

substantial fence, the other party may apply to the trustees. If the trustees find that a *good and substantial* fence has not been constructed, they shall sell the contract to the lowest responsible bidder agreeing to build the fence according to specifications "proposed by the trustees." Clearly, under Section 5913, *supra*, the trustees are authorized and required to specify in detail, the kind of fence that is to be constructed. However, as heretofore indicated, when they assign the portion of the fence that each owner is to build, under Section 5910, *supra*, they are not authorized or required to specify the *kind*. From a practical standpoint, it will be apparent that it probably would be well for the trustees at the time of assignment to suggest to the owners the kind of fence they will regard as *good and substantial* in the event an appeal is made under Section 5913, *supra*. In other words, the owners would probably save much expense if they knew in advance the kind of fence which would be regarded by the trustees as good and substantial at the time they build it, after the portion is assigned. Undoubtedly the term "good and substantial" has reference to a fence that is sufficient to turn stock ordinarily kept by farmers and undoubtedly should be constructed so as to properly turn sheep.

Based upon the foregoing, it is my opinion that:

(1) Under Section 5910 of the General Code, the township trustees shall assign the portion of a partition fence which the owners are to build, and the owners may build any kind of fence they choose, so long as it is a *good and substantial* fence. Undoubtedly, such a fence should be capable of turning live stock ordinarily kept by farmers, including sheep.

(2) If a land owner fails to build a good and substantial fence, the other party may apply to the township trustees, under Section 5913, *supra*, whereupon the trustees shall sell the contract for the construction of such fence to the lowest responsible bidder. Under such procedure, the trustees specify the kind of fence that is to be constructed.

(3) When the trustees assign the portion of the fence each owner is required to build, under Section 5910, General Code, they may suggest to the owners the kind of fence they regard as *good and substantial*, but such suggestion can have no binding force except in so far as it bears upon their action when application is made to them under Section 5913, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3060.

RECORDS—CONCERNING PATIENTS OF STATE INSTITUTIONS—
WHEN SUPERINTENDENTS OF SUCH INSTITUTIONS MAY MAKE
RECORDS PUBLIC.

SYLLABUS:

Superintendents of state institutions may not make public the records of patients of such institutions unless authorized by the Department of Public Welfare or by order of a judge of a court of record.

COLUMBUS, OHIO, March 18, 1931.

HON. JOHN McSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

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

"A question has arisen on the right of superintendents of state hos-

pitals for mental diseases or members of the medical staff of such hospitals to make public or give to friends or relatives, insurance companies, fraternal organizations or other individuals or agencies, information concerning patients or former patients of such state hospitals, particularly the diagnosis of a patient's mental or physical condition as made by the medical staff of the hospital.

We find no law in the Ohio Code governing this department or its institutions, which has any bearing on this subject.

We respectfully request your opinion on this subject."

Your inquiry concerns the right of superintendents of state hospitals to make public, reports concerning the condition of patients or former patients.

In a case involving the files concerning patients of a municipal hospital, it was held that such records are public records. *Sprange vs. Doench*, 24 O. L. R., 188.

The rule in Ohio governing the right of persons to inspect public records is expressed in Opinion No. 2296, of this office, rendered under date of September 5, 1930. The syllabus of this opinion states that records made by public officials are to be open to inspection at all reasonable hours, for persons interested, whether the interest is public or private, unless the legislature has seen fit to prohibit such inspection.

From the foregoing, it would seem that the records of a public hospital or institution are to be free for inspection by the public, unless there exists a legislative inhibition to the contrary.

An examination of the statutes relating to the various state institutions of the character concerned in your inquiry does not disclose any requirement of the superintendent of such institution to make records concerning the physical or mental condition of patients.

Under the provisions of Section 154-57, General Code, the authority of the Ohio Board of Administration is vested in the Department of Public Welfare. Section 1860, General Code, relative to the Ohio Board of Administration, contains the requirement that a record be kept concerning all inmates, patients or pupils in the several institutions governed by the board, with an express limitation as to the person to whom such records shall be accessible. Said section reads in part:

"The board shall keep in its office, accessible only to its members, secretary and proper clerks, except by the consent of the board or the order of the judge of a court of record, a record showing the name, residence, sex, age, nativity, occupation, condition and date of entrance or commitment of every inmate, patient or pupil in the several institutions governed by it, the date, cause and terms of discharge and the condition of such person at the time of leaving, and also all transfers from one institution to another, and, if dead, the date and cause. These and such other facts as the board may from time to time require shall be furnished by the managing officer of each institution within ten days after the commitment, entrance, death or discharge of an inmate patient or pupil. * * *"

It is to be noted that the foregoing section is the only statutory authority for superintendents of state institutions to make records concerning those under their charge and that such records are made for the Board of Administration, which, of course, now must be construed to mean the Department of Public Welfare. To allow the records of a state institution to be open to all who apply at the institution would render nugatory the legislative intent that such records, compiled for and

maintained by the Department of Public Welfare, should be accessible only to those authorized by the enactment.

By reason of the express provisions in Section 1860, General Code, as to the persons to whom such records shall be accessible, I am of the opinion that superintendents of state institutions may not make public the records of patients of such institutions unless authorized by the Department of Public Welfare or by order of a judge of a court of record.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3061.

FIRE EQUIPMENT—COLLISION IN OPERATION THEREOF WITH PERSON OR PROPERTY OUTSIDE MUNICIPALITY—NO LIABILITY UPON MUNICIPALITY FOR DAMAGES—INJURED FIREMAN MAY BE COMPENSATED IN SUCH INSTANCE.

SYLLABUS:

1. *A municipality is not liable for damages that may result to persons or property caused from a collision in the operation of fire equipment outside of the municipality. However, a fireman may be personally liable for consequences attendant upon his negligent acts.*

2. *If a member of the municipal fire department is injured while responding to a fire outside of the municipality, he may be compensated for such injuries under the provisions of the Workmen's Compensation Act.*

COLUMBUS, OHIO, March 18, 1931.

HON. THEODORE H. TANGEMAN, *Director, Department of Commerce, Columbus, Ohio.*

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

“Fire departments organized in municipalities occasionally respond to an appeal in territories outside of the municipalities. The questions upon which I request your opinion are:

1. May the department or the municipality, or those persons operating the equipment outside of the territorial limits of the municipality, be held liable for damages that may result to persons or property resulting from a collision in the operation of this equipment, under such circumstances?

2. Are the members operating this equipment while outside of the municipal corporation protected under the workmen's compensation act, particularly as outlined in section 1465-61, as to injuries they may sustain while engaged in such operation, provided, of course, the municipalities have complied with the provisions of the law?

3. There is enclosed herewith a copy of a bulletin, issued by the state fire marshal's office, pertaining to the procedure to be followed by