

1982.

HOSPITALIZATION SERVICES—NO AUTHORITY UNDER POOR RELIEF LAWS OR ACT TO ADMINISTER SUCH LAWS FOR COUNTY RELIEF DIRECTOR TO TAKE NOTES AND MORTGAGES AS SECURITY FROM RELIEF APPLICANTS FOR CLIENTS OR SUCH HOSPITALIZATION—SECTIONS 3476 TO 3496, 3391 TO 3391-13 G. C.

SYLLABUS:

There is no authority under the Poor Relief Laws (Sections 3476 to 3496, inclusive, General Code) or under the Act for the administration of poor relief (Sections 3391 to 3391-13, inclusive, General Code) for the taking of security in the form of notes and mortgages from relief applicants or clients by a county relief director, for the purpose of securing the payment of hospitalization services.

Columbus, Ohio, March 7, 1940.

Hon. F. L. Orum, Prosecuting Attorney, Harrison County,
Cadiz, Ohio.

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“The Relief Director of Harrison County, has requested an opinion on whether or not he or the county, can, as in the case of recipients of Old Age Pensions, take security in the form of lien on real estate for money advanced in the form of relief by said Director.

We have several cases in this county where people who have no next of kin need hospitalization and do have equities in real estate. In most cases these people would be willing to give a note and mortgage to the Relief Director for the benefit of the county, because in most of these cases there would be no one within any degree of kinship to inherit their property at their death.

There is another class, usually young single men, who have good jobs, but no credit, that call upon the public for emergency hospitalization, and could very well repay at some future time for the money advanced by the county in their behalf.

Therefore the question in both these cases resolves itself into one question:

Can a political subdivision legally take security for relief and medical attention, and then enforce that security at some future date?

I know these are unusual questions, and I would appreciate any assistance you can give me by way of advice and opinion."

The Division of Aid for the Aged does, as you state in your communication, accept security from recipients of aid in the form of mortgage liens on real estate and personal property. However, the conveyance on the part of the recipient is voluntary. The authority for such procedure is expressly set forth in Section 1359-6, of the so-called "Old Age Pension Act". This section reads as follows:

"An applicant for or recipient of aid, or his or her spouse, who is the owner of any interest in real or personal property, excepting household goods, clothing and other personal effects, may convey and transfer such property to the Division of Aid for the Aged (hereinafter created), in trust, reserving to the recipient of aid and his or her spouse the right to use or reside upon such property for life; and upon death of either, leaving wife or husband who is entitled to aid, the right of the survivor likewise to use or reside upon the said property for life. All taxes and assessments on such property and all necessary expenses of keeping it in good condition and repair shall be paid by the person using or residing upon it."

The conspicuous absence of any such provision in the poor relief laws or in the Act for the administration of poor relief indicates that the legislature intended that the pledging of collateral or security was not a matter to be considered in giving relief except in so far as the possession of such personal property or real estate would effect the eligibility of the applicant for relief. Your attention in this respect is directed to Sections 3480-1 and 3391-2, General Code, which sections, in so far as pertinent hereto read as follows:

"Sec. 3480-1. When an indigent person requiring medical services or the service of a hospital, in cases other than contagious, has a legal settlement in a municipality or township within the same county but other than that in which the service is rendered and *such person is unable to pay the expense* of such service, etc. * * *"

(Emphasis mine.)

"Sec. 3391-2. Local relief authorities shall administer poor relief in accordance with the following powers and duties:

1. In each local relief area, subject to the provisions of law, poor relief shall be furnished by the local relief authority to all *persons who are in need of such relief*. * * * " (Emphasis mine.)

It will be noted that the section first above quoted relates to indigent persons who are unable to pay, while the other section limits the furnishing

of poor relief to persons who are in need of such relief. Obviously, therefore, any person possessing such an equity in real or personal property that could be mortgaged or conveyed would not be eligible for relief, for being so possessed of such property he or she would not be indigent or unable to pay, and consequently could deal directly with the institution or person rendering medical aid or hospitalization services.

In considering the question of whether the Relief Director of your county may act as intermediary for those young men who possess good jobs but have no credit, and who are in need of hospitalization, and desire to give the Relief Director notes for the payment by the Relief Director of their hospital bills, it may be pointed out that the policy of the state with regard to the rights and duties of particular fiscal officers of the state and of the various subdivisions thereof with respect to the disbursement of public funds has always been to prohibit the loaning of or dealing in the funds of the state in any form or manner and to require the disbursement of public funds only by clear authority of law.

State vs. Butler, 3 O. S., 310;
A. Bentley & Sons vs. Pierce, 96 O. S., 44;
State ex rel. Smith vs. Maharey, 97 O. S., 272;
Batavia Board of Education vs. Clermont
Board of Education, 19 O. App., 18.

County commissioners being creatures of statute, have such powers and such only as are conferred by statute and they and their authorized agents when acting under a special power, must act strictly in accordance with the conditions under which it is given (11 O. Jur., pages 331 to 336, inclusive). And as a corollary, it might be pointed out that since the right of a county to sue is wholly statutory, action by the relief director to enforce the collection of notes would fail for lack of authority to sue.

Hunter vs. Commissioners, 10 O. S., 515;
Commissioners vs. Noyes, 35 O. S., 201.

I am therefore of the opinion that since no express or implied authority exists under the poor relief laws, (Sections 3476 to 3496, inclusive, General Code) or under the Act for the administration of poor relief (Sections 3391 to 3391-13, inclusive, General Code) the relief director of your county can not legally follow the proposed procedure outlined in your communication.

Respectfully,

THOMAS J. HERBERT,
Attorney General.