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1. MAINTENANCE—PRIOR TO ENACTMENT OF HB 382, 98 GA, MAINTENANCE SIGNIFIED PRACTICE OF FURNISHING ARTICLES AND SERVICES—NECESSITIES AND CONVENIENCES—DESIGNATED OFFICERS AND EMPLOYES —BENEVOLENT, CORRECTIONAL AND PENAL INSTITUTIONS—ALLOWANCE MADE AS PART OF AGGREGATE COMPENSATION—NO LUXURY ITEMS INCLUDED—SECTION 1842 GC.

2. SALARY ADJUSTMENT ACT, 1949—MEALS, LODGING, LAUNDRY, PERSONAL SERVICES — OFFICERS, EMPLOYES, STATE INSTITUTIONS — REQUIRED TO PAY REASONABLE COSTS FOR ITEMS FURNISHED — SECTION 143.10 RC.

3. AMOUNTS DETERMINED TO BE PAID MUST BE REASONABLY RELATED TO COST INCURRED BY STATE IN SUPPLYING MAINTENANCE—SECTION 143.10 RC.

4. ADMINISTRATION DISCRETION — DESIGNATION OF PARTICULAR OFFICERS AND EMPLOYES, STATE INSTITUTIONS WHO MAY RECEIVE MAINTENANCE—RECIPIENTS MUST PAY REASONABLE COSTS INCURRED BY STATE.

5. RESPONSIBILITY OF DEPARTMENT OR INSTITUTION INVOLVED TO DETERMINE WHAT CONSTITUTES REASONABLE COSTS—FAILURE TO COLLECT REASONABLE COSTS FROM RECIPIENTS OR FAILURE TO COLLECT SUM REASONABLY ADEQUATE TO REIMBURSE STATE WOULD CONSTITUTE INSTANCES WHERE PUBLIC MONEY DUE HAS NOT BEEN COLLECTED—SECTION 117.10 RC.

6. BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES — MAY DETERMINE IN PARTICULAR CASES ADEQUACY OF SUMS PAID BY RECIPIENTS— WHERE SUMS PAID WERE NOT REASONABLY ADEQUATE, FINDINGS MAY BE MADE—CHAPTER 117, RC.

7. DEPARTMENT OF MENTAL HYGIENE AND CORRECTION—SEVERAL BENEVOLENT, CORRECTIONAL, OR PENAL INSTITUTIONS — CERTAIN ADMINISTRATIVE OFFICERS AUTHORIZED TO APPOINT SUCH EMPLOYES AS ARE NECESSARY FOR EFFICIENT CONDUCT OF DEPARTMENT—APPOINTMENT OF CHAPLAIN— SECTIONS 5119.05, 5119.48 RC.

SYLLABUS:

1. Prior to the enactment of House Bill No. 382, 98th General Assembly, salary adjustment act of 1949, the term "maintenance" signified the practice of furnishing articles and services in the nature of necessities and conveniences to designated officers and employees in the several benevolent, correctional and penal institutions, such allowance being made as a part of the aggregate compensation of such recipients, which compensation was determined, as to amount, in the manner provided in Section 1842, General Code. It did not include luxury items.

2. Following the effective date of the salary adjustment act of 1949, the term "maintenance" signified the practice of furnishing to designated officers and employees in the state institutions "meals, lodging, laundry, and other personal services," for which items the recipients are required, under the provisions of Section 143.10. Revised Code, Section 486-7b, General Code, to pay the "reasonable costs" incurred by the state in providing such items of maintenance.

3. Under the provision for the departmental determination of the amounts to be paid by recipients of maintenance, as set out in Division (E) of Section 143.10, Revised Code, as amended effective October 1, 1955, the amounts so determined must be reasonably related to the cost incurred by the state in supplying such maintenance.

4. The designation of particular officers and employees in the state institutions who may receive maintenance, is a matter of administrative discretion on the part of the department concerned. Such discretion should be exercised so as to promote the efficiency of the public service and should have regard to the duties and responsibilities of the individuals concerned and the peculiar nature of the conditions under which the institution is operated. Under the provisions of the statute as amended effective January 1, 1950, such discretion was necessarily subject to the requirement that each recipient pay the "reasonable costs" incurred by the state in furnishing such maintenance. It is not restricted to "superintendents, wardens and matrons" of such institutions.

5. The determination of what constitutes the "reasonable costs" incurred by the state in furnishing maintenance in particular cases is initially the responsibility of the "department or institution involved," as provided in Section 143.10, Revised Code. The failure to collect such "reasonable costs" from employees, or the failure to collect a sum which is reasonably adequate to reimburse the state for such costs, would constitute instances in which "public money due has not been collected" within the meaning of Section 117.10, Revised Code.

6. The determination in particular cases of the adequacy of the sums paid the state by officers and employees to meet the "reasonable costs" to the state of maintenance furnished them may properly be made by the Bureau of Inspection and Super-

vision of Public Offices, as provided in Chapter 117., Revised Code; and where it has been thus determined that the sums so paid were not reasonably adequate to meet such costs, appropriate findings may be made against the recipients concerned.

7. Under the general provisions of Sections 5119.05 and 5119.48, Revised Code, the administrative officers therein named are authorized to "appoint such employees as are necessary for the efficient conduct" of the Department of Mental Hygiene and Correction and of the several benevolent, correctional, or penal institutions under the supervision of such department; and such general provisions are not limited, in the matter of the appointment of chaplains for such institutions, by any special provision of law making it mandatory to appoint "a chaplain" for certain of such institutions.

Columbus, Ohio, November 23, 1955

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir:

I have for consideration your recent inquiry regarding the scope of the term "maintenance" and its application to certain employees of the state who are being furnished food, quarters, and other personal services in connection with the services which they render to the state. The several specific questions presented in your inquiry are as follows:

"1. Which employees of the State of Ohio are entitled to 'maintenance' and does such 'maintenance,' excepting the Chaplain of the Ohio Reformatory, include members of the *employee's family.*

"2. What is included in the word 'maintenance' specifically. Does it embrace items other than food.

"3. Who determines 'reasonable costs thereof' and establishes the same. In other words, if 'actual costs' exceed predetermined 'reasonable costs' is the employee receiving maintenance beyond such 'reasonable costs' liable therefor.

"4. If your opinion holds that 'reasonable costs' shall be the approximate value of the schedule set out in the Department's Bulletin, against whom shall findings be made.

"5. If your opinion holds that no one, excluding the exception set forth in the first query, is to be allowed maintenance, other than the 'employee' how shall the sum for which finding is to be made computed.

"6. May mental institutions employ more than one Chaplain and in addition to salary for such Chaplain or Chaplains furnish maintenance—full or partial.

"7. May a Chaplain or Chaplains be paid for services furnished to the convicts in the Ohio Penitentiary.

"8. May more than one Chaplain serve at the Ohio Reformatory for Men at the same time.

"9. May more than one Chaplain serve at the Ohio Reformatory for Women at the same time.

"10. May other employees than Superintendents, Wardens, Matrons and Chaplains of the Ohio Reformatory reside in the institutions with which they are connected. This would include such officials as Business Managers, Assistant Superintendents, Doctors, Attendants, Farm Supervisors, Maintenance employees, etc."

Your inquiry raises certain fundamental questions relating to (1) the definition of "maintenance," (2) the officers and employees to whom maintenance may be extended, and (3) the charge with respect thereto to be made by the state and collected from the recipients of maintenance.

The term "maintenance" is not defined by statute nor am I able to ascertain that it ever was so defined. The *practice* of maintenance in certain of the state institutions has, however, been followed for many years, statutory references to the furnishing of quarters, fuel and meals to institutional officers and employees being found in special legislative enactments of nearly one hundred years ago relating to particular institutions. In the act of March 24, 1860, 57 Ohio Laws, 96, we find a provision for the compensation in money of the several officers of the penitentiary followed by the proviso that no further "perquisites, in the shape of board, provisions, carriages, horses, or otherwise" should be received by such officers "either for themselves or families." This act was repealed three years later, 60 Ohio Laws, 28, and under the new statute the warden and matron were allowed "apartments" in the prison, and the prison directors were authorized to designate such officers and employees as they deemed necessary to be "boarded and lodged within the institution," the recipients to pay the warden therefor "such amount as may be mutually agreed upon."

In more recent years references to such practice, by the term "maintenance," are found in many of the general apropriation acts prior to the enactment of the salary adjustment act of 1949, House Hill No. 382; 123 Ohio Laws 862, and in the numerous institutional salary schedules by which, prior to the enactment of such salary adjustment act, the salaries and allowances of institutional employees were fixed under authority of

Section 1842, General Code. This section, it may be noted in passing, was amended in 1949 in House Bill No. 382 to delete the provision relating to the fixing of salaries and wages of employees.

An instance of such legislative recognition of "maintenance" is found in House Bill No. 495, 97th General Assembly, an act making general appropriations for the biennium ending December 31, 1948. In Section 12 of such act there is set out a requirement that the "compensation" of employees shall be at the rates therein set out for certain "groups and grades." Among the "groups and grades" so listed in the act are the following:

"* * *

"NURSE GROUP—PUBLIC HEALTH AND DEPARTMENTAL—Grade I. Rate C $3,600.00 and up

"* * *

"NURSE GROUP—INSTITUTIONAL
(Including Maintenance)
Grade I. Rate A $2,400.00

"* * *

"PHYSICIAN group
(Institutional—With Maintenance)
Grade I. Rate C $3,600.00 and up

"* * *

"DEPARTMENTAL—NO MAINTENANCE
Grade I. Rate C $4,000.00 and up

"* * *"

Numerous instances of legislative provision for the erection of buildings at state institutions to be used for residential purposes, especially by physicians and other professional employees, are found in the several special appropriation acts for "Additions and Betterments" over the past twenty years or so. See, for example, Amended House Bill No. 816, 100th General Assembly, where provision is made for the construction of ten "physician's units," or residences, at as many different benevolent institutions, and for the erection of a "Nurses and Employees Building" and a "Nurses Home." I am informed that over sixty such residences

for professional employees of the Department of Public Welfare have been constructed pursuant to similar legislative appropriations specifically for such purpose, and that such buildings are presently in use for the legislative purpose thus expressed.

It would seem that by these statutory provisions and references the General Assembly recognized the existence and the propriety of the practice of maintenance in the case of certain institutional employees, and indicated that maintenance received by such employees was deemed a part of their compensation. Despite this recognition and indication, however, it is to be observed that the legislature failed either in these enactments or in any permanent statute to define the term "maintenance" or to indicate just what items the term was deemed to include. Provision was made, however, prior to the salary adjustment act of 1949, for the fixing of the compensation of institutional employees by administrative means. Such provision was found in Section 1842, General Code, which section, as enacted in 1911, read in part as follows:

> "The board after conference with the managing officer of each constitution shall determine the number of officers and employes to be appointed therein. It shall from time to time fix the salaries and wages to be paid at the various institutions, which shall be uniform, as far as possible, for like service, provided that the salaries of all officers shall be approved in writing by the governor."

The "board" to which reference is thus made is the Ohio Board of Administration, the powers and duties of which agency were later transferred to the Department of Public Welfare. By an amendment of 1945 this section was changed to give recognition to such transfer; and, as already noted, the provision for the administrative fixing of compensation of officers and employees was deleted in the enactment of the salary adjustment act of 1949.

I am informed that it has been the administrative practice in the Department of Public Welfare for many years, under authority of Section 1842, supra, to promulgate from time to time a "salary schedule" in which provision is variously made for "full maintenance" or "partial maintenance" for designated institutional employees. "Full maintenance" was provided for by the use of that term itself, but "partial maintenance" was provided for by listing the various items, such as quarters, laundry, or one or two meals daily, as the case may be.

In none of these salary schedules does there appear to have been included any attempt to define the term "full maintenance." It may be observed, however, that the practice of the department in allowing to certain officers and employees a provision in kind in the matter of quarters, fuel and laundry services, meals, in institutional dining rooms or provisions for the operation of separate food facilities in assigned residential quarters, and other personal services, was administratively approved by the same officer, i.e., the Director of the Department of Public Welfare, who had the authority, under Section 1842, General Code, to fix the salary schedule for departmental employees. Accordingly, since the legislature had recognized "maintenance" as a form of compensation, as hereinbefore indicated, it would logically follow that the compensation of employees who were allowed maintenance was fixed not only by the terms of such salary schedules approved by the department but was fixed in further detail by the administrative orders issued from time to time by the department in the matter of assignment of quarters to individual employees and in directing that particular allowance in kind be made to them.

It is thus to be seen that prior to the enactment of the salary adjustment act of 1949, there was statutory authority for the allowance of varying amounts of maintenance to the institutional officers and employees in the Department and that such allowances were deemed to be a part of the gross compensation of such officers and employees.

As to the extent of such maintenance, it has already been observed that the statute is silent and it seems that no detailed rules on the subject had been adopted by the department. Since the fixing of the gross compensation in such cases was confided to the discretion of the department by the provisions of Section 1842, supra, it necessarily follows that the extent of maintenance allowed was likewise confided to the departmental discretion. This is not to say, however, that such discretion was, or now is, without limit. In the absence of statutory definition we may assume that the term must be given its ordinary and usual meaning. Such meaning is stated by Webster as follows:

> "That which maintains or supports; means of sustenance; supply of necessaries and conveniences."

This definition very clearly excludes luxuries of any kind and I think it is quite safe to assume that the Legislature, in the several references to "maintenance" in various appropriation acts, intended that such term

should be limited to "necessaries and conveniences" to the exclusion of luxury items.

Since the allowance of any maintenance was confided in the first instance to the discretion of the department, it would seem that the determination of what constitutes "necessaries and conveniences" was likewise a question of fact to be determined in the first instance by the department. Any abuse of discretion in this matter during the period prior to the date when employees were required by statute to pay the "reasonable costs" of maintenance, would, of course, amount to an improper use of public property and would present to the bureau a question of mixed law and fact as to whether "any public property has been converted or misappropriated" within the meaning of Section 117.10, Revised Code. There being presented in such case a question of mixed law and fact, a precise statement of what is included within "maintenance" is clearly beyond the scope of this opinion, and is one for determination by the bureau.

All that has thus far been said is more particularly applicable to the situation as it existed in the years prior to 1950. On January 1, 1950, the salary adjustment act, House Bill No. 382, 123 Ohio Laws, 862, became fully effective with the salaries and wages of all state employees being fixed by survey and assignment of the several positions and employments to one of the classifications provided in such act. As already noted, this enactment effected the amendment of Section 1842, General Code, by which the department's authority to fix the compensation of institutional officers and employees was deleted.

One of the provisions in such enactment pertinent to the problem at hand is the following as set out in Section 486-7b, General Code, now Section 143.10, Revised Code:

> "5. The above salary and wage ranges are based upon full-time service by the employee and represent gross amounts; and if meals, lodging, laundry or other personal services are furnished employees, the reasonable costs thereof shall be paid by the employees receiving the same in such manner as may be provided by the particular department or institution involved."

By this reference to "gross amounts," and the payment by employees of "reasonable costs," the Legislature has clearly evinced an intent that the aggregate compensation of employees should no longer be paid both in

money and in kind, i.e., that maintenance should no longer be furnished employees without cost on the notion that it constituted a part of their aggregate compensation. These references do, however, constitute a clear legislative recognition of the propriety of supplying to employees the service and convenience of maintenance provided the "reasonable costs" thereof are paid by the recipients.

The statute does not indicate, of course, what employees may receive this service but it can fairly be inferred, in my opinion, that it was the legislative intent that it would be largely limited to those institutional employees whose duties and responsibilities were such as to require them to live either in the institution itself or in close proximity to it, or were such as to make it a matter of substantial inconvenience for them to secure "meals, lodging, laundry, or other personal services" from sources other than the institution by which they are employed. In making this provision it was indubitably the legislative intent primarily to promote efficiency of the services rendered by employees by removing the cause of such substantial inconvenience, rather than an intent to provide for additional compensation for the employees concerned.

From the statutory provision above quoted we may readily infer that the legislature was familiar with the then existing practice of maintenance and specifically was cognizant of the fact that maintenance was extended to the dependent members of the families of employees in the several state institutions. Since no restriction in this regard was imposed in the statutory provision by which the practice of maintenance was substantially changed in other respects, we may conclude that there was no intent to change the practice with regard to its extension to dependents of employees. Morever, since under the amended statute the "reasonable costs" of any maintenance received was required to be paid, it is possible to suppose that the legislature perceived no compelling need to place any additional limits either on the amount of maintenance furnished or on the class of persons who might receive it.

On the other hand, there is no indication in this legislation of an intent to extend the class of persons who might receive maintenance. I would conclude, therefore, that it was the legislative intent that the existing practice in this regard was to be continued, i.e., that the determination of who might receive maintenance is confided in the first instance to the discretion of the department, now the department of Mental Hygiene and Correction, and such determination should be made with a view to pro-

moting the efficiency of employees' services by removing substantial inconvenience which would otherwise be involved, due to the peculiar nature of their duties and responsibilities, in securing "meals, lodging, laundry, and other personal services" from sources other than the institution which they serve.

We now come to the question of the extent to which maintenance may be furnished under Section 143.10, Revised Code, prior to the amendment of such section effective October 1, 1955. As already indicated, the statute effective on January 1, 1950, required the employee concerned to pay the "reasonable costs" involved. Accordingly, it is my notion that the department concerned, under this provision, might reasonably be thought to have somewhat broader discretion in the matter than was the case in the period prior to 1950 when maintenance was deemed a part of the employee's aggregate compensation.

In this connection the more important question is how the reasonable costs were to be computed, by whom determined, and the more specific question of whether the "schedule of deductions" enclosed with your inquiry is a reflection of reasonable costs.

In the first place it seems to me that the term "reasonable costs" has reference to the cost of the goods, services and facilities incurred by the state in procuring them. It would indicate, I should think, the amount actually expended by the state in such procurement, plus a reasonable added amount to cover the additional administrative cost incurred in supplying maintenance to numerous employees.

In many instances, of course, it is not readily possible to evaluate precisely the value of items such as lodging, meals, laundry, and other personal services, or the additional administrative expense involved. The word "reasonable" therefore, must be deemed to mean "reasonably accurate," or the "approximate" costs, as nearly as they can be conveniently determined. Here, again, is an area within which we must conclude that the department concerned might exercise some administrative discretion. Any such discretion is not, of course, absolute, and if an evaluation of the cost to the state of the goods and services supplied are wholly without some reasonable relationship to the amounts paid therefor by the recipients, it becomes clear that an abuse of discretion has occurred. It would appear, therefore, that if the value of the goods and services supplied to employees by way of maintenance so far exceeds the cost to the state in making them available, that there can be said to be no reasonable rela-

tionship between them, then the failure to collect from such employees the reasonable cost of such goods and services constitutes an instance in which "public money due has not been collected" within the meaning of Section 117.10, Revised Code.

It is well beyond the scope of this opinion, of course, to make a determination, on the basis of the facts available to me, of whether the "schedule of deductions" enclosed with your inquiry bears a reasonable relationship to the value of the maintenance actually supplied the employees to whom such schedule is applicable. Such determination would involve, in numerous situations, questions of mixed law and fact and such determination is, therefore, one which should properly be made by the bureau from a detailed consideration of the facts involved in each such situation.

With these conclusions we may proceed to consider in order the several specific questions set out in your inquiry. Your first specific question is here repeated for convenience:

> "1. Which employees of the State of Ohio are entitled to 'maintenance' and does such 'maintenance,' excepting the Chaplain of the Ohio Reformatory, include members of the *employee's family.*"

I have already indicated that although the enactment in 1949 of the fifth paragraph in Section 486-7b, General Code, evinced a legislative intent to change materially the basis of maintenance, so far as payment therefor by the employees is concerned, it was nevertheless an indication that the legislature was aware of the practice of maintenance in its application to employees' families. Since the legislature has thus indicated awareness of the practice without forbidding it, but instead placing it on such a financial basis that the extension of maintenance to the families of employees would not result in any financial loss to the state, it is difficult to find anything in the 1949 enactment which would make it imperative to "disregard and set aside" the long continued administrative interpretation of the powers of the department in this regard, the applicable rule of interpretation in this connection being thus stated in Industrial Commission v. Brown, 92 Ohio St., 309 (311). In this connection it will be noted that although there is found in Section 5143.14, Revised Code, a mandatory provision that "The superintendent shall assign * * * suitable rooms, fuel and provisions" to the chaplain "for himself and his family," I do not regard this provision to be inconsistent with the notion that such of-

ficer might have similarly assigned quarters and provisions to other officers and employees if in his discretion he believed that the efficiency of the service rendered the state would thereby be promoted, and subject to the condition that the state be reimbursed for the "reasonable costs thereof." With respect to the chaplain it would seem that the provision above noted in Section 5143.14 must, since January 1, 1950, be interpreted in relation to the provision for payment of the "reasonable costs" as set out in Section 143.10, Revised Code, effective from that date to October 1, 1955, and it thus becomes necessary to conclude that the assignment of quarters, provisions, etc., to the chaplain was likewise subject to the condition that the state be reimbursed for the "reasonable costs" incurred by the state.

Your second specific question reads as follows:

> "What is included in the word 'maintenance' specifically. Does it embrace items other than food."

Maintenance must now be deemed, by specific statutory provision in Section 143.10, Revised Code, to include, in addition to food, "lodging, laundry, and other personal services." Since the statute is not more specific it would seem that what may be included in "other personal services" is largely left to the discretion of the director of the department concerned. Here it can be supposed that the strictness with which such discretion is exercised is not a matter of compelling concern, so far as the state's purely fiscal affairs are concerned, since the employee affected was required in any event to pay the "reasonable costs" of whatever "other personal services" are furnished him or his family.

Your third and fourth questions read:

> "3. Who determines 'reasonable costs thereof' and establishes the same. In other words, if 'actual costs' exceed predetermined 'reasonable costs' is the employee receiving maintenance beyond such 'reasonable costs' liable therefor."
>
> "4. If your opinion holds that 'reasonable costs' shall be the approximate value of the schedule set out in the Department's Bulletin, against whom shall findings be made."

As already indicated herein, it is my conclusion that the Department head concerned could initially determine the "reasonable costs" to the state of whatever maintenance items were furnished, and arrange for the payment of such amounts by the recipient employee. In any instance in which the bureau finds there has been an abuse of discretion in this regard, and

that the "reasonable costs" have not been recovered by the state, it should regard the transaction as one in which proceedings under the provisions of Section 117.10, Revised Code, are justified.

As to the question of the persons against whom the findings in such case should be made, it is to be borne in mind first that the actual allowance of maintenance to employees is in and of itself lawful, and second that there is a duty on the department heads concerned to arrange for the state to recoup the reasonable costs thereof by way of payments from the employees concerned. Where it has been determined that such recoupment has not been effected, or has been made in a wholly inadquate amount, there is evident, not a case of illegal expenditure of public money nor a case of conversion or misappropriation of public money, but rather a case of failure to collect sums due the state. It follows, therefore, that the findings should be made against the recipients of maintenance who have failed to pay the state the reasonable costs thereof.

Your fifth question reads:

> "5. If your opinion holds that no one, excluding the exception set forth in the first query, is to be allowed maintenance, other than the 'employee' how should the sum for which finding is to be made be computed."

Since I have indicated that certain employees, subject to the conditions imposed in Section 143.10, Revised Code, might properly be allowed maintenance for their families, and because this question is based on the assumption of a contrary conclusion, it becomes unnecessary to consider this question. Your sixth question is as follows:

> "6. May mental institutions employ more than one Chaplain and in addition to salary for such Chaplain or Chaplains furnish maintenance—full or partial."

Your attention is invited to the following provision in Section 5119.05, Revised Code:

> "Except as otherwise provided as to appointments by chiefs of divisions, the director of mental hygiene and correction shall appoint such employees as are necessary for the efficient conduct of the department of mental hygiene and correction, and prescribe their titles and duties."

This provision is to be considered in relation to the final paragraph of Section 5119.48, Revised Code, which reads as follows:

"After conference with the managing officer of each institution and the director, the chief of the division shall determine the number of employees to be appointed to the various institutions and clinics."

I find no provision elsewhere in the statutes relating to the Department of Mental Hygiene and Correction, or relating specially to particular institutions, which would have the effect of limiting the administrative discretion under these provisions to appoint more than one chaplain at any of the state mental institutions. As to the allowance of maintenance to such employees, I have already indicated as to employees generally, that this is a matter of administrative discretion to be exercised with regard to the needs of the public service upon consideration of the duties and responsibilities of the employee concerned, and conditioned, of course, upon payment by the employee of the reasonable costs incurred by the state. I perceive no reason why a different rule should be applied in the case of institutional chaplains.

Your seventh question reads:

"7. May a Chaplain or Chaplains be paid for services furnished to the convicts in the Ohio Penitentiary."

Here, too, the statutory authority pointed out above in Sections 5119.05 and 5119.48, Revised Code, would clearly appear sufficient to authorize the exercise of administrative discretion in determining the propriety of appointing chaplains for the Ohio Penitentiary unless there be special provisions of law inconsistent therewith. I find no such inconsistent provisions and am therefore impelled to answer this question in the affirmative.

In so concluding I am not unmindful of the fact that in Section 2180, General Code, 102 Ohio Laws 474, there was formerly set out a mandatory requirement that "a chaplain, who shall act as librarian" be appointed for the penitentiary. This section was repealed in 1947, 122 Ohio Laws, 239, in an act largely designed to repeal numerous "obsolete, antiquated or redundant" sections. I do not regard this repeal as having any limiting effect on the interpretation of the provisions pointed out in Section 5119.05 and 5119.48, supra.

Your eighth and ninth questions are as follows:

"8. May more than one Chaplain serve at the Ohio Reformatory for Men at the same time.

"9. May more than one Chaplain serve at the Ohio Reformatory for Women at the same time."

It is assumed that you deem these questions to have been raised because of the special mandatory provision in Section 5143.14, Revised Code, for the appointment of "*a* chaplain" at the Ohio State Reformatory for Men, and the absence of a similar provision in the statutes relating to the reformatory for women.

I do not regard either the rule of "expressio unius," or the rule of prevalence of a special statute over one that is general, to have any application in a situation where we are concerned with a special statute which is mandatory and a general statute which is permissive, Sections 5119.05 and 5119.48, supra, this for the reason that there is no necessary conflict between them. These questions must, therefore, be answered in the affirmative.

Your tenth question reads:

"10. May other employees than Superintendents, Wardens, Matrons and Chaplains of the Ohio Reformatory reside in the institutions with which they are connected. This would include such officials as Business Managers, Assistant Superintendents, Doctors, Attendants, Farm Supervisors, Maintenance employees, etc."

I have already indicated herein that the designation of particular employees for the allowance of maintenance is a matter of administrative discretion to be exercised upon consideration of the several factors affecting the public service, including the nature of the duties and responsibilities of the individuals concerned, and conditioned upon payment by the recipients of the reasonable costs incurred by the state in furnishing such items of maintenance as may be allowed. It is assumed from the reference to "Superintendents, Wardens and Matrons" that you have in mind the posible effect of the following provision in Section 5119.47, Revised Code:

"Superintendents, wardens, and matrons, if required by the department of mental hygiene and correction, shall reside in the institution in which they are employed and devote their entire time to the interests of their particular institution."

This provision simply means that the director may, in his discretion, *require* certain officers to reside in the institution in which they are employed. He could not *impose such requirement* on any other officers or

employees. He could, however, *permit* such other persons to reside in institutions in which they are employed, for this is another instance in which there can be no conflict or inconsistency between the special and general statutes which apply. This question is therefore answered in the affirmative.

In conclusion we may note briefly the effect of the amendment of Section 143.10, Revised Code, in House Bill No. 651, 101st General Assembly, Division (E) in this section, effective October 1, 1955, reads as follows:

> "(E) The above salary and wage ranges are based upon full-time service by the employee and represent gross amounts; and if meals, lodging, laundry, or other personal services are furnished employees, such employees shall pay such amounts therefor, and in such manner, as shall be determined by the particular department involved."

It will be noted that even though the words "reasonable costs" have been eliminated, the provision to the effect that the "salary" prescribed in this section shall represent "gross amounts" is retained. This rather clearly indicates that there was no intent to permit the allowance of maintenance in unlimited or unreasonable amounts as a form of compensation; and we may thus conclude that this provision still requires the department concerned to require payment by recipients of maintenance in such amounts as are reasonably related to the cost thereby incurred by the state.

Accordingly, and in specific answer to your inquiries, it is my opinion:

1. Prior to the enactment of House Bill No. 382, 98th General Assembly, salary adjustment act of 1949, the term "maintenance" signified the practice of furnishing articles and services in the nature of necessities and conveniences to designated officers and employees in the several benevolent, correctional and penal institutions, such allowance being made as a part of the aggregate compensation of such recipients, which compensation was determined, as to the amount, in the manner provided in Section 1842, General Code. It did not include luxury items.

2. Following the effective date of the salary adjustment act of 1949, the term "maintenance" signified the practice of furnishing to designated officers and employees in the state institutions "meals, lodging, laundry, and other personal services," for which items the recipients are required, under

the provisions of Section 143.10, Revised Code, Section 486.7b, General Code, to pay the "reasonable costs" incurred by the state in providing such items of maintenance.

3. Under the provision for the departmental determination of the amounts to be paid by recipients of maintenance, as set out in Division (E) of Section 143.10, Revised Code, as amended effective October 1, 1955, the amounts so determined must be reasonably related to the cost incurred by the state in supplying such maintenance.

4. The designation of particular officers and employees in the state institutions who may receive maintenance, is a matter of administrative discretion on the part of the department concerned. Such discretion should be exercised so as to promote the efficiency of the public service and should have regard to the duties and responsibilities of the individuals concerned and the peculiar nature of the conditions under which the institution is operated. Under the provisions of the statute as amended effective January 1, 1950, such discretion was necessarily subject to the requirement that each recipient pay the "reasonable costs" incurred by the state in furnishing such maintenance. It is not restricted to "superintendents, wardens and matrons" of such institutions.

5. The determination of what constitutes the "reasonable costs" incurred by the state in furnishing maintenance in particular cases is initially the responsibility of the "department or institution involved," as provided in Section 143.10, Revised Code. The failure to collect such "reasonable costs" from employees, or the failure to collect a sum which is reasonably adequate to reimburse the state for such costs, would constitute instances in which "public money due has not been collected" within the meaning of Section 117.10, Revised Code.

6. The determination in particular cases of the adequacy of the sums paid the state by officers and employees to meet the "reasonable costs" to the state of maintenance furnished them may properly be made by the Bureau of Inspection and Supervision of Public Offices, as provided in Chapter 117., Revised Code; and where it has been thus determined that the sums so paid were not reasonably adequate to meet such costs, appropriate findings may be made against the recipients concerned.

7. Under the general provisions of Sections 5119.05 and 5119.48, Revised Code, the administrative officers therein named are authorized to "appoint such employees as are necessary for the efficient conduct" of the

Department of Mental Hygiene and Correction and of the several benevolent, correctional, or penal institutions under the supervision of such department; and such general provisions are not limited, in the matter of the appointment of chaplains for such institutions, by any special provision of law making it mandatory to appoint "a chaplain" for certain of such institutions.

Respectfully,
C. WILLIAM O'NEILL
Attorney General