

3529.

COUNTY—HOSPITALIZATION OF TUBERCULAR PATIENTS BY COUNTY OF LEGAL RESIDENCE—EXPENSE PAYABLE BY COUNTY WHERE PATIENT INDIGENT—EXPENSE FOR CARE OF INDIGENT EPILEPTIC PERSON—COMMITMENT OF EPILEPTIC PERSON BY PROBATE COURT.

SYLLABUS:

1. *The county of legal residence of persons afflicted with tuberculosis should hospitalize such residents. Legal settlement of such persons within the county is not a necessary requirement. The expense of treatment in the hospital for tuberculosis should be paid by the county of legal residence if such person is indigent.*

2. *By virtue of Section 1816, General Code, when an indigent epileptic person, neither insane nor dangerous, is committed to an institution for epileptics, the county from which the indigent person is committed is liable for the necessary clothing and incidental expenses of the indigent epileptic person at such institution.*

3. *By virtue of Section 2045, General Code, the probate court of the county in which the epileptic is resident has jurisdiction to commit such person to the State Institution for epileptics. A "legal settlement" is not a necessary requirement before an indigent person may be committed by such court to such institution.*

COLUMBUS, OHIO, November 30, 1934.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

◆ DEAR SIR:—I am in receipt of your communication which reads as follows:

"May I ask your opinion in the following matter?

A person who formerly resided in Putnam County moved to Allen County, Ohio, and lived there for more than three years and established a legal residence or settlement in Allen County for poor relief purposes. This person moved back to Putnam County from Allen County in March, 1934, and has apparently established a permanent residence in Putnam County, without intention of returning to Allen County. This person is poor and without means of support and it is necessary that such person receive poor relief. At the present time the poor relief or support is granted to this person from Allen County, the last place of legal settlement, inasmuch as such person has not lived in Putnam County for one year, as required by the statutes.

However, this person has developed an active case of tuberculosis and is under medical treatment. An application of admission to a district tuberculosis hospital has been filed by this person and the matter has come to the attention of the Putnam County Commissioners.

Please advise me whether or not, under the law of Ohio, Sections 3148 to 3153-7, inclusive, the County Commissioners of Putnam County, Ohio, are responsible for the care and treatment of this person in the district hospital at Lima, Ohio, or whether or not this person should be sent to said district tuberculosis hospital by the County Commissioners of Allen County, Ohio. (Section 3143 of the General Code provides that the county commissioners of any county may contract for the care and

treatment of residents of the county suffering from tuberculosis, with a district tuberculosis hospital. This does not seem to me to be compulsory upon the Commissioners.) Section 3144 of the General Code provides that the State Board of Health shall have authority to order any person suffering from tuberculosis to be removed to such district tuberculosis hospital, when in the opinion of the State or local board of health such person is a menace to the public and cannot receive proper treatment at home.

Will you please advise me in this instance whether or not this person, who has not lived in Putnam County for one year to establish a legal settlement as required by the poor relief laws of Ohio, is subject to removal to the district tuberculosis hospital by the Commissioners of Putnam County, said expenses to be paid by said Commissioners, or whether such person is subject to removal to said hospital by the Allen County Commissioners, said expense to be paid by Allen County.

Also advise me whether or not, if the State Board of Health orders the removal of a person to such district tuberculosis hospital upon proper complaint and such person has lived in the county only three months, whether or not the county in which such person resides is responsible and liable for the necessary expense and care to such hospital. I can find nothing exactly in the laws on this point and will appreciate your prompt attention to this matter.

Also advise me whether or not the county in which a person has resided less than thirty days, such person having changed their place of residence and expressing a desire not to return to their former residence, is liable for the care of such person when removed to a district tuberculosis hospital. This person needs immediate attention and your prompt reply will be appreciated.

Will you please advise me whether or not the same rule applies to a person who is an epileptic and is assigned or sent to an epileptic hospital in the state?"

Section 3143, General Code, provides:

"Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for, the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, for the care and treatment of the inmates of such infirmary *or other residents of the county* who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, and they shall also pay for their transportation. Provided, that the county commissioners of any county may contract for the care and treatment of the inmates of the county infirmary *or other residents of the county* suffering from tuberculosis with an association or corporation, incorporated under the laws of Ohio for the exclusive purpose of caring for

and treating persons suffering from tuberculosis; but no such contract shall be made until the institution has been inspected and approved by the state board of health, and such approval may be withdrawn and such contracts shall be cancelled, if, in the judgment of the state board of health, the institution is not managed in a proper manner. Provided, however, that if such approval is withdrawn, the board of trustees of such institution may have the right of appeal to the governor and attorney general and their decision shall be final." (Italics the writer's.)

Section 3140, General Code, provides:

"Whenever complaint is made to the state board of health that a person is being kept or maintained in any county infirmary in violation of section 3139 of this act, such state board of health may make arrangements for the maintenance of such person in some hospital or other institution in this state devoted to the care and treatment of cases of tuberculosis, and the cost of removal to, and the cost of maintenance of, such person in such hospital or institution shall become a legal charge against, and be paid by the county in which such person has a *legal residence*. If such person is not a legal resident of this state, then such expense shall be paid by the county maintaining the infirmary from which removal is made." (Italics the writer's.)

Section 3144, General Code, provides:

"In any county which has not provided for a county hospital for tuberculosis, or which has not joined in the erection of a district hospital for tuberculosis, the state board of health upon a proper presentation of the facts, may order an inmate of the infirmary who is suffering from tuberculosis removed to a municipal, county or district hospital for tuberculosis, but such removal shall not be made without the consent of the inmate, if a suitable place outside of the infirmary, approved by the state board of health, is provided for his or her care and treatment. The state board of health upon a proper presentation of facts, shall also have authority to order removed to a municipal, county or district hospital for tuberculosis, any person suffering from tuberculosis, when in the opinion of the state or local board of health, such person is a menace to the public and can not receive suitable care or treatment at home, provided however, that such person shall have the right to remove from the state."

Section 3145, General Code, provides:

"The medical superintendent shall investigate applicants for admission to the hospital for tuberculosis who are not inmates of the county infirmary and may require satisfactory proofs that they are in need of proper care and have tuberculosis. The board of trustees may require from any such applicant admitted from the county or counties maintaining the hospital a payment not exceeding the actual cost incurred in their care and treatment, including necessities and cost of transportation, or such less sum as they may deem advisable owing to the financial condition of the applicant."

Underlying your first three questions is the basic question of whether or not

the term "residence" used in the law dealing with the care and treatment of tuberculosis, is synonymous with the term "legal settlement" as employed in Section 3477, General Code.

Section 3145, General Code, which provides inter alia, "The board of trustees may require from any such applicant admitted from the county or counties maintaining the hospital a payment not exceeding the actual cost incurred in their care and treatment, including necessities and cost of transportation, or such less sum as they may deem advisable owing to the financial condition of the applicant," shows that these statutes contemplate not only the hospitalization of indigents but also the hospitalization of those afflicted with tuberculosis who are not indigent. In other words, the laws dealing with the care of the tubercular are not part of the poor relief laws but are laws for the protection of the public health to prevent the spreading of the disease. Consequently it is my opinion that the county commissioners may contract for the care and treatment of "residents" of the county suffering from tuberculosis and that the more stringent requirements of "legal settlement" laid down in Section 3477, General Code, are not necessary before the county commissioners may take care of a tubercular person.

Your second question is, if the State Board of Health orders the removal of an indigent person to the district hospital for tuberculosis upon proper complaint, whether the county wherein the tubercular person has had a "legal settlement" for three months or the county of legal settlement is responsible for the necessary expenses and care in such hospital. Your third question is identical except that the length of residence is only thirty days. In my opinion the answer to your first inquiry is applicable to the situation where the State Board of Health orders the removal of an indigent person to a district hospital for tuberculosis and consequently it is my opinion that the expense of care in such case should be borne by the county of "legal residence." The question of the "legal residence" of a person is a mixed question of law and fact and change of residence is a question of intention and fact, or facts in the light of intention. See Opinions of the Attorney General for 1917, Vol. III, page 2037.

I come now to your fourth question concerning indigent epileptics. I assume for the purpose of this opinion that such epileptics are not insane or dangerous. Section 2035, General Code, provides:

"The asylum for epileptics and epileptic insane, at Gallipolis, shall be known as the Ohio hospital for epileptics, and shall be under the control and management of the Ohio board of administration."

Section 2045, General Code, provides:

"Application for admission to the hospital of an epileptic person, other than insane or dangerous, first shall be made in writing by such person, his or her parent, guardian or representative, to the probate court of the county in which the epileptic is *resident*. If such epileptic has no parent, guardian or representative, any citizen may make such application on his behalf." (Italics the writer's.)

Section 2049, General Code, provides:

"If not paid by themselves or those having them in charge, the expenses of the clothing of the patient, shall be paid by the counties, and, if furnished by the institution, may be collected from the counties, *as provided by general provisions relating to benevolent institutions.* The traveling and incidental expenses of the patient and of the officer or other person or persons in charge of the patient, to and from the institution shall be paid by the counties, or as provided by general provisions relating to benevolent institutions." (Italics the writer's.)

The pertinent general provision relating to benevolent institutions is Section 1816, General Code, which provides as follows:

"In case of failure to pay incidental expenses, or furnish necessary clothing, the steward or other financial officer of the institution may pay such expenses, and furnish the requisite clothing, and pay therefor from the appropriation for the current expenses of the institution, keeping and reporting a separate account thereof. The account so drawn, signed by such officer, countersigned by the superintendent, shall be forwarded by such officer to the auditor of the county, *from which the person came;* and such auditor shall issue his warrant, payable to the treasurer of state for the amount of such bill and charge the amount to the current expense fund. The county auditor shall then collect the amount in the name of the state as other debts are collected." (Italics the writer's.)

It is thus apparent that the County from which the person is committed to the hospital for epileptics must pay the expense of clothing and other incidental expenses in such institution if such person is indigent. It becomes necessary to determine which County should commit such person to the hospital for epileptics. The laws dealing with the commitment of epileptics are similar to the laws having to do with tubercular care in that both comprehend indigents and non-indigents, and hence are not strictly poor relief laws. Moreover, Section 2045, General Code, employs the term "residence" rather than the term "legal settlement." Consequently it is my opinion that the probate court wherein the epileptic is "resident" has jurisdiction to commit such person to the Ohio Hospital for epileptics and that if such person is indigent the county from which the epileptic is committed should pay the cost of clothing and incidental expenses of such indigent.

Specifically answering your inquiry, it is my opinion that:

1. The county of legal residence of persons afflicted with tuberculosis should hospitalize such residents. Legal settlement of such persons within the county is not a necessary requirement. The expense of treatment in the hospital for tuberculosis should be paid by the county of legal residence if such person is indigent.
2. By virtue of Section 1816, General Code, when an indigent epileptic person, neither insane nor dangerous, is committed to an institution for epileptics, the county from which the indigent person is committed is liable for the necessary clothing and incidental expenses of the indigent epileptic person at such institution.
3. By virtue of Section 2045, General Code, the probate court of the county in which the epileptic is resident has jurisdiction to commit such person to the State Institution for epileptics. A "legal settlement" is not a necessary require-

ment before an indigent person may be committed by such court to such institution.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3530.

MUNICIPALITY—TRUSTEES OF SINKING FUND MAY NOT BORROW MONEY USING INVESTMENTS IN THEIR POSSESSION AS SECURITY THEREFOR.

SYLLABUS:

The trustees of the sinking fund of a municipality may not legally borrow money using investments in their possession as security for such loan.

COLUMBUS, OHIO, November 30, 1934.

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

GENTLEMEN:—I acknowledge receipt of your communication in which you ask the following question:

“Will you kindly furnish this Department an opinion upon the question of whether sinking fund trustees of a municipality may legally borrow money using investments in their possession as security for the loan?”

I can find no statute which authorizes the sinking fund trustees of a municipality to borrow money. Section 4511, General Code, provides that the trustees shall take charge of and keep a full record, and report to council at least once a year a full detailed statement of the outstanding indebtedness of the corporation for bonds issued, and of the investments and general financial business of the city or village. Section 4514, General Code, provides for the investment of moneys received by such trustees in bonds of the United States, the State of Ohio, or of any municipal corporation, school, township or county bonds in Ohio. Sections 4515, 4516 and 4516-1, General Code, provide for the deposit of their funds.

Section 4517, General Code, reads as follows:

“The trustees of the sinking fund shall have charge of and provide for the payment of all bonds issued by the corporation and the interest maturing thereon. They shall receive from the auditor of the city or clerk of the village all taxes, assessments and moneys collected for such purposes and invest and disburse them in the manner provided by law. For the satisfaction of any obligation under their supervision, the trustees of the sinking fund may sell or use any of the securities or moneys in their possession.”

With respect to the last sentence of this section, if the word “use” refers to securities, this sentence would mean that for the satisfaction of any obligation under their supervision the trustees of the sinking fund could sell any of their