"I have been asked by the Ashtabula General Hospital Trustees whether or not it would be legal for the various townships to enter into contracts with the Hospital for a year's time for the care of their indigent sick, at a certain flat rate which would be less than the regular rate charged by the Hospital.

I find no authority for doing this, but I was requested to get your opinion on it, and would appreciate this at your convenience."

Township trustees have those powers and duties which are defined by statute or naturally or necessarily implied from the language of the statute.

Township trustees are by sections 3476 to 3496, General Code, required to furnish relief to the indigent residents having a legal settlement within the township. Section 3476 reads in part as follows:

"Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act (G. C. Sections 3476 et seq.) that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in sections 3477 and 3479."

Section 3480 provides for the furnishing by the township trustees of services of a physician or surgeon to indigent residents of the township requiring medical services. In an opinion by my immediate predecessor rendered under date of June 15, 1932, Opinion No. 4421, it was held as disclosed by the first branch of the syllabus that:

"A village may expend funds for hospital care of its indigent residents and may contract with a city in which is located a municipal hospital for the hospitalization of such indigent persons."

It is stated in the opinion that:

"Charges for services afforded by a hospital are as much a proper item of medical relief as any other charges."

It is my opinion that by virtue of sections 3476 to 3496, General Code, the township trustees can legally pay for hospital services furnished to the indigent residents having legal settlement within the township.

I find no express statutory provision authorizing the township trustees to contract with a hospital for the furnishing of hospital services to the indigent residents of the township. Section 3411, General Code, authorizes the township trustees to levy a tax and pay the amount derived from the tax to a hospital association for the purpose of furnishing hospital services to its indigent residents. Said section reads:

"The trustees of each township may annually levy and collect a tax, not to exceed one mill on each dollar of the taxable property of the township and pay it to a hospital association which maintains and furnishes a free public hospital for the benefit of the inhabitants of such township, or to a hospital association which maintains a public hospital not free except to such inhabitants of the township as in the opinion of the trustees of such hospital are unable to pay."

Sections 3411-1 and 3411-2 provide for the levying of a tax by the township trustees, such funds derived therefrom to be paid to a private corporation organized for charitable purposes, for the construction and maintenance of a hospital. It is stated in the 1932 opinion, *supra*, that:

"I find no express statutory authority for a village to contract with a city for the hospitalization of its indigent inhabitants, but as villages

may afford medical relief, I am of the view that where a village has no hospital facilities it may make such arrangement with a city having a hospital in the absence of any statutory inhibition."

Both villages and townships are authorized by statute to furnish medical relief to the indigent residents within their respective jurisdictions. Township trustees having the authority to expend public funds in the payment of hospital services rendered to the indigent residents of the township, have the implied authority to contract with the hospital for such services. It is a well established principle of statutory construction that public officers have the necessary implied powers to carry into effect the powers expressly granted. In an opinion of the Attorney General, reported in the Opinion of the Attorney General for 1929, page 1784, it was held as disclosed by the syllabus:

"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 the indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed."

It was pointed out in the opinion that such a contract did not violate section VI of article 8 of the Ohio Constitution, which prohibits the loaning of public credit to aid private corporations or associations. The township trustees, as administrative officers, have certain discretion in the administration of the public funds in affording poor relief and medical services to the indigent residents of the township. It is their duty to see that the funds are efficiently administered. It is within their discretion to determine whether or not it would be to the advantage of the township to enter into a contract with a hospital for the care of the indigent residents requiring hospital services or to pay for each individual case. The exercise of such discretion cannot be questioned in the absence of fraud. The contract price paid the hospital must be commensurate with the services rendered. The township trustees having been authorized by law (sections 3476, et seq.) to furnish medical relief to the indigent residents, and as pointed out above, the term "medical relief" includes hospital services, the township trustees have the implied authority to contract with a private hospital for the furnishing of hospital services to the indigent residents of the township. It is within the discretion of the township trustees to determine the economic advantage to the township of such a contract.

In specific answer to your inquiry, it is my opinion that in the absence of a tax levied for hospital services, as provided by section 3411, et seq., General Code, the township trustees of the various townships in Ashtabula County can legally contract with the Ashtabula general hospital to furnish hospital services to the indigent residents of the various townships, provided the services are commensurate with the contract price and funds are available and the procedure followed as required by law in making the appropriation.

Respectfully,
JOHN W. BRICKER,
Attorney General.