

The bonds should be issued by the individual counties and in an amount equal to the assessments levied in the particular county issuing the bonds.

For the reasons that I have set forth I am of the opinion that there is no authority to issue joint obligations of two or more counties and that therefore the present bond issue must be rejected.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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PATIENTS IN OHIO STATE SANITORIUM AT MT. VERNON--LIABILITY FOR THEIR SUPPORT--INTERPRETATION OF PHRASE "MEDICAL TREATMENT".

SYLLABUS:

1. *When patients in the Ohio State Sanitorium at Mt. Vernon, or persons legally liable for their support are unable to pay the minimum amount fixed by law or any part thereof for the care and support of such patients the county in which they have a legal residence is liable for such minimum amount and the patient is entitled to the full benefit of maintenance and care in such sanitorium, including, medical treatment, medicine, nursing, board, lodging and laundry.*

2. *The term "medical treatment" as used in Section 2068, General Code, includes such surgical operations as may be necessary.*

COLUMBUS, OHIO, April 28, 1927.

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

GENTLEMEN:--This will acknowledge receipt of your recent communication, requesting my opinion as follows:

"A person becomes an inmate of the Ohio State Sanitarium at Mt. Vernon under the provisions of Section 2068, of the General Code, the county paying the fee prescribed by such section. Such person was suddenly taken ill with a case of appendicitis which required an immediate operation.

Question: By whom should the expenses of such operation and hospital treatment be paid?"

You enclose a copy of a letter which you have received from one of your examiners in which he states that a Miss X of _____ county who was a patient at Mt. Vernon, developed a case of appendicitis, requiring an immediate operation. Before the operation was performed the superintendent of the hospital telegraphed to the city health commissioner of the city of which the lady was a resident to inquire as to who was to be responsible for the bill for the operation and he replied "to operate, bills would be paid". Whereupon the operation was performed.

The lady in question had been a patient at the sanitorium and had been discharged. She later was admitted to the institution a second time soon after which appendicitis developed, requiring immediate attention. She had never been formally accounted as a public charge as provided by Section 2544, of the General Code, but her circumstances were such that the county paid the charges provided for by Section 2068, General Code, *infra*.

After the operation was performed the superintendent of the sanatorium sent the bills to the city health officer who sent them to the county auditor, and his question is whether or not the county is responsible for the payment of these bills.

In Title V, (State Institutions) Division I (General Provisions), Chapter 1 (Powers and Restrictions), Section 1815, of the General Code, provides as follows:

"All persons now inmates of, or hereafter admitted into, a benevolent institution, except as otherwise provided in this chapter, and except as otherwise provided in chapters relating to particular institutions, shall be maintained at the expense of the state. They shall be neatly and comfortably clothed and their traveling and incidental expenses paid by themselves or those having them in charge."

Under this Title, Division II (Benevolent Institutions), Chapter 11 (Ohio State Sanatorium), Section 2068, of the General Code, reads:

"Any citizen of this state suffering from pulmonary tuberculosis in the incipient or early stage and any citizen of this state under twelve years of age who has tuberculosis in any of its forms or who is predisposed thereto, as determined by the superintendent, may be admitted to the sanatorium upon payment in advance of a sum to be fixed by the superintendent, said sum to be not less than five dollars nor more than twenty-five dollars each week, according to the financial condition and ability to pay of the person applying for admittance or any other person legally liable for the care and support of said applicant. Said sum, so fixed, shall fully cover all expenses for medical treatment, medicine, nursing, board, lodging and laundry. The superintendent shall make such investigation as is necessary to determine such financial condition and ability to pay, and may at any time increase or decrease the amount within the limits herein prescribed upon the approval of the department of public welfare. Payment for the support of patients in the sanatorium shall be made in accordance with the provisions of Sections 1815-13, 1815-14 and 1815-15, of the General Code."

The intention expressed in this statute is that liability for the support of patients in the Ohio State Sanatorium is upon the patients themselves or some one legally liable for their care and support. The amount to be paid for such care and support is to be fixed by the superintendent of the institution within five dollars and twenty-five dollars per week, according to the financial circumstances of the patient, or the persons legally liable for his care and support, the amount so fixed to cover all expenses for *medical treatment, medicine, nursing, board, lodging and laundry.*

Provision is made in the General Code for the support of patients in this institution where the patient or persons liable for their support are unable to pay for the same, as follows:

"Sec. 1815-13. It shall be the duty of the board of state charities to make collections for the support of patients at the Ohio state sanatorium. When the superintendent of the Ohio state sanatorium shall report to the board of state charities that an applicant for admission to or an inmate of that institution or any person legally responsible for his support is not financially able to pay the minimum amount fixed by Section 2068, of the General Code, it shall be the duty of the state board of charities by its authorized agents to make a thorough investigation as is provided by law for such investigations in other institutions."

"Sec. 1815-14. If after the investigation provided in the next preceding section it shall be found that said applicant or inmate or any person legally responsible for his support is unable to pay the minimum amount fixed by law, said board of state charities shall determine what amount, if any, said applicant or inmate or any person legally responsible for his support shall pay. The difference between the amount so determined and the minimum amount fixed by Section 2068, of the General Code, shall be paid by the county in which said applicant or patient has a legal residence. The amount so determined to be paid by the county shall be paid from the poor fund on the order of the county commissioners."

It would seem from the provisions of the two sections of the code last above quoted that if the patient or the persons legally liable for his support are unable to pay the minimum amount fixed by law the county in which said patient has a legal residence shall pay the difference between the amount they are able to pay and the minimum fixed by law. In other words, a county is liable for the full minimum amount in any case, unless the patient or persons liable for their care are able to pay a portion or all of this minimum amount and then only for the difference, if any, between the amount fixed by law and the amount the patient or persons liable for their support are able to pay.

Our chief difficulty in this connection is whether or not the statute when it says that the superintendent shall fix a sum to be paid by an inmate of a sanatorium and that "said sum so fixed shall fully cover all expenses for *medical treatment, medicine, nursing, board, lodging and laundry*" is to be construed as including the services of a surgeon as well as that of a physician.

It is well understood that there is a difference, particularly as spoken of by members of the profession, between the practice of surgery and the practice of medicine and that medical attendance does not necessarily include surgical services; yet our statute in providing for the examination of applicants for certificates to practice medicine or surgery speak of the two together. All through the statutes with reference to this subject (Sections 1262, et seq., of the General Code,) wherever one word appears the other does also. They are spoken of as one and the same thing. The word "or" is used in joining the words in all cases and not the word "and". In Section 1273, General Code, where provision is made for examination of applicants for certificates to practice medicine it appears that a list of subjects for examination is prescribed for those who desire certificates to practice medicine or surgery and Section 1274, General Code, provides that a certificate when granted entitles the holder to practice medicine or surgery.

In Section 1274-1, General Code, provision is made for examination and registration of persons desiring to practice chiropody, Swedish movement, magnetic healing, chiropractic and many others. They are referred to in the statute as limited branches of medicine or surgery.

The Supreme Court of Ohio has construed the act providing for a medical board with authority to regulate the practice of medicine or surgery to include all arts of healing, even Christian Science, where admittedly no medicine as technically understood, is administered. *State of Ohio vs. Marble*, 72 O. S. 21.

Section 3490, General Code, provides in substance that the trustees of a township or the proper officers of a municipal corporation may contract with physicians for medical relief and medicines for the needy poor coming under their charge. Attorney General Hogan in an opinion to be found in the Reports of the Attorney General for 1912, page 1384, held that:

"The term 'medical relief' as employed in Sections 3480, 3490 and 3546,

of the General Code, providing for the furnishing of such to the poor by township and county authorities includes 'surgical relief'."

In this case, it is true, the Attorney General had the benefit of the provisions of Section 3480, General Code, where authority is given to the township trustees to employ a physician or surgeon, which the Supreme Court of Ohio in the case of *Trustees vs. White*, 48 O. S. 577, held gave the trustees authority to allow bills for surgical services to the needy poor, notwithstanding the fact that Section 3490, General Code, simply gave authority to the trustees to furnish medical relief and medicines necessary for such persons.

In the course of the opinion of the Attorney General above referred to reference is made to the case of *Wetherall vs. Marion County*, 28 Iowa 22, wherein it was held:

"The term 'duties of a physician' as used in a contract between the plaintiff as a physician and the board of supervisors of the county of M. for the performance by him of professional services for the paupers of said county at the poorhouse therein was held to include in its general and ordinary acceptation the usual cases of surgery as well as the administration of medicine."

On page 24 of the opinion in this Iowa case the court said:

"If we were therefore driven (as perhaps we are not) to determine as a matter of legal construction the meaning of the term 'duties of a physician' and 'medical treatment' we should not hesitate long in deciding that they like the degrees or diplomas of those who practice them, include both medicine and surgery."

No one would contend that the authority given to the department of public welfare in the management of state institutions is not sufficiently broad but that the board might, if it saw fit, employ surgeons or practitioners of any of the healing arts as well as those who are generally called physicians. The art of healing has become so specialized that it is difficult to tell just what physician or medical attendance does include, but I prefer to consider, in cases such as this where the state is specifically enjoined to maintain all inmates of state benevolent institutions (Section 1815, *supra*), that such terms include whatever arts of healing necessary properly to carry out the terms of the statute and comply with the express injunction to maintain the inmates.

Inasmuch as Section 1815, *supra*, provides that inmates in benevolent institutions are to be maintained at the expense of the state except as otherwise provided in chapters relating to particular institutions, and since the only other provisions with reference to patients in the Mt. Vernon State Tuberculosis Sanatorium, which is one of the state benevolent institutions, are those contained in Section 2068, 1815-13 and 1815-14, *supra*, and in view of the fact that it is provided that the fees to be paid are meant to include medical attention and nursing (Section 2068, *supra*), it is my opinion that under the circumstances as they have been outlined with reference to Miss X, the state is required to bear the expense of her care and support, including the expense of any necessary operation while a patient in the sanatorium in so far as the expense of such care and support exceeds the minimum amount fixed by law for which the county in which she is a legal resident is liable.

Respectfully,

EDWARD C. TURNER,

Attorney General.