

It is a well recognized rule of law that public officers can be paid only such compensation as is provided by law. As the only provision of law, which authorizes the payment of a per diem compensation to common pleas judges in addition to their regular salaries, is that contained in Section 2253, *supra*, which provides that such payment may be made when the judge is assigned by the Chief Justice by *virtue of Section 1469 of the General Code, to aid in disposing of business of some county other than that in which he resides*, it seems clear that such per diem compensation can not be paid under any other circumstances.

I am therefore of the opinion that a common pleas judge, who merely by agreement with the judge of some other county exchanges benches with him, is not entitled to any compensation in addition to his regular salary.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1903.

POOR—AUTHORITY OF TOWNSHIP TRUSTEES TO CARE FOR INDIGENTS—MEDICAL AND SURGICAL EXPENSES—CERTIFICATE OF FISCAL OFFICER.

SYLLABUS:

1. *Where indigent persons have a legal settlement and residence in a township of this state, the trustees of such township are authorized to contract for necessary operations on such persons and to pay for the same out of township funds; and within the limitations prescribed in Section 3480, General Code, they are required to do so.*

2. *The trustees of a township can not make a contract, or make an order involving an expenditure of money unless the fiscal officer of the township certifies that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances.*

3. *Where medical or surgical services are required by an indigent person, who is a township charge, in a township and no physician or surgeon is regularly employed by such township, by contract, to furnish medical attendance to the poor, upon compliance with the requirements of Section 3480, General Code, a legal obligation of the township is created to pay to the physician or surgeon rendering the necessary services, such compensation as the township trustees determine to be just and reasonable. Such obligation may be created without the filing of a fiscal officer's certificate, as provided by Section 5625-33, General Code, to the effect that the necessary funds to discharge such obligation are in the township treasury.*

COLUMBUS, OHIO, March 27, 1928.

HON. ISAAC E. STUBBS, *Prosecuting Attorney, Cambridge, Ohio.*

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

“The trustees of Jackson Township, our county, in which is included the village of Byesville, report an indigent boy about sixteen years of age re-

quiring an operation for appendicitis, and an indigent woman about thirty years of age, requiring an operation for gall stones; both cases emergencies.

The trustees of Jackson Township are practically without funds to pay for operations in these cases, and as this township is located in the mining section here, and the trustees are likely to be called upon for action in more such cases, they insist that we get an exact opinion from you as to what should be done in such matters.

I have read what purports to be your decision or opinion in a case from Ravenna, Ohio, in the January 19th, 1928, issue of Department Reports, and it seems rather clear to me and I find no fault therewith. I have advised the trustees along this same line. However, on account of these cases being emergencies, and the trustees without funds and the likelihood of more cases, the trustees have rather importuned me to ask your opinion, as to whether or not there may be any relief in sight for them, or difference of your opinion in their cases. These cases are outside the county infirmary and are not of permanent paupers.

If it is your opinion that the township trustees must take care of these cases, paying hospital bills, etc., can they contract with hospitals for same, when they have no funds appropriated, and the fiscal officer cannot certify that there is money on hands or in process of collection for such contract?"

Section 3476 of the General Code 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 (G. C. Sections 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. 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."

It is assumed that these indigent persons each has a legal residence in Jackson Township and is not permanently disabled. You state that these persons are not in the county infirmary and are not permanent paupers. I do not infer from your letter that said persons are in such peculiar condition that they can not be satisfactorily cared for except at the county infirmary or under county control.

It will be noted that Section 3476 of the General Code provides generally that the trustees of each township shall afford at the expense of such township, public support or relief to all persons therein who are in condition requiring it; and it is the declared intent of the act, of which Section 3476 of the General Code is a part, that townships shall furnish relief in their homes to all persons needing temporary or partial relief, who are residents of the township, as is prescribed in Sections 3477 and 3479.

Section 3480, General Code, reads as follows:

"When a person in a township or municipal corporation requires public relief, or the services of a physician or surgeon, complaint thereof shall be forthwith made by a person having knowledge of the fact to the township trustees, or proper municipal officer. If medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately notify such trustees or officer, in writing, that he is attending such person, and thereupon the township or municipal corporation shall be liable for relief and services thereafter rendered such person, in such amount as such trustees or proper officers determine to be just and reasonable. If such notice be not given within three days after such relief is afforded or services begin, the township or municipal corporation shall be liable only for relief or services rendered after notice has been given. Such trustees or officer, at any time may order the discontinuance of such services, and shall not be liable for services or relief thereafter rendered."

The provisions of Sections 3476 and 3480, General Code, afford ample power to the trustees of the township to provide for an operation to be performed upon said indigent persons, of the kind stated, and to pay for the same out of township funds, and, within the limitations prescribed in said Section 3480, General Code, require them to do so.

You call attention to my opinion No. 1519, rendered January 4, 1928, to Hon. Howard J. Seymour, Prosecuting Attorney, Ravenna, Ohio. The syllabus of said opinion reads as follows:

"1. When an indigent person has a legal settlement and residence in a city of this state, the county commissioners of the county in which such city is located are not authorized to contract for a necessary surgical operation on such person, or pay for the same out of county funds, unless the operation is performed on such person as an inmate of the county infirmary, as provided for in Section 2546.

2. When an indigent person has a legal settlement and residence in a city of the state, the proper authorities of such city are authorized to contract for a necessary surgical operation on such person and to pay for the same out of city funds; and within the limitations prescribed in Section 3480, General Code, they are required to do so."

You state that you have advised the township trustees in accordance with the holding of this opinion and then ask in substance whether said opinion is applicable to the facts as stated in your communication.

The question under consideration in said former opinion was as to whether the City of Ravenna was liable for the expense of an operation for appendicitis upon an indigent person, a legal resident of said city. It was held in said former opinion in construing Section 3476, General Code, that:

"It will be noted that this section provides generally that the trustees of each township or the proper officers of each city therein, 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; and that it is the declared intent of the act, of which Section 3476, General Code, is a part, 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 is prescribed in Sections 3477 and 3479, General Code."

It is therefore evident said opinion refers to both cities and townships.

You further state that the township trustees are without funds, and inquire whether said trustees may contract with hospitals for service in performing said operations and the expense incident thereto when the fiscal officer can not certify that there is money on hand or in process of collection for such contract.

Former Section 5648, General Code, provided as follows:

"The trustees of any township which incurs liabilities for the relief of the poor, beyond the amount raised by the levy authorized by law, may make an additional levy, for the purpose of discharging such liabilities, not exceeding six-tenths of one mill on the dollar of the taxable property of such township."

This section was repealed by Section 40 of House Bill No. 80, 112 O. L. 391, and no similar section was enacted.

Section 2293-7, General Code, as enacted, 112 O. L. 364, reads as follows:

"In case of epidemic or threatened epidemic, or during an unusual prevalence of a dangerous communicable disease, or in case of the destruction by fire, flood or extraordinary catastrophe of any bridge, road, school or public building, if it is determined by the Tax Commission of Ohio that funds are not otherwise available, the taxing authorities may borrow money and issue notes: (a) to defray those expenses which the local board of health deems necessary to prevent the spread of such disease, or (b) to provide temporary facilities for bridge, road, school or building purposes. Such notes shall mature one-half on March first next following the next February tax settlement at which, in accordance with the ordinary budget procedure, a tax to pay such notes can be included in the budget and one-half on the following September first, and a tax shall be levied to pay such notes, which tax shall be outside of all limitations of law."

It is manifest that this section is not applicable to the facts in the instant case, but relates only to the conditions and circumstances therein defined. The trustees may, however, borrow money and issue notes in anticipation of the collection of current revenues.

Section 5625-33, General Code, provides as follows:

"No subdivision or taxing unit shall:

* * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in

the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * * ”

It is clear that unless the money is in the treasury or in process of collection to the credit of the appropriate fund and is free from any previous encumbrances, that the fiscal officer can not make the certificate and that the contract therefore legally can not be made.

Where, however, relief is afforded under Section 3480, General Code, it would seem clear that the provisions of Section 5625-33, supra, do not apply. You will note that by the express terms of Section 3480 “if medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately notify such trustees * * * , in writing, that he is attending such person, and thereupon the township * * * shall be liable for relief and services thereafter rendered such person.” This statute seems clearly to create a valid obligation of the township in a method entirely different from that by which obligations are ordinarily created, and must be regarded as an exception to the requirements of Section 5625-33 and related sections of the General Code. The reason therefor is obvious, for in many a case in which medical or surgical services are required, any delay occasioned by making the necessary appropriation and filing the certificate of the fiscal officer might render the medical services too late and cause the death of the person.

In my opinion the statute contemplates that when an indigent person, who is a township charge, is sick, he shall receive the required medical or surgical attention, either from the physician or surgeon under contract, or, in case there be none under contract, then from any available physician or surgeon who is required to give the notice required by Section 3480. Of course, the amount of compensation, which the physician or surgeon not under contract may receive under such circumstances, is left to the just and reasonable determination of the township trustees, and if the notice required by Section 3480 be not given within three days after the relief is afforded, or services begin, the township is only liable for such services as are rendered after notice has been given.

Your attention is further directed to the fact that the trustees at any time may order the discontinuance of such services, and that after such order, the township is not liable. Such an order must not, however, be made arbitrarily, but should only be given where the township trustees in good faith determine that such services are not required or that the person is not an indigent person entitled thereto.

There is provision, however, by which a certain amount of money may be secured by said township trustees. Section 2293-4, General Code, provides as follows:

“In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the

February tax settlement before January first of the year of such tax settlement."

In connection with the above section, however, it should be noted that the provisions thereof simply provide a method by which money can be received into the township treasury before the semi-annual settlement of taxes. By the terms of Section 5625-33, General Code, the certificate of the fiscal officer may be filed when the funds are "in process of collection," the section prescribing that:

"Taxes and other revenues in process of collection, * * * notes or certificates of indebtedness sold and in process of delivery, shall for the purpose of this section be deemed in the treasury or in process of collection and in the appropriate fund."

Thus it will be seen that the effect of Section 2293-4 is to permit the township to obtain money to discharge an obligation legally created, and the section making provision for the receiving of funds into the township treasury to make possible the *payment* of a debt as distinguished from the *creation* thereof.

It is therefore my opinion that:

1. Where indigent persons have a legal settlement and residence in a township of this state, the trustees of such township are authorized to contract for necessary operations on such persons and to pay for the same out of township funds; and within the limitations prescribed in Section 3480, General Code, they are required to do so.

2. The trustees of a township can not make a contract, or make an order involving an expenditure of money unless the fiscal officer of the township certifies that the amount required to meet the same has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund, free from any previous encumbrances.

3. Where medical or surgical services are required by an indigent person, who is a township charge, in a township and no physician or surgeon is regularly employed by such township, by contract, to furnish medical attendance to the poor, upon compliance with the requirements of Section 3480, General Code, a legal obligation of the township is created to pay to the physician or surgeon rendering the necessary services, such compensation as the township trustees determine to be just and reasonable. Such obligation may be created without the filing of a fiscal officer's certificate, as provided by Section 5625-33, General Code, to the effect that the necessary funds to discharge such obligation are in the township treasury.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1904.

APPROVAL, NOTES OF MONTGOMERY TOWNSHIP RURAL SCHOOL DISTRICT, WOOD COUNTY, OHIO—\$110,000.00.

COLUMBUS, OHIO, March 27, 1928.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.