

2245.

COUNTY COMMISSIONERS—DUTIES AS TO BURIAL OF INDIGENT PERSONS—AUTHORITY TO PURCHASE CEMETERY GROUND DISCUSSED.

SYLLABUS:

1. *It is the duty of the board of county commissioners to pay the burial expenses of indigent county charges; and in the discharge of this duty the commissioners may provide burial lots in public or private cemeteries, or may set aside a part of the real estate, upon which the county home is situated, as a burial ground for such deceased persons.*

2. *The board of county commissioners of a county is without authority to purchase from a cemetery association a plot of ground, which does not adjoin the existing site of the county home, for the purpose of providing a place to bury the indigent poor who are county charges at the time of their death.*

3. *By the terms of Section 2433, General Code, as amended (112 v. 364), county commissioners may purchase or appropriate such real estate adjoining the existing site of the county home as they deem necessary for infirmary purposes.*

COLUMBUS, OHIO, June 18, 1928.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“I would appreciate your opinion on the following:

Some years ago when the county commissioners erected a county home part of the land surrounding the home was set apart for burial purposes, of the indigent dead in Mahoning County. At present, such land has been exhausted, which necessitates the buying of lots in private cemeteries for the burial of indigent dead.

The county commissioners now have a proposition whereby they can purchase twelve acres of land from a cemetery association for the sum of \$3,000.00, which, under very close estimate will save Mahoning County considerable money.

May the county commissioners legally purchase a plot of ground from a cemetery association for the purpose of burying the county's indigent dead?”

It has long been settled in this state that statutory boards, such as boards of county commissioners have such powers and jurisdiction, and only such, as are expressly conferred by statute, or necessarily implied to carry the powers expressly granted into effect. See *Elder vs. Smith, Auditor, et al.*, 103 O. S. 369. It is evident, therefore, that the county commissioners may not purchase and take title to said plot of ground unless they are authorized by statute to do so. This authority I do not find in the statutes.

Under the provisions of Section 3451, General Code, the title, right of possession and control to and of public graveyards and burial grounds, located without the corporate limits of any city or village, except such as are owned or under the care of a religious or benevolent society, or an incorporated company or association, or under the control of the authorities of any city, or village, are vested in the township trustees.

Section 4160, General Code, provides in substance that the title to, and right of possession of, public graveyards, and burial grounds, located within a city, except those owned or under the care of a religious or benevolent society, or an incorporated company or association, shall be vested in the corporation where such graveyard or burial ground is located.

Section 4174, General Code, contains like provisions with reference to public graveyards and burial grounds located in villages, and by this section such graveyards or burial grounds are vested in the village where the same is located.

As stated above, I do not find any statutory authority for the county commissioners to purchase burial grounds and to have the title, right of possession and control in said county or county commissioners.

There is authority under Section 2433, General Code, as amended by the 87th General Assembly (112 v. 364), for purchasing such real estate adjoining an existing county infirmary as the county commissioners may deem necessary. Said section reads as follows :

“The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, detention home, public market houses, county children’s home and other necessary buildings, and sites therefor ; *also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid*, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress.” (Italics the writer’s.)

This section authorizes the county commissioners to purchase additional land for the county infirmary but provides that said purchase shall be for county infirmary purposes.

The question is therefore presented as to whether or not, as a matter of law, a plot of ground may be purchased for infirmary purposes and set aside for use as a burial ground for the indigent poor, who are county charges.

In my opinion, it is the duty of the county to bury at county expense the body of a deceased indigent person, who, at the time of his death, was a county charge. I reached this conclusion in Opinion No. 562, rendered under date of June 2, 1927, to the Bureau of Inspection and Supervision of Public Offices, in which, after quoting, in part, Sections 3495, 3496 and 9984, General Code, as the only sections *expressly* relating to the burial of the bodies of indigent poor, and after reviewing a number of former opinions of this department, viz., those reported in the Annual Report of the Attorney General, 1912, Vol. II, p. 1302; Opinions, Attorney General, 1915, Vol. I, p. 547; 1921, Vol. I, 332; and 1922, Vol. I, p. 60, I said as follows :

“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 described 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."

It being the duty of the county commissioners to bury at county expense the bodies of indigent (poor), who at the time of their death, were county charges, the manner and place of burying such persons must be left to the sound discretion of the county commissioners. If in the exercise of this discretion, the commissioners deem it to be for the best interest of the county to provide burial lots in public or private cemeteries, they may do so. If, on the other hand, it is the opinion of the commissioners that the interests of the county will be best served by setting apart a part of the infirmary grounds as a burial place for the indigent (poor,) who are county charges, this course may be followed.

It will be noted that under the provisions of Section 2433, above quoted, the commissioners may purchase or appropriate "such real estate adjoining an existing site as such taxing authority may deem necessary," for a county infirmary as well as for the other institutions and buildings enumerated in the section. In view of the provisions of this section, it is my opinion that if the county commissioners deem it necessary they may purchase or appropriate additional land adjoining the present

infirmity site, and that if they see fit so to do, may use such part of this additional land as they deem proper for cemetery purposes for the indigent (poor,) who are county charges.

Specifically answering your question, in view of the foregoing discussion, it is my opinion that:

1. It is the duty of the board of county commissioners to pay the burial expenses of indigent county charges; and in the discharge of this duty the commissioners may provide burial lots in public or private cemeteries, or may set aside a part of the real estate, upon which the county home is situated, as a burial ground for such deceased persons.

2. The board of county commissioners of a county is without authority to purchase from a cemetery association a plot of ground, which does not adjoin the existing site of the county home, for the purpose of providing a place to bury the indigent poor who are county charges at the time of their death.

3. By the terms of Section 2433, General Code, as amended (112 v. 364), county commissioners may purchase or appropriate such real estate adjoining the existing site of the county home as they deem necessary for infirmity purposes.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2246.

COUNTY COMMISSIONERS—LIABLE FOR MEDICAL BILLS OF PRISONERS CONFINED IN JAIL—HOLD STATE LAW VIOLATORS A REASONABLE TIME ONLY TO SECURE PROPER COMMITMENT FROM COMPETENT MAGISTRATE.

SYLLABUS:

1. *Persons arrested by peace officers for violating state laws may lawfully be confined in the county jail for such a period of time as is reasonably necessary, under all the circumstances of the case, to procure a proper warrant or commitment from a magistrate of competent jurisdiction.*

2. *It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail.*

3. *If the Common Pleas Court has, by virtue of Section 3162, General Code, prescribed rules governing the employment of medical or surgical aid when necessary for prisoners in the county jail, such rules must be adhered to in furnishing such services.*

COLUMBUS, OHIO, June 18, 1928.

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

GENTLEMEN:—I acknowledge receipt of your request for my opinion reading as follows:

“We respectfully request you to furnish this department your written opinion upon the following:

Upon a warrant issued by the mayor of the city of Troy, Ohio, a person