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## INMATE, INSTITUTION, SUPERVISION, DEPARTMENT OF PUBLIC WELFARE:

1. PERSONAL PROPERTY, MONEY — DECEASED — PROBATE COURT SHOULD ADMINISTER ESTATE — COUNTY WHERE INMATE RESIDED, TIME OF DEATH — IF NO HEIRS TO INHERIT, PROPERTY ESCHEATS TO STATE — “INDUSTRIAL AND ENTERTAINMENT FUND” — “POSTHUMOUS FUND”.
2. IF BODY, DECEASED INMATE, NOT DELIVERED TO AUTHORITIES FOR DISSECTION, SECTION 9984 G.C. AND NOT CLAIMED BY PARTY FOR BURIAL AT HIS OWN EXPENSE, ESTATE OF DECEDENT IS LIABLE FOR BURIAL EXPENSES.
3. MONEY DEPOSITED IN BANK — INTEREST EARNED PROPERTY OF INMATES, PRO RATA.
4. GRANT, GIFT, DEVISE OR BEQUEST — USE OR BENEFIT SUCH INSTITUTIONS — SECTION 1840 G.C. — MAY BE USED FOR MAINTENANCE OR UPKEEP — PROVISIO.
5. EACH SUCH DONATION SHOULD BE KEPT AS SEPARATE FUND UNDER A SEPARATE ACCOUNT.

## SYLLABUS:

1. Personal property, including money, of a deceased inmate of an institution under the supervision of the Department of Public Welfare, should be administered by proceedings had in the probate court of the county wherein such inmate resided at the time of his death. If there be no living heirs to inherit, such property escheats to the state and should not be placed in the so-called “Industrial and Entertainment Fund” or the “Posthumous Fund” of the institution (Opinion No. 1817, Vol. 1, page 63, Opinions of the Attorney General for 1921, approved and followed).

2 If the body of a deceased inmate of one of the institutions under the supervision of the Department of Public Welfare is not delivered to proper authorities for dissection pursuant to Section 9984, General Code, and is not claimed by some person for burial at his own expense, the estate of such deceased inmate is liable for the expenses of his burial.

3. Interest earned on account of money belonging to inmates of an institution under the supervision of the Department of Public Welfare, which is placed with the head of such institution for safekeeping and by such head deposited in a bank, is the property of the inmates pro rata.

4. A grant, gift, devise or bequest made to or for the use or benefit of any of the institutions under the supervision of the Department of Public Welfare pursuant to Section 1840, General Code, may be used for maintenance or upkeep of such institution, provided the person making such grant, gift, devise or bequest has not made any condition restricting the use thereof.

5. Each such grant, gift, devise or bequest should be kept as a separate fund and a separate account should be opened therefor and kept thereof.

Columbus, Ohio, December 31, 1942.

Hon. Charles L. Sherwood, Director of Public Welfare,  
Columbus, Ohio.

Dear Sir:

I am in receipt of a letter from your office wherein my opinion is requested with respect to the disposition of money and other personal property belonging to persons who die while they are inmates of the various institutions under the supervision of the Department of Public Welfare. In this connection, it is asked specifically whether money belonging to such an inmate may be used to defray his burial expenses, thereby relieving the institution from the necessity of offering the dead body to a medical college pursuant to Section 9984, General Code.

Further inquiry is made with respect to the disposition of interest earned on money belonging to such inmates, which is deposited in a bank for safekeeping, and the question is asked whether such interest may be credited to the "Industrial and Entertainment Fund" of the appropriate institution. A memorandum containing portions of orders of the former Board of Administration establishing the so-called "Industrial and Entertainment Fund" and also a letter to your department from the Cashier of the Ohio Penitentiary accompany the request.

My opinion is also desired with respect to the so-called "Posthumous Fund" at the Ohio Soldiers and Sailors Home at Sandusky which now amounts to several thousand dollars and which has been accumulated from money belonging to inmates of the home who have died intestate and without heirs. The question is asked as to whether the pro-

visions of Section 10503-24, General Code, are applicable to the disposition of such money.

Finally, it is stated in the letter that bequests have been made to institutions and accepted under authority of Section 1840, General Code, and that such bequests have at times been used in the maintenance and upkeep of the institution to which the bequest was made, and my opinion is desired as to whether expenditures from such funds are legal for such purposes. It is also stated in the letter that bequests made to the Ohio Soldiers and Sailors Home have been credited to the so-called "Posthumous Fund" and have not been kept as separate accounts, and presumably you wish my opinion as to whether such accounting procedure is in violation of law.

1. It appears from the memorandum accompanying the request that on December 16, 1912, the following resolution was adopted by the Board of Administration:

"Whereas: a large number of accounts are being carried on the books of the State Institutions under the control of the Board of Administration showing various accounts due to individual patients who are now dead or have left the institution, and said accounts have been unclaimed and the legal owners of said accounts are unknown,

Resolved: that the Managing Officers be and are hereby authorized to charge off all such accounts by crediting them to a separate fund to be known and used as an 'Industrial and Entertainment Fund'

Provided that in case any of said accounts are hereafter claimed by the legal owners of the same, then the same are to be paid out of said special fund."

If the former Board of Administration possessed the power to provide for the disposition of money and property belonging to deceased inmates of the various institutions in question, the resolution just quoted would, of course, be dispositive of your question. The devolution of property of decedents is a matter solely within the province of a legislature and cannot, under our Constitution, properly be the subject of a rule or regulation promulgated by some administrative body or department. The resolution adopted by the Board of Administration on December 16, 1912, was and is wholly ineffective in law and is no valid justification or reason for placing money belonging to deceased inmates in the "Industrial and Entertainment Fund."

This question was a subject of consideration by one of my predecessors as shown by an examination of his Opinion No. 1817 found at page 63 of Vol. I of the Opinions of the Attorney General for 1921. In that opinion it was determined, as shown by the second paragraph of the syllabus:

“Personal property of a deceased inmate of such an institution (Ohio Reformatory for Women) should be administered by the probate court, of the county wherein such inmate resided at the time of his death, in accordance with the provisions of section 10604 of the General Code. If there be no living heirs to inherit, property vests in state under provisions of section 8579 G.C.” (Matter in parentheses mine.)

Sections 10604 and 8579, General Code, to which reference is made in said syllabus, have been repealed, but Section 10509-1, General Code, is identical with the first sentence of former Section 10604, General Code, which is the portion thereof on which my predecessor relied. Section 10503-24, General Code, is in substance the same as former Section 8579, General Code. Since the statutory provisions applicable to the question have not been materially changed, there is no reason for adopting a conclusion other than that reached by my predecessor.

In this connection, however, it perhaps should be noted that Section 10509-5, General Code, provides that under certain circumstances an estate, the assets of which are of less value than \$500, may be relieved from administration.

Section 9984, General Code, provides:

“Superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, before burial, shall hold such bodies not less than thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. Before or after burial such superintendent, director, or other officer, on written application of the professor of anatomy, or the president of a county medical society shall deliver to such professor or president, for the purpose of medical or surgical study or dissection, the body of a person who died in either of

such institutions, from any disease, not infectious, if it has not been requested for interment by any person at his own expense.”

This section requires the officers in charge of the institution under the supervision of the Department of Public Welfare to hold bodies of deceased inmates for not less than thirty-six hours and notify the professor of anatomy in a medical college or the president of a county medical society of the fact that such body is so held, and requires that said body be delivered to such professor or president of the medical society on written application therefor, unless it has been requested for burial by some person at his own expense.

If the body is delivered to proper authorities for dissection purposes or if it is claimed by some person for burial at his own expense, obviously, funds belonging to the estate of such decedent could not be used to defray the expenses of his interment. However, if neither such event took place, I see no reason why the estate of such decedent should not be liable for the expenses of his burial. In this connection, however, you are advised that the authorities in charge of such institution could not make such expenditure themselves as such officers. An administrator would have to be appointed or the estate relieved from administration, as above noted, and the expenditure made under authority of the proper probate court.

2. If the head of an institution accepts for safekeeping money belonging to inmates and deposits such money in a bank, he thereby becomes a trustee of such funds and the inmates are the cestuis que trustent. It is, of course, fundamental that a trustee may not manage the subject of his trust so as to make profits or gains therefrom for himself. Any income earned by trust property belongs to the beneficiary of the trust and cannot be appropriated by the trustee to his own use. See 40 O.Jur., 446.

I am therefore of the opinion that the interest earned on the money belonging to such inmates must be prorated among them.

3. What has been said heretofore with respect to the legality of placing money belonging to deceased inmates in the “Industrial and Entertainment Funds” of the various institutions is equally applicable to placing such moneys in the so-called “Posthumous Fund” of the Ohio Soldiers and Sailors Home. There is no statute which permits this to

be done, and no rule or regulation adopted by the supervising authority of such institution can have any legal effect. Money belonging to a deceased inmate of the Ohio Soldiers and Sailors Home is subject to the same laws of descent and distribution as that of any other person resident of this state.

4. Section 1840, General Code, provides:

“The board shall accept and hold on behalf of the state, if deemed for the public interest, any grant, gift, devise or bequest of money or property made to or for the use or benefit of said institutions or any of them, whether directly or in trust, or for any pupil or inmate thereof. The board shall cause each such gift, grant, devise or bequest to be kept as a distinct property or fund, and shall invest the same, if in money, in the manner provided by law; but the board may, in its discretion, deposit in a proper trust company or savings bank any fund so left in trust during a specified life or lives, and shall adopt rules and regulations governing the deposit, transfer or withdrawal of such funds and the income thereof. The board shall, upon the expiration of any trust according to its terms dispose of the funds or property held thereunder in the manner provided in the instrument creating the trust.

The board shall include in the annual report a statement of all such funds and property and the terms and conditions relating thereto; provided that moneys or property deposited with officers of institutions by relatives, guardians, conservators and friends for the special benefit of any pupil or inmate, shall remain in the hands of such officers for use accordingly; but each such officer shall keep an itemized book account of the receipt and disposition thereof, which book shall be open at all times to the inspection of any member of the board of administration or of the board of state charities.”

I find nothing in the section prohibiting grants, gifts, devises or bequests of money or property made to or for the use of one of the so-called welfare institutions from being used for the maintenance or upkeep of the proper institution. Of course, the person making such grant, gift, devise or bequest might stipulate that it be used for some particular purpose for the benefit of the institution and in such case such condition would have to be followed. But there is no limitation in Section 1840, General Code, other than that the grant, gift, devise or bequest be used for the benefit of the institution. Maintenance or upkeep of an institution is of benefit to it and any funds derived pursuant to the provisions of Section 1840, General Code, supra, for the benefit of the institution without any conditions being attached could, in my opinion, be used for maintenance or upkeep.

It will be noted that this section also provides that such grants, gifts, devises or bequests might be made to the institution for the benefit of some pupil or inmate thereof. In such case, the use would, of course, be restricted to the benefit of the particular pupil or inmate involved and could not be used for the benefit of the institution generally.

The section requires that each grant, gift, devise or bequest be kept as a distinct property or fund, and it would therefore be illegal to credit such funds to the so-called "Posthumous Fund." The law definitely requires separate accounts to be opened for each such grant, gift, devise or bequest and any other accounting procedure would be irregular and illegal.

Respectfully,

THOMAS J. HERBERT  
Attorney General.