4558.

DETENTION HOSPITAL—DEPARTMENT OF PUBLIC WELFARE NOT REQUIRED TO ESTABLISH DETENTION HOSPITALS—STATE TO PAY COST OF MAINTENANCE AND CARE OF PERSONS CONFINED IN COUNTY DETENTION HOSPITAL.

SYLLABUS:

1. *Senate Bill No.* 207, *enacted by the* 91*st General Assembly, amending section* 3154, *General Code, places no duty upon the State Department of Public Welfare to establish detention hospitals or to prescribe standards of medical care for the patients confined therein.*

2. *Section* 3155, *as amended, does not require that a previously adjudicated insane person now in a detention hospital be readjudicated insane before the state is chargeable for his support.*

3. *The State Department of Public Welfare has the authority by virtue of section* 1841-1, *General Code, to act as a commission in lunacy and to determine the sanity of any person confined by reason of alleged insanity in a county detention hospital and to direct such person's disposition.*

4. *Section* 3155, *General Code, as amended by Senate Bill No.* 207 *of the* 91*st General Assembly, requires that the state pay to the counties the actual cost of maintenance and care of persons confined in a county detention hospital who have been adjudged insane and who have been determined to be fit subjects for commitment to one of the state institutions for the insane. No maximum rate of support having been established by the legislature, the state is required to pay the actual cost provided the same is not excessive.*

5. *There is no legal duty or authority on the part of the Department of Public Welfare to make an investigation of the financial status of persons confined in a county detention hospital. The so-called Pay Patient Law (Sections* 1815-1 *et seq.) General Code, does not apply in cases where the state in paying the cost for maintenance and care of inmates in a county detention hospital. No provision is made whereby the state may be reimbursed from either the patient or relatives or other persons responsible for his care.*

6. *The legislature having made no appropriation to the Department of Public Welfare for the purpose of paying the cost of the maintenance and care of persons confined in a county detention hospital who have been adjudged insane and have been determined fit subjects for commitment to one of the state institutions, no payments can be made until funds are made available for that purpose through an appropriation by the legislature.*

COLUMBUS, OHIO, August 19, 1935.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM:—This will acknowledge receipt of your request for my opinion which reads as follows:

"Sections 3154 (99 v. 210) and 3155 (99 v. 210—Amended by Senate Bill No. 207, passed May 23, 1935, and approved by the Governor June 4, 1935) read as follows:

Section 3154. 'Upon the request of the probate judge, the county commissioners of the county may establish a place to be known as the detention hospital for alleged insane persons. Such place shall consist of a hospital or ward, or other suitable place available for this purpose which shall be in close proximity to the probate court. It shall be under the charge, supervision and control of a superintendent, who shall be a registered physician, appointed by the probate judge, and such other assistants as may be required, who shall be appointed by the superintendent with the approval of the probate judge. In counties wherein a municipality owns and controls a hospital the county commissioners may contract with the authorities having charge and control of the municipal hospital for the care of such alleged insane persons.'

Section 3155. 'The probate judge may commit to the detention hospital all persons brought before him, alleged to be insane, whose cases are doubtful or whose insanity is likely to be temporary, and also all insane persons who cannot be committed to or received into the state hospital. A person so committed, shall be detained in the detention hospital until the superintendent and the probate judge determine that the person so committed is cured, or is a fit subject for the state hospital. When it is determined that such person is cured, he or she shall be discharged; and when it is determined that such person is a fit subject for the state hospital, application shall be made for his or her admission thereto as in other cases. *In all cases where such alleged insane person or persons shall thereafter be declared to be insane, the cost of maintenance and care of such insane person or persons in such detention hospital shall be paid by the state as is* provided in section 1815 and section 1950 of the General Code.'

That part of Section 3155 which is italicized is the amendment recently enacted. Prior to this amendment, any persons whatsoever confined in detention hospitals, whether alleged to be insane or legally insane by adjudication by the probate court, were supported

by themselves or their relatives or by the county, the state bearing none of the cost of care and maintenance.

We respectfully request your opinion on the following questions incident to these two sections:

1. By reason of the amendment 'In all cases where such alleged insane person or persons shall thereafter be declared to be insane, the cost of maintenance and care of such insane person or persons in such detention hospital shall be paid by the state, as is provided in section 1815 and section 1950 of the General Code,' has the state any duty or obligation in the establishment and supervision of such detention hospitals; or in prescribing standards of physical, medical or other care of the patients confined therein, for whom the state must bear the cost?

2. In cases of patients who before their commitment to the detention hospital by the probate court, as provided for in the first sentence of section 3155 G. C., had been adjudged insane by the probate court and application for their admission to a state hospital filed with the superintendent of the state hospital and such patients have not been received by the state by reason of lack of room in state hospitals, does the phrase, 'in all cases where such alleged insane person or persons shall *thereafter* be declared to be insane,' mean that another hearing shall be had by the probate court before the state is obligated in the cost of maintenance and care in the detention hospital?

3. Has the State Department of Public Welfare authority to determine through its own examination whether the patient confined in the said detention hospital 'is a fit subject for the state hospital'? See Section 1841-1 G. C. (103 v. 681) giving the Department of Public Welfare power to act as a commission in lunacy and to determine the question of the sanity of any person confined in any public or private hospital and to direct such person's disposition.

4. What rate of support is established by the provision, 'The cost of maintenance and care of such insane person or persons in such detention hospital shall be paid by the state *as is provided in Section* 1815 and Section 1950 of the General Code'? Shall Section 1815 as used in this amendment be interpreted to mean Section 1815 et seq.? Section 1815 G. C. provides:

'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 inci-

dental expenses paid by themselves or those having them in charge.'

Section 1815-2 G. C. reads:

'The maximum rate for the support of inmates of such institutions shall be five dollars and fifty cents per week. Less amounts may be accepted by the board (Department of Public Welfare) when conditions warrant such action, or when offered by persons not liable.'

Does this section, establishing the maximum rate for the support of inmates of state institutions at $5.50 per week, govern?

5. $5.50 per week, as established by Section 1815-2, is the maximum rate charged the patient, his responsible relatives or guardian for the support of patients confined in state hospitals for the insane (see Section 1815-9 G. C.). In the case of patients confined in a detention hospital referred to in sections 3154 and 3155, is it the province and duty of the state to investigate the financial status and ability to pay of the patient or his responsible relatives, and if found liable and able to pay, to make collections from the patient or his relatives?

6. If questions 4 and 5 are answered in the affirmative, and the Department of Public Welfare finds in its investigation, as provided for by Sections 1815-3, 1815-4, 1815-5, 1815-6, 1815-7, 1815-9 and 1815-10, G. C., that the patient or his relatives are able to pay the $5.50 per week, and makes collection from such patient or his relatives, how shall this payment be made to the county, inasmuch as Section 24 G. C. and other sections of the General Code provide that all fees collected by state departments and institutions shall be paid into the state treasury.

7. This amendment to Section 3155 G. C. carries no appropriation and no funds are available in the general appropriation bill from which payment may be made by the state to the counties for this purpose. Is there any source from which payment may be made by the state to the counties for the support of patients in detention hospitals referred to in Sections 3154 and 3155 G. C.?"

Sections 3154 and 3155, General Code, quoted in your letter were originally enacted in 1910 (99 O. L., 210). Senate Bill No. 207, passed on May 23, 1935, by the 91st General Assembly, changes section 3155 General Code only to the extent that the state instead of the county is charged with the support of persons in detention hospitals after they are declared insane.

With respect to your first question, it appears that there is no duty or obligation on the part of the state to establish or supervise such detention hospitals or to prescribe standards of care therefor. Section 3154 specifically provides for the establishment of such hospitals by the county commissioners

upon the request of the probate judge. It is further provided that "it shall be under the charge, supervision and control of a superintendent who shall be a registered physician, appointed by the probate judge, and such other assistants as may be required who shall be appointed by the superintendent with the approval of the probate judge".

The fact that the state is charged with the payment for the support of such insane persons in these detention hospitals does not, in the face of specific statutory provisions to the contrary, create an obligation to establish and supervise the hospitals. An analogous case is that in which the counties pay for the support of feeble minded patients in state institutions (G. C. 1815-12). This does not impose upon the county a duty to establish and supervise such institutions as the law places this obligation upon the state. Your first question must therefore be answered in the negative.

Your second inquiry concerns the necessity of previously determined insane persons now in detention hospitals being readjudged insane before the state can be charged for their support.

It appears that the phrase in section 3155, General Code, which charges the state for the support of the patient "in all cases where such alleged insane person or persons shall *thereafter* be declared to be insane," refers only to those persons who, as stated in the first sentence of section 3155, when committed to the detention hospital were merely "alleged to be insane, whose cases are doubtful, or whose insanity is likely to be temporary". That is, it merely applies to those who were being held as doubtful cases and not to those who have been declared insane and committed to the detention hospital only because of lack of accommodations at the state hospital.

It would therefore appear that when section 3155, as amended, becomes effective, the state is chargeable with the support of previously adjudged insane persons in detention hospitals, unless section 1957, General Code, can be construed as necessitating further proceedings. Section 1957, General Code reads as follows:

> "The medical certificate shall contain answers to such interrogations as the director of public welfare, with the advice of the superintendents of the several state hospitals shall prescribe. The medical certificate form shall be printed by the state department of public welfare and shall not be modified oftener than once each year. Sufficient copies shall be furnished the probate courts of the respective counties. *All medical certificates shall be void after thirty days from the date of issue, if the person named therein as insane is not admitted to a state hospital within that time.* In the same manner there shall be prepared and distributed forms for use in commit-

ments to the Ohio hospital for epileptics and to the institution for feeble-minded."

(Italics the writer's.)

The mere fact that the medical certificate, without which, as provided by Section 1958, General Code, a committed person cannot enter a state hospital, has become void through lapse of time, does not alter the fact that the patient has been adjudicated insane but only concerns his admission to a state hospital.

In the *Opinions of the Attorney General for* 1920 in discussing the purpose of section 1957, General Code, with respect to the period for voiding medical certificates, which was then ten days, the then Attorney General said, at page 810:

> "Its evident purpose was to insure a speedy commitment of the insane person to a state hospital for the insane, and to do away with the condition of things formerly obtaining where the unfortunate person was often allowed, after inquest, to remain in the county jail or infirmary for an indefinite period.
>
> *The only thing that becomes void, however, by reason of the lapse of the ten days, is the certificate, the prior proceedings which have terminated in the adjudication of lunacy being unaffected.* * * *
>
> It seems to be clear, therefore, that a new inquest—that is to say, a proceeding *de novo*, initiated by the filing of a new affidavit under section 1953 G. C., is not made necessary merely by the fact that the medical certificate has become void because of the non-admission of the lunatic to a state hospital within ten days after the date of the issuance of such certificate."
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> (Italics the writer's.)

The status of a previously adjudicated insane person in a detention hospital does not change by reason of his medical certificate becoming void, and it is therefore my opinion that further adjudication of insanity is unnecessary before the state is chargeable for his support.

Your third question, with respect to the right of the Department of Public Welfare to determine, through its own examination, whether a patient confined in said detention hospital "is a fit subject for the state hospital", involves the consideration of section 1841-1, General Code, in connection with Section 3155, General Code, supra.

Section 3155 provides in part as follows:

> "A person so committed, shall be detained in the hospital until the superintendent and the probate judge determine that the

person so committed is cured, or is a fit subject for the state hospital."

Section 1841-1, General Code, reads as follows:

"The Board of Administration shall act as commissioners of lunacy, and shall have power to examine into, with or without expert assistance, the question of the sanity or condition of any person committed to or confined in any public or private hospital or asylum for the insane, or restrained of his liberty by reason of alleged insanity at any place within this state, order and compel the discharge of any such person who shall not be insane and direct what disposition shall be made of him; * * *."

By the enactment of the Administrative Code, the Ohio Board of Administration was abolished in 1921 by section 154-26, General Code, (109 O. L., 111) and the Department of Public Welfare invested with its powers and duties by section 154-57, General Code, (109 O. L., 124).

That portion of section 3155, above quoted, giving the superintendent of the detention hospital and the probate judge the power to determine the disposition of alleged insane persons confined in the county detention hospital was enacted in 1910 as part of the original section, while section 1841-1 was passed in 1913 (103 O. L., 681). It therefore appears that it is the ordinary duty of the probate judge and the superintendent with regard to a detention hospital, just as it is the duty of a superintendent of a state hospital to determine in the ordinary conduct of their respective institutions what disposition shall be made of patients confined therein. The Department of Public Welfare, however, is given broad powers by virtue of section 1841-1 to examine into the question of the sanity of any person confined in any institution, either public or private, and to determine what disposition shall be made of such person.

Therefore, I am of the opinion, in answer to your third question, that the State Department of Public Welfare has the power through its own examination to determine the sanity of any person confined in a county detention hospital and to determine whether or not such individual is a fit subject for the state hospital and to direct what disposition shall be made of such individual.

In your fourth question you ask what rate of support the state is required to pay to the counties for the care and maintenance of persons who have been adjudged insane and have been determined to be fit subjects for a state institution and whether or not the rate prescribed by section 1815-2, General Code, is applicable.

The legislature in the enactment of Senate Bill No. 207, specifically

referred to section 1815 and section 1950 of the General Code. There is no language used which would indicate that the legislature intended to refer to any other sections than these two. Section 1815 makes the state liable for the support of inmates in benevolent institutions while sections 1815-1 to 1815-10, General Code, comprise what is known as the Pay Patient Law and provides for the collection by the state from the inmates confined in these state institutions or from their relatives or persons who are liable for their support.

In section 1815-1 express reference is made to the various state benevolent institutions. Said section provides that when a person is committed to "a state hospital for the insane, to the Longview hospital, to the Ohio Hospital for Epileptics, or to the Institution for Feeble-Minded, the judge making such commitment shall at the same time certify to the superintendent of such institution, and the superintendent shall thereupon enter upon his records the name and address of the guardian, if any appointed, and of the relative or relatives liable for such person's support under section 1815-9". This section can have no application to persons being confined in a county detention hospital.

As above pointed out section 3155, General Code, as amended by Senate Bill No. 207, provides that the state shall pay the cost of maintenance of persons adjudged insane and confined in a county detention hospital. It follows that the so-called Pay Patient Law applies only to state institutions and does not authorize the collection for the support of persons confined in a county detention hospital. The cost of maintenance and care of such persons must be borne by the state. It is to be noted, however, that the liability of the state to pay such costs does not accrue until the person is legally adjudged insane. and determined to be a fit subject for commitment to a state institution. There is no liability on the part of the state to pay for the support of persons held for observation or whose insanity is only temporary.

It is evident from the language used in the enactment of Senate Bill No. 207 that the legislature intended that the state should pay for the cost of the maintenance of persons confined in a county detention hospital who have been legally adjudged insane and fit subjects for commitment to a state institution and who could not be admitted because of the lack of facilities. An absurd conclusion would be reached to hold applicable sections other than 1815 and 1950, General Code.

Section 1816 General Code makes the county liable for incidental expenses and cost of clothing of persons confined in state institutions in the event the same are not paid by the relatives of the patient or other persons responsible for his care.

It certainly was never intended by making the state liable for the cost of the maintenance and care of certain persons confined in a county detention hospital that the state was to be reimbursed by the county.

In specific answer to your fourth question, it is my opinion that the so-called Pay Patient Law has no application to patients confined in a county detention hospital. No provision is made whereby the state can be reimbursed from the patient or other persons responsible for his care. The state by virtue of section 3155, General Code, is required to pay the actual cost provided the same is reasonable and not excessive. The maximum rate provided for support of inmates in the various state institutions as provided by section 1815-2, General Code, is not applicable. It is within the power of the Department of Public Welfare to determine whether charges made by the various counties for the support of the persons confined in the detention hospitals are reasonable. There is no duty on the Department of Public Welfare to investigate the financial status of the various persons confined in a county detention hospital who have been adjudged insane and have been determined fit subjects for commitment to a state institution.

Your fourth and fifth questions having been answered in the negative to the effect that there is no authority on the part of the state to be reimbursed for the amount paid to a county for the care and support of an inmate in a county detention hospital who has been adjudged insane and determined to be a fit subject for the state institution, it is unnecessary for me to give further consideration to your sixth question.

Coming now to the consideration of your seventh question, you state in your inquiry that the legislature in passing the General Appropriation Bill made no appropriation to the Department of Public Welfare to be paid to the county for the support of the persons confined in a county detention hospital who have been adjudged insane and determined fit subjects for commitment to one of the state institutions.

No appropriation was made by the legislature by the enactment of Senate Bill No. 207.

Article II, Section 22, of the Ohio Constitutoin provides as follows:

> "No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

It will therefore be necessary, before any payment can be made to the counties for the support of these patients in the county detention hospital, that an appropriation be made for that purpose. No payments can be made to the counties until funds are made available by proper appropriation.

Respectfully,

JOHN W. BRICKER,

Attorney General.