

911.

POOR RELIEF—TOWNSHIP TRUSTEES UNAUTHORIZED TO ISSUE
STORE ORDERS AS EVIDENCES OF INDEBTEDNESS.

SYLLABUS:

Township trustees are without authority to issue store orders which purport to be evidences of indebtedness in granting poor relief under sections 3476 et seq. of the General Code.

COLUMBUS, OHIO, June 2, 1933.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—I have your request for my opinion which reads as follows:

“Lately several local boards of township trustees have informed me that they are without funds with which to administer poor relief, and that they have a large number of families in their townships who are absolutely destitute and requesting relief. Many of the township trustees also inform me that they have been issuing grocery, clothing and fuel orders on various stores and firms in their vicinity to people who actually need the same. They have been doing this due to the fact that they have no funds to buy such necessities and give to these people. This practice has become so uniform and involves so much money they are apparently getting a little worried and have decided to inquire of me whether or not their action in this respect is illegal.

The question then presents itself, can township trustees who are without funds to administer poor relief issue orders for necessities to indigent persons living within their township, and pay such orders when they obtain sufficient funds from the tax settlements with the county auditor?

Assuming that this is the situation throughout the State of Ohio, I have concluded that I should probably obtain an opinion from you.”

Section 3476, General Code, reads in part:

“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 (G. C. §§3476 et seq.) 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.”

Section 2293-4, General Code, provides a method whereby money can be received into the township treasury before the semi-annual settlement of taxes by the process of borrowing and issuing notes.

Amended Senate Bill No. 4, 89th General Assembly (114 O. L. Pt. II, 17) authorized the issuance of bonds by counties and cities for “poor relief” and provided for the levy of an excise tax upon public utility companies for such

purpose. In addition to the poor relief bonds authorized by section 3 of the act, it was provided in section 7 that additional funds necessary for poor relief prior to March 1, 1933, might be derived from the issuing of bonds of a county or city in an amount not exceeding one-tenth of one per cent of the general tax list and duplicate of such county or city. Section 2 of the act provided, *inter alia*:

"In the case of a township 'poor relief' shall mean the support and relief of the poor and the burial of the indigent by the township trustees, as authorized by General Code sections 3476 to 3496 inclusive * * *"

The period of operation of the above special act was extended by Senate Bill No. 63, 90th General Assembly, effective February 28, 1933. Amended Senate Bill No. 4 was considered by my predecessor in Opinion No. 4434, rendered June 18, 1932, the syllabus of which reads:

"1. Funds collected under the provisions of section 4 of Amended Senate Bill No. 4, passed March 31, 1932, shall be allocated and paid to all the counties in the state in accordance with the method outlined in section 5 of said act regardless of whether or not said counties have issued bonds for poor relief.

2. Moneys so paid to said counties shall be held in trust in a special fund of the county as provided in section 6 of said act.

3. Money so allocated to a county which is not required for retirement of poor relief bonds may be used for the poor relief purposes as provided in sections 2 and 9 of said act and the balance, if any, shall be paid into the sinking fund of the county and used for the retirement of bonds of the county."

Amended Senate Bill No. 3, 89th General Assembly (114 O. L. Pt. II, 14), provided for the expenditure of gasoline and motor vehicle license tax funds in counties, cities and townships for poor relief purposes. Amended Senate Bill No. 61, 90th General Assembly, extended the operation of this act until March 1, 1935.

Apparently these provisions have not made available sufficient money in the townships of your county for the trustees to carry on poor relief. As a result, they have issued store orders to those in need of relief. While I do not have before me the form of such instruments, I assume that they purport to be evidences of indebtedness.

Since sections 3476, et seq., impose upon the township trustees the duty to provide poor relief in certain cases, it may be contended that the trustees have the power to issue promises to pay for necessaries furnished to needy poor persons, subject only to the limitation of section 5625-33, requiring a certificate of the fiscal officer of the township that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrances.

Public officers and boards possess only the powers and duties expressly conferred by statute, together with such implied powers and duties as may be necessary to carry out those expressly granted. *State, ex rel. vs. State Medical Board*, 107 O. S. 20; *Throop's Public Officers*, Sec. 542. The legislature has expressly placed upon township trustees the duty of providing temporary poor relief but it has not expressly granted to the trustees the power to incur debts

and issue evidences of indebtedness in performing that duty, except as above stated. In my opinion, considering the statutes above referred to, that power cannot be implied.

The legislature, particularly in the last two general assemblies, has provided means for securing funds to be used by the township trustees in providing poor relief. Provision has been made for the borrowing of money in anticipation of tax settlements which may be used for poor relief. Additional funds have been made available by the provisions for the issuing of poor relief bonds. By expressly providing these means of borrowing money and issuing evidences of indebtedness, the legislature has impliedly withheld from the township trustees the authority to issue other evidences of indebtedness for poor relief purposes. *Expressio unius est exclusio alterius*.

While the acts above considered were passed at a later date than section 3476, they relate to the same subject and should be construed *in pari materia* with it. The following statement appears in 2 Lewis' Sutherland Statutory Construction, page 845:

"Statutes which are not inconsistent with one another, and which relate to the same subject-matter, are *in pari materia*, and should be construed together; and effect should be given to them all, although they contain no reference to one another, and were passed at different times."

In view of the foregoing, it is my opinion that section 3476 does not by implication confer upon the board of township trustees, in providing poor relief, the authority to issue store orders which purport to be evidences of indebtedness and, therefore, that the trustees have no such authority.

Article X, Section 5 of the Ohio Constitution, reads:

"No money shall be drawn from any county or township treasury, except by authority of law."

Since I find the issuing of the evidences of indebtedness in question to be unauthorized, I am of the opinion that the drawing of money from the township treasury with which to pay them contravenes the above constitutional provision.

Respectfully,

JOHN W. BRICKER,
Attorney General.

912.

COUNTY BOARD OF EDUCATION—CONTRACT—TEACHER VOLUNTARILY TEACHING AFTER CONSENTING TO DISSOLUTION OF CONTRACT CANNOT LATER CLAIM PAY FOR SERVICES WHILE VOLUNTEER—SUSPENSION OF SCHOOL TERMINATES CONTRACT WITH TEACHER—COUNTY EDUCATIONAL EQUALIZATION FUND DISTRIBUTED HOW.

SYLLABUS:

1. *A contract of a board of education with a teacher may be dissolved by mutual consent of the parties. If a teacher employed for a school year voluntarily*