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INDIGENT PATIENT — BOARD OF COUNTY COMMISSIONERS RESPONSIBLE FOR BURIAL WHERE CARE AND CONTROL ASSUMED — SECTION 3476 G. C. — PATIENT PLACED IN PRIVATE HOSPITAL IN FOREIGN COUNTY UNDER SECTION 3143 G. C. — TUBERCULOSIS.

SYLLABUS:

*The board of county commissioners is responsible for the burial of an indigent patient where such board has assumed the care and control of such patient under Section 3476, General Code, and thereafter places such indigent patient in a private hospital in another county for treatment, under the provisions of Section 3143, General Code.*

Columbus, Ohio, July 5, 1940.

Honorable Paul A. Baden, Prosecuting Attorney,  
Hamilton, Ohio.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you request my opinion upon the following:

“A short time ago the County Tuberculosis Hospital burned and arrangements were made by the County Commissioners to send all tuberculosis patients to the sanatorium at Mt. Vernon. For these patients the County Commissioners are paying a flat rate of \$20.00 per week each.

With the above in mind, we submit the following facts:

1. A patient suffering from tuberculosis was placed in the County Tuberculosis Hospital by the County Commissioners. Subsequent to the fire he was removed to Mt. Vernon and while at Mt. Vernon died. His body was returned to Butler County for burial. Are the County Commissioners or the officials of his place of legal settlement liable for the funeral expenses?

2. A patient suffering from tuberculosis was placed by the County Commissioners in Mercy Hospital, Hamilton, Ohio, for treatment. Mercy Hospital is a private hospital operated by the Sisters of Mercy. After being in Mercy Hospital for six (6) weeks he was removed to Mt. Vernon by the County Commissioners and the expenses of keeping him there paid for by the County

Commissioners. Subsequently he died and his body was returned to Butler County for burial. Are the County Commissioners or the officials of the place of his legal settlement liable for the burial expenses?

I have read opinions of the Attorney General 1927 No. 562 and 1932 No. 4814 but do not believe they answer these questions.

For your information and to further clarify this reference, the sanitorium at Mt. Vernon is called The Avalon Sanitorium, Mt. Vernon, Ohio, and as we understand it, it is a strictly private institution having no connection with the State."

Section 3476, General Code, setting forth as to what units of government shall be responsible for relief, provides:

"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 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. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city.

Section 3139, General Code, setting forth as to what patients shall not be kept in the county infirmary, provides:

"On and after January first, nineteen hundred and fourteen, no person suffering from pulmonary tuberculosis, commonly known as consumption, shall be kept in any county infirmary."

Section 3143, General Code, granting authority to the county commissioners to make contracts for the care of persons suffering from tuberculosis, provides in part:

"\* \* \* 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; \* \* \*

Section 3495, General Code, stating as to what units of government shall be chargeable for burial of indigent dead in certain cases, provides:

“When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a penal reformatory, benevolent or charitable institution, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of section 9984, it shall be disposed of as follows: If he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death; if he had a legal residence in any other county of the state at the time of his death, the infirmary superintendent of the county in which his dead body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death, but if he had no legal residence in the state, or his legal residence is unknown, such infirmary superintendent shall cause him to be buried at the expense of the county.”

Section 3496, General Code, fixing the responsibility for the cost of burial of persons dying in state benevolent institutions, provides:

“In a county in which is located a state benevolent institution, the board in control of said institution shall pay all expenses of the burial of a pauper that dies in such institution, except when the body is delivered in accordance with the provisions of section 9984 of the General Code, and send an itemized bill of the expenses thereof to the county commissioners of the county from which the pauper was sent to the institution. Such county commissioners shall immediately pay the bill to such board in control.”

In view of the provisions of Section 3476, *supra*, and Section 3143, *supra*, there can be no question but that the county as a unit of government has proper authority to provide care and treatment for residents of the county who are suffering from tuberculosis. Under the provisions of Section 3143, *supra*, a county may contract with another county for such care or under the provisions of Section 3148, General Code, join with one or more counties to establish and maintain a district tuberculosis hospital, or each county may under the provisions and conditions of Section 3148-1, General Code, provide for its own hospital for the treatment of persons suf-

fering from tuberculosis. As to what plan of care will be utilized is a matter to be decided by each county.

The county herein involved appears to have elected to care for their patients suffering from tuberculosis through the means provided for in Section 3143, *supra*.

The county once having assumed control and care for treatment of a patient suffering from tuberculosis under the provisions of Section 3143, *supra*, the question then arises as to whether the county by virtue of its assumption of care and control have also assumed an obligation to provide a burial for such patient, should such person die while being so treated. The question at hand was for consideration in an opinion appearing in 1928 O. A. G., page 1502, wherein the then Attorney General states at page 1503:

“Even if it be conceded, however, that the phrase in Section 3495, *supra*, ‘and such person was not an inmate of a *penal, reformatory, benevolent or charitable institution*, in this state’ relates only to a state institution, and therefore does not include an inmate of a county home or a county or district Tuberculosis Hospital within the exception to the operation of the statute, it is my opinion that the section in question does not relate to the inmates of county homes, county hospitals, district hospitals or to other county charges.

That there is a well settled line of demarcation between that class of indigent poor for whom it is the duty of the township or municipal corporation to care for on the one hand and those for whom it is the duty of the county to provide is well settled. This question has been before this department a number of times and was elaborately discussed in an opinion of this office rendered under date of December 16, 1920, and reported in Opinions, Attorney General, 1920, 1177. Suffice it to say it is the duty of townships and cities to furnish relief to all residents of the state, county, township or city under Sections 3477 and 3479, General Code, who need *temporary* relief and to all such residents who need *partial* relief, while it is the duty of the county to furnish relief to persons who do not have the residence requirements prescribed by Sections 3477 and 3479, *supra*, to persons who are permanently disabled, to paupers, and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county home or under county control.

As to these last named classes of persons, an examination of the various sections of the General Code relating to the indigent poor convinces me that it was the intention of the Legislature to relieve townships and municipalities of any obligation to extend relief to or support persons coming within the four classes above de-

scribed for whom it is the duty of the county to provide. To relieve the townships and municipalities of caring for these classes of poor when alive and then to require the townships and municipalities to pay the burial expenses of such persons would bring about a situation somewhat absurd, and if Section 3495, supra, be held to include inmates of the county infirmary, a construction creating this very situation would be adopted.

Moreover, it will be observed that Section 3495, supra, requires the body to be buried at the expense of the township or corporation in which the indigent person had a legal residence at the time of his death. All or a large part of the inmates of a county home may and often do have a legal residence in the township in which the county home is situated. Certainly it was not intended that the township in which a county home was located would be required to bury all the inmates of the home. And it is equally certain that it cannot be said that the Legislature has not made provision for the burial of county charges because such authority is not expressly contained in any section of the Code. Such authority is plainly inferable from the various sections relating to the county home, including Section 2544, supra, which directs the superintendent of the home to *'receive and provide* for indigent (poor) in proper cases. For these reasons it is my opinion that it is the duty of the proper county officers to bury at county expense the body of an indigent person who had become a county charge."

While the statutes above quoted do not in express terms empower the board of county commissioners to provide a burial for persons who die as county charges, yet from the reasoning contained in the above opinion, it appears that the legislature in the enactment of said statutes clearly intended by implication to grant such power to the board of county commissioners, and therefore did not expressly so state. Pertinent to the instant case the legislature has enacted statutes providing for the public care and treatment of persons suffering from tuberculosis and the assumption of such persons as county charges. By the application of the above reasoning it can certainly be concluded that the same legislation which provides for the care of such persons impliedly grants to the board of county commissioners who have assumed such charges, the authority to make expenditures to properly care for the bodies of such indigent charges after death.

It is, therefore, my opinion in specific answer to your inquiry that the board of county commissioners is responsible for the burial of an indigent patient where such board has assumed the care and control of such patient

under Section 3476, General Code, and thereafter places such indigent patient in a private hospital in another county for treatment, under the provisions of Section 3143, General Code.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.