I am unable to subscribe to a holding whereby, the authority which secondarily has the appointing power may by his own act deprive the authority which primarily has such power from exercising this power to appoint. Undoubtedly, if the facts were that council, after moving to fill the vacancy, had allowed the matter to rest and failed to act until the mayor, in good faith in order to avoid further vacancy in the office, made an appointment, then reason and justice might warrant a contrary conclusion. Such, however, are not the facts here; with apparent promptness the mayor, after refusing to entertain the motion, attempted to make the appointment himself. Even then it appears council attempted again to appoint by calling a special meeting eight days later but were again stopped by the mayor; and again five days later council appointed. These facts are clearly distinguishable from the supposititious case hereinabove mentioned of where upon failure of council to function the mayor might appoint to avoid further vacancy. As I view the situation, it is no different than if the mayor had appointed after council had moved and seconded an appointment before the members had been given as much as five minutes within which to vote.

In view of the foregoing, it is my opinion that:

1. When a vacancy in a village council is discovered to have been in existence for a period of more than thirty days, such vacancy may be filled by council or by the mayor, whichever authority acts first.

2. Under such circumstances, when a motion is made and seconded by council to appoint a person to fill such vacancy and a vote thereon deferred by the mayor, in refusing to entertain the motion, until after the mayor has made an appointment, the appointment made by the mayor is of no legal effect and the person thereafter appointed by council is the legally appointed incumbent to fill such vacancy.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2906.

HOSPITALIZATION—EMERGENCY CASE OF NON-RESIDENT IN IMMEDIATE NEED OF HOSPITALIZATION IN COUNTY OTHER THAN THAT OF HIS LEGAL SETTLEMENT DISCUSSED.

SYLLABUS:

Hospitalization in emergency cases exclusive of motor vehicle injuries and contagious cases of a non-resident of a county found in need of hospitalization in a county other than that of his legal settlement discussed.

COLUMBUS, OHIO, July 10, 1934.

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

GENTLEMEN:—I am in receipt of your communication concerning the following state of facts:

> T. D. was in an accident (not of a motor vehicle type) in Norton Township, Summit County, Ohio, and was immediately rushed by ambulance to a nearby hospital, St. Thomas Hospital, in Akron for an emergency operation. No opportunity was afforded the hospital under the cir-

cumstances to determine the legal residence and settlement of the patient at that particular time.

The Summit County commissioners were notified of T. D.'s admittance as an indigent within 24 hours of the patient's admission and were also notified as to the non-residence of the patient, the particular patient having a legal settlement in Doylestown, Wayne County. Due notice was given the county commissioners of Wayne County by the county commissioners of Summit County through their special deputy, after receipt from the St. Thomas hospital of information of the non-residence of the patient.

An operation was performed on T. D. on May 28, 1932, and he received treatment as a patient until October 10, 1932. He was then removed to his home at Doylestown, in Wayne County.

On September 4, 1933, T. D. was brought back to the St. Thomas hospital for medical services, the need for which related back to the disability suffered by him in May, 1932, for which emergency services had been rendered. Within two days of T. D.'s return to the hospital on September 4, the Superintendent of the County Infirmary of Summit County was notified of his admission (the county commissioners of Summit County have delegated the Supt. of the Infirmary as the party to whom notice of indigent cases should be reported) as an indigent and as a non-resident of Summit County. The man's case was one requiring a very skillful surgeon and it may be stated as a fact that his local community would not have been capable of supplying a surgeon or giving him the attention his type of emergency required. The particular type of illness may probably be called recurrent. T. D. was discharged on November 18, 1933.

Your questions are substantially as follows:

"1. Assuming in the instant case the patient is indigent, is Summit County liable for the payment of hospital services rendered the particular patient?

2. Under the same assumption, is Wayne County, the county of legal settlement of the patient, liable for the hospital services?

3. Under the same assumption, if Summit County is liable for payment to the hospital for services rendered the indigent patient, is Wayne County liable to Summit County by way of reimbursement?

4. When a local hospital in the City of Akron is asked to render emergency services and the treatment subsequent thereto is necessary before the patient can be removed, and the patient proves to be a resident of a county of Ohio other than Summit County and indigent, upon what municipality, township or county does the liability for the payment of the cost of such services fall and by what steps may the local hospital seek and effect collection?"

The above problems are presented principally by heart attack, appendicitis, etc. Section 3476 of the General Code provides 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 a 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 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." (Italics the writer's.)

Section 3477, General Code, in brief defines the term "legal settlement" as a residence in any county for twelve consecutive months without the assistance of public or private charitable relief.

Section 3479, General Code, provides in substance that any persons who have lived continuously in any county of the state for one year shall be considered as having a legal settlement in the township or city in which they last resided continuously for a period of three consecutive months without relief.

From a reading of Section 3476 it is apparent that under ordinary circumstances no legal disbursement of poor relief funds can be made by a city or township for persons who do not have a "legal settlement" within that particular subdivision. This principle is fortified by the language, "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 residents of the state, county, township or cities as described in Sections 3477 and 3479."

Section 3476 of the General Code, supra, provides that the county shall grant relief in four different types of cases:

1. *To persons who do not have the necessary residence requirements.*
2. To persons who are permanently disabled.
3. To those who have become paupers.
4. To persons whose peculiar condition is such that they can not be cared for satisfactorily except at the county infirmary or under county control.

Thus the liability of the county is fixed by Section 3476, of the General Code for all persons found within such county, excepting only those who have resided within a township or municipality the required three months' period without support.

Section 3481, General Code, provides that no relief or support shall be given to a person unless they shall have been investigated by the proper officers of a city or township or a public charity organization or other benevolent association which investigates and keeps a record of facts relating to persons who receive or apply for relief, for the purpose of determining the existence or non-existence of a legal settlement, the need for relief, age, sex, etc. It further provides that the infirmary superintendent, township trustees, or proper officers of a city, shall accept the investigation and information

of this type of charitable organization, and may grant relief upon the approval and recommendation of such an organization.

Section 3482, General Code, provides:

> "When it has been so ascertained that a person requiring relief has a legal settlement in some other county of the state, such trustees or officers shall immediately notify the infirmary superintendent of the county in which the person is found, who, *if his health permits*, shall immediately remove the person to the infirmary of the county of his legal settlement. If such person refuses to be removed, on the complaint being made by the infirmary superintendent, the probate judge of the county in which the person is found shall issue a warrant for such removal, and the county wherein the legal settlement of the person is, shall pay all expenses of such removal and the necessary charges for relief and in case of death the expense of burial if a written notice is given the county commissioners thereof within twenty days after such legal settlement has been ascertained." (Italics the writer's.)

Section 3483, General Code, provides:

> "Upon refusal or failure to pay such expenses, such board of county commissioners may be compelled so to do by a civil action against them by the board of county commissioners of the county from which such person is removed, in the court of common pleas of the county to which such removal is made. If such notice is not given within twenty days after such board of county commissioners ascertain such person's residence and within ninety days after such relief has been afforded, the board of county commissioners where such person belongs shall not be liable for charges or expenditures accruing prior to such notice."

General Code Section 3484 is applicable only to counties in which there is no county infirmary and hence no infirmary superintendent. In such counties notice to foreign counties shall be sent directly by the trustees of the township or officers of the city in which the indigent persons are found. It was held in an opinion of one of my predecessors in office found in Opinions of the Attorney General for 1926, page 452 as stated by the second and third branches of the syllabus:

> "2. In non-contagious cases a hospital may recover for necessary hospital care, rendered to one requiring public relief, from the township or municipality in which the patient resides when the provision in section 3480 in reference to notice, etc., has been complied with.
>
> 3. The county authorities may compensate a city hospital for relief furnished to a needy resident of another county and in turn collect from the county in which said patient resides."

The opinion after making specific reference to Sections 3482 and 3483, General Code, supra, stated at page 454:

"Under these sections it is believed that outside relief may be given by the county officials in which the party is found in need of such relief. The county under such circumstances could reimburse the City Hospital for the reasonable value of the necessary relief rendered, and in turn can collect from the county of which the patient is a resident.

In a brief reply to your further inquiry as to the procedure to be followed, it is believed that upon receiving such a patient, the hospital authorities should get in touch with the infirmary superintendent in the county in which the relief is granted, who should be able to advise as to the necessary steps to be taken."

In Opinions of the Attorney General for 1927, Vol. I, p. 386, it was held as disclosed by the second branch of the syllabus:

"2. Persons who are not established residents of a city and who require relief should be furnished such relief by the county under the provisions of Section 3476 and 2540, General Code."

In Opinions of the Attorney General for 1927, Vol. II, p. 1106, it was held as stated in the syllabus:

"1. Where an indigent person who is a non-resident of the State of Ohio is permanently disabled by the loss of both lower limbs or other serious injury and is removed to a hospital for necessary treatment, it is the duty of the county in which such injury was sustained to extend the necessary relief, including the payment of the necessary medical and surgical attendance, hospital expenses, etc.

2. While the power and duty to determine whether or not a person is a proper subject for public relief by the county is by Section 2554, General Code, exclusively vested in the superintendent of the county home, where a non-resident is permanently disabled by the loss of both lower limbs or other serious injury, and is removed to a hospital for treatment, it is unnecessary that the superintendent of the county home determine that the person injured is a proper person for the extension of public relief by the county prior to the incurring of the necessary medical and surgical attention and hospital expenses."

After quoting Sections 3476, 3477, and 3479 referred to supra, it was stated at page 1108:

"From the provisions of the foregoing statutes it will be noted that it is the duty of townships and cities, to furnish relief to all residents of the state, county, township or city under Section 3477 and 3479, supra, who need temporary relief and to all such residents who permanently need partial relief, while it is the duty of the county to furnish relief to persons who do not have the necessary residence requirements prescribed by Sections 3477 and 3479, supra, to persons who are permanently disabled, to persons who have become paupers,

and to other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control.

In Opinion No. 562, rendered by this department on June 2, 1927, it was said after quoting the provisions of Section 3476, 3477 and 3479, of the General Code:

> 'An examination of the various sections of the General Code relating to the indigent poor convinces me that it was the intention of the legislature to relieve townships and municipalities of any obligation to extend to or support persons coming within the four classes above described for whom it is the duty of the county to provide.'

In connection with the above, your attention is directed to the fact that this department has repeatedly held that the power and duty to determine whether or not a person should become a county charge is by Section 2554, General Code, exclusively vested in the superintendent of the county home. See Opinion No. 562 rendered by this department, as above stated, under date of June 2, 1927, citing Opinions Attorney General, 1915, Vol. I, p. 358; 1918, Vol. I, p. 54; 1919, Vol. I, p. 965, and Opinion No. 509 rendered under date of May 19, 1927.

It is my opinion, however, that the law does not go so far as to require that before necessary medical treatment and hospital services be rendered in an emergency case like the one under consideration, the superintendent of the county home must determine that the person injured requires public relief. To so hold would have the effect of completely denying public relief in cases like the one referred to in your letter, for if the extension of medical and surgical and other necessary assistance were not to be granted in cases of serious injury and other emergencies unless and until the superintendent of the county home could be found and his decision obtained, in many cases the patient would die while awaiting official action. It must be remembered that, as stated in the opinion of the Attorney General reported in Opinions of the Attorney General, 1919, Vol. I, p. 965, 'the poor laws of the state should be liberally construed so as to accomplish the object and purpose of the enactment, and should not, excepting only when clearly and imperatively so required by their own language, be so construed as to exclude from their protection an indigent poor person who is in a condition requiring public support and relief."

After the date of the rendition of the above mentioned opinions, Section 3484-2, General Code, was enacted. It provides as follows:

> "When a person requiring medical services or the services of a hospital, in cases other than contagious, has a legal settlement in a county other than the one in which such service is rendered, and is unable to pay the expenses of such service, *and such service is rendered*

by a municipality or township, the municipality or township rendering such service shall notify in writing the county commissioners of the county of legal settlement that such service is being rendered. Such written notice shall be sent within three days if the fact of non-residence is disclosed upon the beginning of such service, or admission to such hospital, or within three days after the discovery of such fact, if the same be not disclosed as above. Within twenty days after the discharge of such person, or the rendering of the last service, the municipality or township rendering such service shall send a notice thereof, and a sworn statement of its expenses, at the established rate of the municipality or township therefor, to the county commissioners of the county of legal settlement. Thereupon the county of legal settlement shall be liable to the municipality or township rendering such service for the expenses of such service, including hospital service, at the established rate of the municipality or township therefor, and shall pay for the same within thirty days after date of the sworn statement of expenses. If the notice of the rendering of such service, required to be sent by the municipality or township rendering the same, be not sent within three days after the disclosure by such person, or the discovery of such non-residence, the county of legal settlement shall be liable only after the receipt of such notice. Nothing herein contained shall prevent the removal or assumption of care of such person by the county of legal settlement, at its expense, but such removal or assumption shall not relieve such county of liability for the expenses theretofore incurred by the municipality or township rendering such service. Any such person who does not, upon discharge from such hospital, or upon the rendering of the last service, pay the expenses of such service, at the established rate therefor, shall for the purpose of this act, be deemed indigent insofar as the municipality or township rendering such service is concerned. The county of legal settlement is hereby subrogated to all the rights of the municipality or township rendering such service to such person." (Italics the writer's).

The above sections make provision for the rendition of hospital services by a municipality or township where a person is stricken ill in the city or township in a different county than the one in which he has his legal settlement. The title of House Bill No. 13 of the 88th General Assembly of which Section 3484-2 was a part, reads:

> "To amend section 4438 of the General Code of Ohio, and to enact supplemental sections 4438-1, 3480-1 and 3484-2, all relative to the furnishing, by municipalities or townships, of medical, hospital or quarantine service to indigent persons having legal settlement outside such municipality or township."

It becomes necessary to determine whether or not Section 3484-2 is now the exclusive method of giving hospitalization to indigent non-residents of the county who are found in need of hospitalization in a city and county other than that in which they have a legal settlement, or whether it merely gives a supplementary method of caring for such persons.

Section 3484-2, General Code, has been interpreted in an opinion of my immediate predecessor in office. This opinion, found in Opinions of the Attorney General for 1931, Vol. II, p. 1206, held as disclosed by the syllabus:

> "Upon compliance with the provisions of section 3484-2 General Code, hospital and medical expenses for services rendered by a township in the treatment of an indigent person resident of another county are charges upon such county, and the fact that such hospital or medical services were furnished by a doctor or hospital located in another state does not bar recovery by the township rendering such services from the county of the residence of the indigent person to whom such services were rendered."

It was also held in my opinion found in Opinions of the Attorney General for 1933, Vol. II, p. 1352, in an interpretation of Section 3481-2, General Code, enacted contemporaneously with Section 3484-2 and similar in phraseology, as stated in the syllabus:

> "A hospital, as provided for by Section 3480-1, General Code, in order to render the township trustees or proper officials of a city responsible for the hospital bill of a patient, must be owned or managed by a city or township or must render the hospital service at the request of the proper city or township officials."

Section 3484-2, General Code, supra, is a part of Division No. 4, Chapter I of the General Code under the heading "Charity," and includes Sections 3476 to 3496, inclusive, of the General Code, which provide a complete system of dispensing aid to the needy poor in the state. These sections are all in pari materia and should be construed together even though some of the sections were enacted at different times and by different legislatures. See Lewis' Sutherland's Statutory Construction, Vol. II, par. 443.

Section 3484-2, General Code, is not inconsistent with the previous sections inasmuch as its interpretation is conditional upon the rendition of the hospital services or medical assistance by the municipality or township in which the indigent person is found, and has no application where the municipality or township in which the person is found does not render hospital service. Since the poor laws of the state should be construed liberally so as to accomplish the object and purpose of their enactment, (See Opinions of the Attorney General for 1928, Vol. IV, p. 2560), it is my opinion that Section 3484-2, General Code, was not intended to repeal in any way, nor is it inconsistent with the other method of an indigent non-resident of the county obtaining necessary hospitalization at the expense of the county in which he is found, reimbursement for which expenditures should be made by the county of legal settlement. Consequently, it is my opinion that in those cases in which the city or township does not render the medical or hospital assistance to such indigent persons by virtue of Section 3484-2, General Code, Section 3843 above quoted, prescribes the procedure, which places the burden on the county infirmary superintendent to notify the county of legal settlement of the indigent person, and Section 3476, General Code, fixes the liability of the county in which the indigent person is found wherein it provides "relief to

be granted by the county shall be given to those persons who do not have the necessary residence requirements." If the county wherein the indigent person is found desired to be reimbursed for the expenses incurred, it is incumbent upon the superintendent of the county infirmary to notify the county of legal settlement within the prescribed time, and failing amicable collection of its expenses incurred in furnishing relief to the indigent person, the county commissioners of the county wherein the indigent person is afforded relief have the right of a civil action against the board of county commissioners of the county of the indigent person's legal settlement.

For purposes of clarity in answering your questions I shall answer them with respect to the first hospitalization of T. D. and then discuss his second hospitalization. It is my opinion in specific answer to your four questions with respect to the first hospitalization of T. D. that since all the procedural steps have been duly and legally taken, Summit County is liable for the expenses in such hospitalization for such non-resident and should be reimbursed by the county officials of the indigent person's legal settlement, i. e. Wayne County. With respect to the second hospitalization, however, inasmuch as T. D. was not found in Summit County but was brought over from Wayne County without any request by the township trustees of his legal settlement nor the county commissioners of Wayne County, in my opinion neither Summit County nor Wayne County is liable for the expenses of hospitalization for this second hospitalization of this non-resident.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2907.

MILK—FUNDS COLLECTED BY MILK SETTLEMENT COMMITTEE IN CLEVELAND MARKET SALES ARE COLLECTED AND DISTRIBUTED HOW—LIABILITY OF COMMITTEE MEMBERS DISCUSSED.

SYLLABUS:

1. *Under the provisions of the rules and regulations in force in the Cleveland Market Sales Area the various funds collected by the Milk Settlement Committee must be segregated and distributed for the various purposes for which they were specifically collected.*

2. *When the Milk Settlement Committee, by a proper majority, duly passes a resolution authorizing the expenditure of money under the rules and regulations, it becomes the duty of the secretary and chairman to sign the proper check to the proper payee. In the exercising of such powers by the chairman and secretary, they are acting within the scope of their authority and in the absence of fraud or bad faith it is believed no personal liability and, in any event, no more liability could arise by reason of the signing of the checks than would exist by reason of being a member of the Committee.*

COLUMBUS, OHIO, July 10, 1934.

The Ohio Milk Marketing Commission, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion upon the following: