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1. RELIEF OF POOR — STATE FUNCTION — AUTHORITY FOR LEVYING TAXES OR EXPENDING PUBLIC FUNDS BY LOCAL AUTHORITIES — MUST BE FOUND IN GENERAL LAWS ENACTED BY GENERAL ASSEMBLY.

2. MUNICIPAL CORPORATION — WITHOUT AUTHORITY TO PROVIDE RELIEF TO PERSONS FOR WHOM COUNTY IS MADE RESPONSIBLE — SECTION 3476 G. C.

3. COUNTY AND CITY MAY CONTRACT THAT COUNTY'S POOR SHALL BE RECEIVED AND CARED FOR IN CITY INFIRMARY — SECTION 2419-1 G. C.

4. CITY WHICH ASSUMES CARE OF POOR FOR WHOM COUNTY IS BY LAW RESPONSIBLE HAS NO RECOURSE AGAINST COUNTY FOR EXPENSE IN ABSENCE OF CONTRACT FOR CARE.

SYLLABUS:

1. Relief of the poor is a state function and authority for levying taxes or expending public funds therefor by local authorities must be found in general laws enacted by the General Assembly.

2. A municipal corporation is without authority to provide relief for those persons for whom the county is by the provisions of Section 3476 General Code, made responsible.

3. A county and city may, by authority of Section 2419-1 General Code, provide by contract that the county's poor shall be received and cared for in the infirmary maintained by such city.

4. In the absence of such contract, a city which assumes the care of the poor for whom the county is by law responsible, has no recourse against such county for the expense incurred in so doing.

Columbus, Ohio, August 25, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

"We are inclosing herewith a letter from our city of Cleveland Examiner, in which he requests interpretation of the provisions of Section 3476 General Code, and any other statutes applicable to the maintenance of persons permanently disabled or who have become paupers, in relation to the operation of the City Infirmary in the City of Cleveland.

As we do not find any legal ruling on this matter, may we request that you examine the inclosure and give us your opinion in answer to the following question:

In view of the fact that the inmates of the Cleveland City Infirmary may be classified as permanently disabled, or paupers, yet said city received reimbursement for only about forty percent of the cases classified as insane or epileptic, is the City entitled to further reimbursement from Cuyahoga County by favor of the provisions of Section 3476 G. C., or any other statutes applicable to the maintenance of such permanent cases now being supported in said Infirmary at the expense of the City?"

Attached to your communication I note the letter from your Examiner from which I quote the following:

"During the period of the past 108 years the City of Cleveland has operated and maintained an institution where such residents of the city as have become too old, feeble, infirm or ill to support themselves, could find shelter and the necessities of life.

The City Infirmary has been operated at its present site since 1909 and at the present time there are approximately 650 inmates housed at this institution * * *.

Contracts and agreements have been entered into whereby the State of Ohio pays the city for the maintenance of inmates who have been adjudicated insane, and Cuyahoga County pays for the keep of epileptics and the non-adjudicated psychopathic cases. Thus the city is reimbursed for the cost of keeping approximately 40 percent of the inmates.

In each year's operating budget an amount has been re-

quested by the City of Cleveland for the operation and maintenance of the city infirmary. The budget containing such item has been approved by the county budget commission and the city's tax levy has included provision made for this purpose * * *.

Now, my specific questions may be stated thus:

1. In view of the provisions of law as above referred to, may the City of Cleveland legally maintain and operate an infirmary for the purpose of providing permanent relief to paupers and persons who are too old, infirm or ill to care for themselves, and whose friends and relatives are unwilling or unable to provide such care?

2. Since the city has maintained such an institution under the circumstances described above, does it now have any justifiable and enforcible claim upon Cuyahoga County for the recovery of the expense so incurred by the city, particularly since the said county has not accepted the responsibility for the care of such persons?

It appears to me to be of little consequence in the final analysis whether the taxpayers of the county or of the city bear this expense as they are just about the same persons anyway, since 90 percent of the taxes of Cuyahoga County are levied within the city of Cleveland * * *."

Your communication seems to present three questions for consideration: (1) Has a city the legal right to expend its own funds for the relief of those persons whose maintenance has been by law expressly imposed upon the county? (2) May the city contract with the county to assume the care of the county poor? (3) Where the city has assumed the care and relief of indigent persons responsibility for whom rests by law with the county, without any contract, may the city recover from the county the cost of furnishing such relief?

The first of these questions presents considerable difficulty. We may start with the proposition that the matter of public relief is a function of the state and not a matter merely of local concern. This principle was stated and emphasized with liberal citation of authority by the Supreme Court in the case of State, ex rel. Ranz, v. City of Youngstown, 140 O. S. 477, part of the syllabus of which is as follows:

"1. There is no common law obligation on the part of any public authority to grant poor relief.

2. Relief of the poor is a state function and authority for

levying taxes or expending public funds therefor by local authorities must be found in general laws enacted by the General Assembly.

3. A county which has not adopted a charter or alternative form of government is a wholly subordinate political division or instrumentality for serving the state.

4. A county embraces the territory within the municipalities located within the county * * *."

In the course of the opinion Turner, J., said at page 482:

"That poor relief is a state function does not admit of argument. If there were any doubt, it ought to be dispelled quickly by an examination of the many statutes upon the subject and especially the appropriation of various excise tax proceeds to the subdivisions for poor relief."

After discussing the general character of counties as distinguished from municipalities, Judge Turner continues:

"From the foregoing, it will be seen that there is no inherent reason why the county, which embraces all municipalities and townships within its limits, may not be made the unit for poor relief at the sole expense of the county and either with or without state aid."

Among the public institutions which the county commissioners are authorized by Section 2419 General Code, to provide, we find provision for "an infirmary". By Section 2419-3, the name of this institution has been changed to "county home". The management of the county infirmary or county home, formerly committed to a board of infirmary directors, is now imposed directly upon the commissioners of the county. (Sec. 2522 et seq. General Code.)

The duties of counties, townships and cities, respectively, in providing relief to those requiring it, are set out in general terms in Section 3476 of the General Code, which reads as follows:

"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 resi-

> dents 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 can not 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."
>
> (Emphasis added.)

It will be observed that this section makes a clear distinction between the two kinds of relief. Those persons who are in need of *temporary or partial relief,* shall be taken care of by the township or city in which they reside. A change to which I will presently refer was later made as to the duty of the township trustees; that of the city is unchanged. By the above section responsibility is clearly placed upon the county to take care of those persons who do not have the necessary residence requirements and also those "who are *permanently disabled* or have become *paupers*" and "such other persons whose peculiar condition is such that they can not be satisfactorily cared for except at the county infirmary or under county control."

I take it that the inmates of the Cleveland City Infirmary to whom your letter refers, are clearly those who by the provisions of the section just quoted fall within the class for which the county is responsible.

In 1939, the legislature enacted what is commonly known as the "poor relief act", comprising Sections 3391 to 3391-13 General Code. In this act it was expressly provided in Section 3391-2 General Code, as follows:

> "Except as modified by the provisions of this act, section 3476 and other sections of the General Code of like purport shall remain in full force and effect and *nothing in this act shall be construed* as *altering, amending, or repealing the provisions of section 3476 of the General Code, relative to the obligation of the county* to provide or grant relief 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 that they cannot be satisfactorily cared for except at the county infirmary or under county control."
>
> (Emphasis added.)

This act, in Section 3391-1, did shift the responsibility placed by Section 3476 supra, on the township trustees to the county commissioners, but made no change as to cities, and as will be noted expressly emphasized the responsibility of the county as to permanent cases.

A study of the earlier legislation upon which Section 3476 *supra* and other provisions of the present poor relief laws are based will disclose that as early at least as 1876, the legislature had enacted provisions which undertook a distribution of the relief burden somewhat similar to the present provisions (73 O. L. 233). However, the obligation imposed upon the county was not so clearly defined as at present. Section 3476 above quoted was based upon Section 11 et seq. of that earlier enactment which related only to relief to be given by the township or city. It was amended in 1919 to its present reading, adding as new matter all that portion beginning with the words, "It is the intent of this act", etc. This, it appears to me, amounted to an implied prohibition against the use of public money of a municipality or township in the performance of a function which is expressly imposed by law upon the county, particularly in view of the proposition laid down by the court in the case of State, ex rel. Ranz v. Youngstown, supra, that the authority for levying taxes or expending public funds by local authorities for public relief must be found in general laws enacted by the General Assembly.

Having in mind the power reserved to the legislature by the Constitution in Section 6 of Article XIII and in Section 13 of Article XVIII, to restrict the power of municipalities in the levying of taxes and contracting debts, it would seem that the provisions to which we have referred, relative to the administration of public relief would amount to such restriction.

We should not be confused by the fact that municipalities are authorized by statute to build, maintain and operate infirmaries. This power is expressly granted by Section 3646 of the General Code; and Sections 4089 to 4095, inclusive, provide for the management and control of such city infirmaries, vesting the management in the case of a city, in the Director of Public Safety. These provisions, in substance, were also embraced in the early act to which I have referred, 73 O. L. 233, and have remained on the statute books practically without change since their original enactment.

The authority above referred to, to erect and maintain an infirmary

does not, as a matter of fact, throw any light on the extent to which a municipality may administer poor relief. Nor does it amount to a grant of such power. While an infirmary, in common conception may have been regarded as a more or less permanent home for indigents, its legal definition as far as I can find goes no farther than that which is given in 31 C. J. 1182, as follows:

> "An infirmary is a hospital or place where the infirm or sick are lodged and nursed gratuitously, or persons who are non-residents are treated".

I find the definition given in Webster's Dictionary to be almost in identical words. There is nothing in this definition or in the laws, so far as I can find, which prevents an infirmary from being a place for administering temporary or partial relief, as well as total or permanent relief.

It would be just as logical to hold that the power given a municipality to build a city office building would justify it in assuming the task of housing the county offices and courts, as to concede its right to assume the county's burden of poor relief because it has the right to build and maintain a city infirmary.

The power of a city to contract with a county for the care of the county's charges in the city infirmary is found in Section 2419-1 General Code, which reads as follows:

> "In any county containing a city which has an infirmary, it shall be competent for the commissioners of such county, (if they find it will be conducive to economy), to agree with the director of public safety or his successor, or the proper person, persons or board in charge or control of the same, of such city upon terms and conditions for the care and maintenance of the county's poor in such city's infirmary, and for such city to receive and care for such county poor in its infirmary in accordance with such agreement. The cost and expense of maintaining the county poor in the city infirmary shall be paid out of the county poor fund on the allowance of the county commissioners."

Here, it will be observed that the county commissioners are given express authority to agree with the proper officer of a city for the care and maintenance of the county's poor in a city infirmary and the same section grants authority to such city to receive and care for such county poor in accordance with such agreement.

As to recovery by the city for services rendered in the past in the care of those for whom the county was legally responsible, I call attention to the provisions of Section 2445 General Code, which reads:

> "No contract entered into by the county commissioners, or order made by them, shall be valid unless it has been assented to at a regular or special session thereof, and entered in the minutes of their proceedings by the auditor."

It has been held that no recovery can be had against the county either on contract or for compensation for work, labor and material in the absence of compliance with this and other statutes prescribing the steps by which public contracts may be made. Buchanan Bridge Company v. Campbell, 60 O. S. 406; Wellston v. Morgan, 65 O. S. 219; Commissioners v. State, ex rel., 66 O. S. 654; Opinions Attorney General for 1931, p. 994.

In the case of Buchanan Bridge Company v. Campbell, supra, the court held a contract made by a county with a bridge company in disregard of the provisions of the statutes, to be void, notwithstanding the fact that the bridge had been built and accepted. The court referred to Section 878 Revised Statutes, which was substantially identical with Section 2445 General Code, and to the fact that no record of the contract was entered in the minutes of the commissioners as required by statute; also that certain other restrictive statutes had been ignored, and said:

> "These omissions are fatal to the validity of the contract, and by force of the above cited sections of the statute, the contract is totally void and imposed no obligation on either party to it."

Referring to the claim made that since the commissioners had received and retained the bridge though without an express contract, the county should be required to pay for it, the court said at page 426 of the opinion:

> "The answer to this is that the commissioners have no power to bind the county in that way, and to allow such a course to be pursued would permit the evasion of the statutes. * * * The commissioners cannot purchase supplies upon the reasonably worth plan, and no one is permitted to deal with them on that plan. The statute is the only authority and guide for both parties. In this case both parties have acted in disregard of the statute, and the court will leave them where they have placed themselves, and refuse to aid either."

If it should be argued that in the matter under consideration the provisions of the statute imposing an absolute obligation on the county for the care of its poor should be considered as equivalent to a contract I would call attention to the fact that while this obligation may be preemptory, yet it is an obligation imposed for the benefit of the poor and cannot raise an implied liability to one who volunteers to furnish relief. Furthermore, certain discretion is allowed to the county officers in determining who are and who are not proper county charges. Section 2544 General Code, gives to the superintendent of a county home the discretion to determine whether a person brought to his attention by the trustees of the township or the officers of a municipal corporation should be accepted as a county charge, and Section 2557-1 General Code leaves that power with the county commissioners or some other person appointed by them when there is no county home. One of my predecessors in construing Section 2544 held that the discretion thus conferred upon the superintendent is, in the absence of fraud or clear abuse, absolute, and that by no type of action could the local authorities compel him to accept such person as a county charge or admit him to the county home, and that unless and until he did admit such person the obligation of temporary relief continued to rest on the local subdivision. See 1937 Opinions Attorney General, p. 132.

Since it is evident from the authorities above referred to that a private individual or corporation could not impose a liability on the county by voluntarily performing a service or furnishing supplies to the county, I see no reason to hold that a municipality would have any better right. Accordingly, it is my opinion that the city of Cleveland, in so far as it has taken care of the poor who were properly county charges and has done so without any contract, can not recover from the county for the services thus rendered.

It is accordingly my opinion:

1. Relief of the poor is a state function and authority for levying taxes or expending public funds therefor by local authorities must be found in general laws enacted by the General Assembly.

2. A municipal corporation is without authority to provide relief for those persons for whom the county is by the provisions of Section 3476 General Code, made responsible.

3. A county and city may, by authority of Section 2419-1 General Code, provide by contract that the county's poor shall be received and cared for in the infirmary maintained by such city.

4. In the absence of such contract, a city which assumes the care of the poor for whom the county is by law responsible, has no recourse against such county for the expense incurred in so doing.

Respectfully,

THOMAS J. HERBERT

Attorney General