2832.

DISTRICT TUBERCULOSIS HOSPITAL—WHERE COUNTY JOINS IN ERECTION OF SUCH HOSPITAL AND LATER WITHDRAWS AND DISPOSES OF ITS INTEREST—MAY EXPEND SAID FUNDS FOR ERECTION OF COUNTY TUBERCULOSIS HOSPITAL.

*Where a county has joined in the creation of a district hospital and thereafter withdraws from said district and disposes of its interest therein, as provided in G. C. section 3148 and conditions as outlined in G. C. section 3141-1 exist, said county may expend the money derived from such sale for the erection of a county tuberculosis hospital.*

COLUMBUS, OHIO, January 28, 1922.

HON. HARRY H. SNIVELY, *Director of Health, Columbus, Ohio.*

DEAR SIR:—Your communication of recent date received in which you ask a reconsideration of Opinion No. 1265, Attorney General's Opinions for 1920, page 602. You repeat the question asked in the opinion referred to, which question is as follows:

> "After a county has disposed of its interest in a district tuberculosis hospital, as provided by law, and after applying a part of the proceeds of the sale of such interest to meet the payment of bonds and interest theretofore issued, for the erection of such district hospital, can the county commissioners use the balance of such proceeds for the establishment of a county tuberculosis hospital?"

After noting the conclusion of the said opinion your letter proceeds as follows:

> "In regard to this opinion I wish to submit the following statement with the request that the matter be reconsidered.
>
> Columbiana county previously joined with Stark, Summit, Mahoning and Portage counties in the construction and operation of a district tuberculosis hospital located at Springfield Lake in Summit county. Because of the fact that the capacity of the institution was limited and there was not opportunity for Summit county to have admitted to this insitution all cases of tuberculosis that should have been cared for in such an institution, and because of the further fact that the board of trustees of such hospital and the joint board of county commissioners refused to accede to the request of Summit county for an enlargement of the institution, the county commissioners of Summit county came to the legislature with the request for legislation authorizing any county so situated as Summit county was at that time with respect to this tuberculosis hospital to provide additional facilities by the construction of a county tuberculosis hospital, following consent received from the state department of health.
>
> The general assembly acceded to the request and passed an act (108 O. L., pt. 1, 230) authorizing the construction and operation of a county tuberculosis hospital. A study of section 3141-1 of this act will show that a county hospital for tuberculosis would not be authorized unless the precedent conditions existed, that is, that the county proposing such a hospital must be a part of a tuberculosis hospital district, that the capacity of the hospital was not sufficient to care for all cases that should be admitted, and

that the joint board of county commissioners had failed or refused to provide additional accommodations.

The same general assembly, at its special session on December 4, 1919, passed a further supplementary section, section 3141-2 (108 O. L., pt. 2, 1054), making provision that where bonds had been authorized or funds secured for the purpose of erecting or maintaining a county hospital as provided for in section 3141-1 such funds could be used in purchasing the right, title and interest of any or all counties that had joined in the erection or maintenance of a district hospital for the treatment of tuberculosis.

The effect of this supplemental section made it possible for Summit county to take the funds that had been voted for a county tuberculosis hospital and therewith to purchase the right, title and interest of the counties interested in the Springfield Lake institution. That plan was carried out and the district was abandoned; therefore, Columbiana county had no authority to proceed under the provisions of section 3141-1, for the reason that no district existed.

I now come to a consideration of another feature brought into your opinion, namely, the reference to authority given by law for any county to provide a tuberculosis dispensary. It is evident that a proper distinction was not made between the status and functions of a hospital and the status and functions of a dispensary, under authority of section 1236-6 G. C., (108 O. L., pt. 1 ,46), which provides that 'The commissioner of health shall have power to define and classify hospitals and dispensaries,' the following definitions have been made and officially recorded by the Director of Health:

*HOSPITAL.* Any institution or establishment, public or private, for the reception and care of persons for a continuous period longer than twenty-four hours, for the purpose of giving advice, diagnosis or treatment bearing upon the physical or mental health of such persons, shall be considered a hospital.

*DISPENSARY.* Any institution or establishment, public or private, for the purpose of giving advice, diagnosis or treatment bearing upon the physical or mental health of an individual shall be considered a dispensary; provided, that a hospital and the quarters of a licensed practitioner of medicine used for his private practice shall not be deemed to come within the meaning of this definition.

The shortest definition that I can make is that a hospital is a place where persons are received for continuous treatment, that is, bed cases, and that a dispensary is a place where persons are received for temporary treatment, that is, a person comes to a dispensary for certain treatment and then goes home, no bed service being provided, except possibly for emergency cases, such as an anesthesia.

The same general assembly passed another act (108 O. L., pt. 1, 253) authorizing the county commissioners of any county *wherein is located a municipal tuberculosis hospital* to purchase or lease a site and erect or lease the necessary buildings for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis. (3148-1 G. C.) The last general assembly (109 O. L. 212) amended this section so as to provide that the county commissioners of any county having more than fifty thousand population could, with the consent of the state department of health, provide for a county hospital for the treatment of persons suffering from tuberculosis.

I therefore submit that under the present statutes there are but two methods whereby a county hospital for the treatment of tuberculosis can be

provided. The first is where the capacity of a district tuberculosis hospital is not sufficient to provide accommodations for all cases, then a county contributing *to the district* can, with the consent of the state department of health, provide a county tuberculosis hospital (3141-1 G. C.). The second class includes those counties having a population of more than fifty thousand (3148-1 G. C.), and, further, that the authority to provide, operate and maintain a tuberculosis dispensary does not give authority to provide, operate or maintain a county tuberculosis hospital."

The former opinion, after quoting the question to be considered, reviews the history of the law relating to tuberculosis hospitals. After that the opinion discusses section 3153-6 G. C. relating to tuberculosis dispensaries.

At this point it is perhaps advisable to discuss the difference between a hospital and a dispensary.

Section 1236-6 G. C. is as follows:

"The commissioner of health shall have power to define and classify hospitals and dispensaries. Within thirty days after the taking effect of this act, and annually thereafter, every hospital and dispensary, public or private, shall register with, and report to, the state department of health, on forms furnished by the commissioner of health, such information as he may prescribe."

In pursuance of this statute the director of health has defined "hospital" and "dispensary" as set forth in your letter above quoted. It can be said further that said definitions are in keeping with the generally recognized meaning of the terms, as Funk & Wagnalls' new dictionary says of a hospital as follows:

"An institution for the reception, care, and medical treatment of the sick or wounded; also, the building used for such purposes"

As to a dispensary the same authority says:

"A public institution where medicines and medical advice are dispensed gratis or at a nominal price."

The Century Dictionary defines "hospital" as follows:

"Now, specifically, an establishment or institution for the care of the sick or wounded, or of such as require medical or surgical treatment."

The same dictionary says a "dispensary" is:

"A public institution, primarily intended for the poor, where medical advice is given and medicines are furnished free, or sometimes for a small charge to those who can afford it."

These definitions indicate a clear distinction between a hospital and a dispensary, and the former opinion may be misleading because of not making this distinction. Further discussion is unwarranted in arriving at the conclusion that the building of a hospital under the guise of a dispensary is contrary to law and in violation thereof.

Going now directly to the question asked, it is necessary to construe the following statutes:

"Sec. 3141-1. In any county which has joined in the erection of a district tuberculosis hospital and in which such hospital has not capacity to afford suitable accommodation for all cases of tuberculosis that should be admitted to such institution, and where the trustees of such district tuberculosis hospital or the joint board of county commissioners fail or refuse to provide additional accommodation in such hospital, the county commissioners may, with the consent of the state department of health, erect and maintain a county tuberculosis hospital. For the purpose of constructing and maintaining such county hospital the county commissioners may issue bonds and shall annually levy a tax and set aside the funds necessary for such maintenance. Such funds shall not be used for any other purpose. When it shall become necessary to enlarge, repair, or improve such county hospital for tuberculosis, the county commissioners shall proceed in the same manner as provided for other county buildings. Plans and estimates of cost for all additions to hospitals for tuberculosis shall be submitted to and approved by the state department of health and the board of state charities."

"Sec. 2567. Except moneys collected on the tax duplicate, the auditor shall certify all moneys into the county treasury, specifying by whom to be paid and what fund to be credited, charge the treasurer therewith and preserve a duplicate of the certificate in his office. Costs collected in penitentiary cases which have been paid by the state or to be so paid, shall be certified into the treasury as belonging to the state."

For the purpose of this opinion, it is taken as granted that the balance of the money referred to in your inquiry has been referred to the proper fund.

Sec. 5 of Article XII of the Constitution of Ohio says:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

It is noted that in the instant case the object for which the money was raised is the purpose of caring for the indigent tuberculars in supplying hospitals therefor, and that object still exists. Therefore, the expenditure of the balance referred to would not be prevented by the constitutional provision above referred to.

When the county, being a part of a district tuberculosis hospital, sells its interest therein, it is charged with the knowledge of the law that it must provide means of caring for its indigent sick. Sec. 3141-1 G. C. starts by saying as follows:

"In any county which has joined in the erection of a district hospital."

Section 3148 G. C. provides that a county may withdraw and dispose of its interest in a district hospital. In your set of facts the county "has joined" a district and has withdrawn and disposed of its interest therein and has the money or a portion thereof on hand, which for the purpose of this opinion has been placed in the proper fund by the county auditor.

It may be stated from a reading of the law relating to tuberculosis hospitals that a fair inference is that where a joint district arrangement proves inadequate

for the needs of a county, the commissioners are to be empowered and authorized to treat and care for tubercular persons in their own county.

It is noted that no specific provision is made for the disposition of the proceeds of sale of an interest in a district hospital, and in consideration of the last above observation and in the light of section 2567 G. C., which secures the money realized to the proper fund, such specific action by the General Assembly does not seem necessary. The holding of the former opinion is concurred in, although the conclusion herein reached is based to some extent on different reasons. A distinction has been made herein between a hospital and a dispensary, which the former opinion did not make, and to that extent the former opinion is modified.

You are therefore advised that where a county has joined in the erection of a district tuberculosis hospital, in which hospital there is not suitable accommodations afforded and where the trustees have failed and refused to provide additional accommodations and because of such conditions such county has withdrawn from such district tuberculosis hospital and has sold its interest therein, such county, with the consent of the state board of health, may use the proceeds of such sale to erect and maintain a county tuberculosis hospital.

Respectfully,
JOHN G. PRICE,
*Attorney-General.*

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2833.

DELINQUENT LAND SALES—WHERE TRACT OR LOT IS CERTIFIED DELINQUENT AND CONTINUES TO BE SO FROM YEAR TO YEAR—NEED NOT BE AGAIN ADVERTISED AND CERTIFIED DELINQUENT UNTIL REDEEMED OR SOLD ON FORECLOSURE.

COLUMBUS, OHIO, January 28, 1922.

*If tract or lot is certified delinquent and continues to be delinquent from year to year, it should not be again advertised and certified delinquent until it is redeemed or sold on foreclosure.*

HON. JOHN P. PHILLIPS, JR., *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—You have requested the advice of this department as to the correctness of a certain paragraph found in Circular No. 195 issued by the Tax Commission of Ohio under date October 9, 1917, and relating to the administration of the delinquent land tax laws of the state as amended 107 O. L. 735.

The paragraph concerning which you inquire is as follows:

> "If a tract or lot is certified delinquent and continues to be delinquent from year to year, it should not be again advertised and certified delinquent until it is redeemed or sold on foreclosure."

In this connection you call attention to the provisions of sections 5704, 5705, 5708 and 5718 of the General Code as so amended.

The circular referred to by you was submitted to this department before it was sent out, and the paragraph in question was approved. See Opinions of Attorney-General, 1917, Vol. II, 1846. However, the Attorney-General acknowledged that he entertained considerable doubt on this point. The opinion, in so far as it deals with this paragraph of the circular, is as follows: