

the sole use of the treasury of the county in which they are elected and shall be held as public moneys belonging to such county and accounted for and paid over as such as hereinafter provided."

Obviously, section 2778, General Code, supra, makes it mandatory that the county recorder charge and collect the proper fees when an instrument is presented for record and section 2977, General Code, makes it mandatory that such fees be paid into the county treasury.

Summarizing, it is my opinion that:

1. A county recorder who has made an erroneous or incomplete record, may, while in office or after reelection to the same office, alter or complete such record to conform to the original instrument. However, such recorder is not authorized to alter or correct errors in the record made by a predecessor in office.

2. A county recorder may not accept an original instrument, which had previously been recorded improperly, for re-recording and remit the fee to be charged to the parties presenting the instrument for record.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3252.

POOR RELIEF—PAYMENT OF INDIGENT'S WATER BILLS FROM  
STATE EMERGENCY RELIEF FUND.

*SYLLABUS:*

*The State Relief Commission, may if the City of Columbus is unable to furnish necessary and adequate relief for its indigent persons in the way of payment of their water bills, grant funds from the State Emergency Relief Fund to such subdivision for such purpose. However, there is no authority to pay out of the poor relief funds of the subdivision, nor of the State Emergency Relief Funds, water bills contracted by non-indigent property owners even though indigent tenants are occupying the premises owned by non-indigent persons.*

COLUMBUS, OHIO, September 26, 1934.

*The State Relief Commission of Ohio, Columbus, Ohio*

GENTLEMEN:—I am in receipt of your communication which reads as follows:

"In the city of Columbus the water works system is a publicly owned utility. The city charter provides that the Director of Service shall make such assessments against users of water 'as will fully cover cost of service'.

Among the delinquent users of water are a large number of property-owners who are unable to collect the rents from their tenants, and who are permitting indigent tenants to occupy their property by sufferance, or who have arrangements by which tenants perform some repair service in exchange for the use and occupancy of the property. In some of these cases the landlords have ordered the water shut off, and

the local relief administration has been compelled to furnish housing for the tenants.

Section 3476 et seq. of the General Code places upon the municipal authorities the primary responsibility for the relief of the indigent.

For the guidance of the State Relief Commission, an opinion is requested upon the question whether the water bills of indigent persons should be paid out of state emergency relief funds to such municipality for such purpose."

The first question to be considered is whether or not the City of Columbus, which has a publicly owned water works system can furnish directly to its indigents, having a legal settlement therein, water free of charge.

Section 3963, General Code, provides:

"No charge shall be made by a city or village, or by the waterworks department thereof, for supplying water for extinguishing fire, cleaning fire apparatus, or for furnishing or supplying connections with fire hydrants, and keeping them in repair for fire department purposes, the cleaning of market houses, the use of any public building belonging to the corporation, or any hospital, asylum, or other charitable institutions, devoted to the relief of the poor, aged, infirm, or destitute persons, or orphan or delinquent children, or for the use of the public school buildings in such city or village.

But in any case where the school district, or districts, include territory not within the boundaries of the city or village, a proportionate charge for water service shall be made in the ratio which such tax valuation of the property outside the city or village bears to the tax valuation of all the property within such school district, subject to the rules and regulations of the waterworks department of the municipality governing, controlling, and regulating the use of water consumed."

Sections 120, 121 and 124 of the Charter of the City of Columbus, Ohio, provide:

"Sec. 120.

"For the purpose of paying the expense of conducting, managing and operating the city water works, the director of public service shall, as a condition of supply, charge against and collect from all consumers both public and private including the various and several city departments and institutions, a charge for water service rendered. Such rates of charge shall be fixed by ordinance of council. It shall be made in an equitable manner and in such amount as will fully cover the cost of service."

Sec. 121.

"In determining the cost of water service to be so charged and collected, council shall be governed by the following general rule:

All water consumers, as stated in the preceding section, shall be charged with and shall pay the current cost of maintenance, operation and supply, interest on outstanding water bonds and losses sustained by depreciation."

Sec. 124.

"Council may by ordinance or resolution relieve from the payment of bills for water service, any hospital, asylum or other charitable institution devoted to the relief of the poor, the aged, the infirm or destitute persons or orphan children, but such relief shall only be granted to institutions which are within the city's limits and not maintained by general taxation, and on the further condition that the bills from which said parties are relieved are promptly paid to the water department out of the general revenue fund of the city."

It is apparent from a reading of the above quoted provisions that there is no authority for the city to furnish free water directly to indigent persons of the community.

The next question to be considered is whether or not the water bills of indigent persons may be paid out of the fund appropriated for poor relief by the city.

Section 3476, General Code, provides in part:

"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 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. \* \* \*" (Italics the writer's.)

Water is even more essential to the relief of indigent persons than is food, shelter and clothing, and in my opinion, the payment of the water bills of indigent persons having legal settlement within the city is a type of "relief" authorized by Section 3476, General Code, quoted in part supra.

Sections 1 and 2 of House Bill No. 264, enacted by the 90th General Assembly (115 O. L. 50) provide:

Sec. 1.

"There is hereby created a state emergency relief fund for the purpose of providing relief for the unemployed and destitute throughout the state. To this fund shall be credited any amounts appropriated or transferred thereto by the General Assembly and the receipts from such taxes as may be levied for the specific purposes of said fund. The state emergency relief fund shall be administered by the state relief commission according to law as now provided or later enacted."

Sec. 2.

"After the state relief commission has determined the need for relief in any subdivision, it shall have the authority to grant to such subdivision from the state emergency relief fund the amount necessary to provide direct and work relief over and above that provided from local revenues and private contributions. Such grants by the state relief commission shall be made in proportion to the need of such subdivisions for assistance *when after reasonable effort, they are unable to furnish necessary and adequate relief for dependent persons.* \* \* \*" (Italics the writer's.)

The above quoted sections grant authority to the State Relief Commission to give assistance to the subdivisions, when such subdivisions are unable to furnish the necessary and adequate relief for dependent persons, such assistance to be in amounts necessary to provide work and direct relief within the subdivisions, from the State Emergency Relief Fund.

It should be pointed out, however, that there is no authority for a city to pay out of poor relief funds, money for the payment of water bills contracted by non-indigent property owners. To do so would be diverting poor relief funds to purposes not contemplated by the poor relief laws.

However, there may be instances where the city's water contract is directly with the indigent tenant and not with a non-indigent property owner and the payment of such water bill under such circumstances might be made out of the poor relief funds, and this would be furnishing aid to the indigent himself and not to the non-indigent property owner. Furthermore, even if the contract is with the non-indigent property owner it would seem that if such property owner orders the water shut off and the service discontinued, he would no longer be liable for water furnished in the future, and the water bills of indigent tenants from that period on could legitimately be paid out of the poor relief funds of the city or from the state emergency relief funds if the subdivision were unable to furnish such necessary relief.

Specifically answering your inquiry, it is my opinion that the State Relief Commission may, if the City of Columbus is unable to furnish necessary and adequate relief for its indigent persons in the way of payment of their water bills, grant funds from the State Emergency Relief Fund to such subdivision for such purpose. However, there is no authority to pay out of the poor relief funds of the subdivision, nor of the State Emergency Relief Funds, water bills contracted by non-indigent property owners even though indigent tenants are occupying the premises owned by non-indigent persons.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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3253.

DISAPPROVAL, BONDS OF ARCANUM VILLAGE SCHOOL DISTRICT, DARKE COUNTY, OHIO—\$148,000.00.

COLUMBUS, OHIO, September 26, 1934.

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

Re: Bonds of Arcanum Village School District, Darke County, Ohio, \$148,000.00.

GENTLEMEN:—I have examined the transcript of the proceedings relating to the above bond issue.

These bonds are proposed to be issued under the provisions of sections 2293-5p and 2293-5t, General Code. Before a subdivision is authorized to provide for the issuance of such bonds, it is necessary that it have the written consent of the