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INDIGENTS — INSTITUTIONAL RELIEF — DUTY, OBLIGATIONS, COUNTY COMMISSIONERS: ORPHANS, NEEDY CHILDREN, NEEDY BLIND, BOARDING HOMES, COUNTY HOME, COUNTY CHARGE—“COUNTY CONTROL”—H. B. 675, 93RD GENERAL ASSEMBLY—PROVISIONS AS TO TOWNSHIP TRUSTEES — EXPENSE, MAINTENANCE, INDIGENT IN COUNTY HOME — POOR RELIEF FUNDS — SECTIONS GENERAL CODE: 1352-3, 1352-4, 1359-31 ET SEQ., 1360 ET. SEQ., 2544, 2557 ET SEQ., 2965 ET SEQ., 3077 ET SEQ., 3391, 3391-2, 3476.

SYLLABUS:

1. *In addition to institutional relief to indigents under authority of Section 2544, General Code, the county commissioners have the obligations and the duties to furnish institutional relief imposed by Sections 1359-31, et seq., and 3077, et seq., General Code, with reference to indigent orphans and needy children; those to needy blind imposed by Sections 2965, et seq., and 1360, et seq., General Code; and those to needy children in boarding homes imposed by Sections 1352-3 and 1352-4, General Code.*

2. *In deciding whether indigents under “county control”, as that term is used in Section 3476, General Code, should be cared for in the county home or otherwise, the county should follow the procedure outlined in Sections 2544, 2557, 2557-1, 2557-3 and 3476, General Code, with the exception of the fact that the duties therein prescribed to be performed by the township trustees should now be performed by the board of county commissioners by reason of the provisions of House Bill No. 675 of the Ninety-third General Assembly.*

3. *Where an indigent person has been accepted by the county as a county home charge, the expense of his maintenance may not be paid from poor relief funds as defined in such House Bill No. 675.*

4. *Where an indigent has been accepted as a county charge, the county may not relieve itself of such charge unless it has been determined that he is*

no longer entitled to such relief for the causes mentioned in Section 3391-2, General Code.

Columbus, Ohio, June 13, 1940.

Hon. H. Lloyd Jones, Prosecuting Attorney,
Delaware, Ohio.

Dear Sir:

I am in receipt of your request for my opinion reading:

“Is a county obligated to provide institutional poor relief for indigent persons in any case other than by the procedure provided for by Section 2544, General Code?”

What procedure should be followed for determining whether an indigent should be a county charge to be cared for under ‘county control’ (Section 3476, General Code) and not at the county infirmary?

Where an indigent person has been accepted by a county as a county charge and is cared for outside the infirmary should such expense be paid for by the county or may it be paid from the relief funds under H. B. No. 675?

Where a case has been accepted as a county charge is it possible for the county to later free itself from the responsibility of caring for such person except by such person becoming self-supporting?”

Section 2544, General Code, referred to in your inquiry, reads:

“In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees.”

A predecessor Attorney General had occasion to consider a question somewhat similar to your first inquiry. Such Attorney General in Opinions

of the Attorney General for 1933, Vol. II, page 988, ruled in the second syllabus that:

“Persons entitled to be received as inmates in the County Home shall become county charges only in the manner provided by Section 2544, General Code.”

Such opinion cites a former opinion of an Attorney General contained in Opinions of the Attorney General for 1918, Vol. 1, page 54, the second syllabus of which is substantially the same as that just above quoted.

It should be remembered, however, that at the time of the rendition of such opinions the primary duty of furnishing poor relief throughout the county was in the boards of township trustees and in the respective municipalities. At that time, the relief to be granted by the county was as defined in Section 3476, General Code, viz.:

“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 that they cannot be satisfactorily cared for except at the county infirmary or under county control.”

Since the rendition of such opinion, the legislature has increased the duties of the county commissioners with reference to the furnishing of poor relief. By the enactment of Sections 3391, 3391-1 to 3391-13, General Code, the legislature has taken from boards of township trustees all their duties with reference to poor relief, as that term is defined in Section 3391, General Code. Such act has placed in boards of county commissioners the duty of administering poor relief “to all persons therein in need of poor relief” within that portion of the county which lies outside of the geographical limits of the cities (see Sections 3391-1 and 3391-2, General Code), in addition to that authorized by Section 3476, General Code, which includes that described in Section 2544, General Code.

Since all of the duties of the board of township trustees with reference to poor relief are now imposed upon the board of county commissioners, it is evident that the board of county commissioners must now perform those functions formerly discharged by boards of township trustees.

You specifically inquire whether there are any other types of institu-

tional relief which the board of county commissioners is required to furnish to indigents other than that as provided in Section 2544, General Code. You are undoubtedly familiar with the provisions of statute as to the duties of the county with reference to the care of indigent orphans and dependent children (see Sections 1359-31, et seq., and 3077, et seq., General Code); to needy blind (Sections 2965, et seq., and 1360, et seq., General Code); and to needy children in boarding homes (Sections 1352-3 and 1352-4, General Code).

I assume that you are not questioning those types of poor relief just above referred to, but are concerned with ordinary poor relief furnished to indigents. I, therefore, am herein not discussing such types. The method of determining the duty of the county with reference to such types, as well as the methods of admission, are specifically set forth in the statutes above cited.

You next inquire the procedure for determining whether an indigent should be cared for under "county control" at a place other than the county infirmary. As I have above stated, by reason of the provisions of Sections 3391-1 and 3391-2, General Code, the county now has the duty of furnishing poor relief "to all persons therein in need of such poor relief" unless they have a legal settlement within a city located within the county. Section 3391-2, General Code, prescribes the rules for determining whether a person shall be granted poor relief. Since you are undoubtedly familiar with the provisions of such section and it is somewhat lengthy, I will not herein quote its provisions. Assuming that, by the application of such rules, the county commissioners determine that the applicant is entitled to poor relief, we have to refer to the provisions of Section 3476, General Code, supra, for the purpose of determining whether the indigent should be placed in the county home. You will observe that such section designates four classes of indigents for whom it is the duty to provide, viz.:

- (a) Those who are permanently disabled.
- (b) Those who have become paupers.
- (c) Those who do not have the necessary residence requirements to be entitled to relief from other sources.
- (d) Those whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control.

From the language of Section 3476, General Code, when construed in conjunction with Section 2544, General Code, it is evident that persons are not to be cared for at the county home unless their "peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control," and that the determination of such fact is to be made by the superintendent of the county infirmary, or county home, as it is now called. (See Opinions of the Attorney General for 1918, Vol. I, page 54; Opinions of the Attorney General for 1937, Vol. I, page 182).

In Opinions of the Attorney General for 1918, Vol. I, page 54, syllabi 2 and 4 read as follows:

"2. The course mapped out in section 2544, G. C., is the only one by virtue of which a person may be found by the superintendent of the infirmary qualified to become a county charge."

"4. When a person becomes a county charge, he is to be provided for in the infirmary of the county, or may be otherwise provided for as set out in section 2544, G. C."

The first syllabus of Opinions of the Attorney General for 1937, Vol. I, page 182, reads:

"Under the provisions of Section 2544, General Code, the superintendent of the infirmary of a county must be satisfied that a person should become a county charge before accepting him as an inmate from a township and such superintendent is authorized to use discretion as to such admission. There is no type of action which the township trustees can bring to compel such superintendent to admit a person to the county infirmary; unless and until said superintendent is so satisfied."

As pointed out by one of my predecessors in office (Opinions of the Attorney General for 1915, Vol. I, page 358):

"The superintendent of a county infirmary may provide outside relief for a county charge only when it is impracticable to provide such relief in the infirmary of the county."

In Section 2557, General Code, the legislature has made specific provision for the care of indigents who are in need of institutional care in the event that one or more of the buildings may be closed. Such section reads:

"Whenever the building or buildings of a county home have become unsuitable for habitation, or whenever the population of

such a home is too small for economical and efficient operation, or for any other reason made of record, the county commissioners may close such home and provide for the care of the inmates thereof and of other persons afterwards accepted as county charges by boarding them in another county home, or in rest homes or in such private homes within the county as they may deem fit and proper, upon such terms as may be agreed upon by the commissioners of the respective counties, said rest and private homes to be approved and certified by the county commissioners and the department of public welfare, division of public assistance."

In Section 2557-1, General Code, the legislature has provided for the disposition of indigents under county control in the event that the county home is permanently closed. In Section 2557-3, General Code, it has provided that two or more counties may establish and operate a joint "district home." Whether the county has placed its institutional cases in other county homes, in rest homes, in private homes or in "district homes," such inmates are, under authority of the above cited statutes, still under "county control." It would therefore seem that if an indigent under authority of Section 2544, General Code, has been determined to be an institutional case, he must be maintained at the county home when practicable; if not, disposed of in the manner provided in Section 2557, 2557-1 or 2557-3, General Code.

In order to determine whether the cost of maintenance of an inmate of the county home may be paid from "poor relief funds," we must refer to the provisions of Sections 3391, 3391-1 to 3391-12, General Code. Such sections are oftentimes referred to by welfare workers as "House Bill 675," which is entitled "An Act for the Administration of Poor Relief." From the language of such act, it is apparent that the poor relief funds therein described may be used for the purpose of maintaining inmates of a county home only if such expenditure is included within the definition of "poor relief" as defined in that act. The definition of "poor relief," as contained in Section 3391, General Code, is as follows:

"'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters. Payments for shelter shall not exceed the average rental for comparable types of shelter in the area in which such shelter is provided. Average rentals shall be determined by local relief authorities subject to

the approval of the state director. Poor relief may take the form of 'work relief,' 'direct relief' or 'medical care' as herein defined. 'Poor relief,' as herein used, shall be synonymous with 'poor relief' as used in Amended Senate Bill No. 4, entitled, 'An act to provide for submitting the question of levying additional taxes to the electors of the subdivision at a special election in the years 1939 and 1940, to authorize the making of such levy, and to amend section 5625-17a of the General Code, and to declare an emergency,' passed May 17, 1939, approved May 22, 1939, and filed in the office of the secretary of state May 22, 1939, and in Amended Substitute Senate Bill No. 40, entitled, 'An act to amend sections 6291 and 6309-2 of the General Code, relative to the levy and distribution of the motor vehicle license tax, and to declare an emergency,' passed May 22, 1939, approved May 29, 1939, and filed in the office of the secretary of state May 29, 1939, and in other acts heretofore passed providing poor relief to needy persons."

From the language of such definition, it is evident that for the purpose of that act "poor relief" includes only "food, clothing, shelter and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons *in their homes*, or in the case of homeless persons, *in lodging homes or other suitable quarters*." Such section further provides that poor relief may be administered in the form of "work relief," "direct relief" or medical care." Section 3391-2, General Code, further provides that "poor relief" * * * may be furnished either in the form of cash, or commodities and services or both."

It would, thus, appear that the definition of "poor relief," as contained in such act, does not include the maintenance of the county home or patients therein, unless it be by reason of the language. " 'Poor relief,' as herein used, shall be synonymous with 'poor relief, as used in Amended Senate Bill No. 4, entitled, 'An act to provide for submitting the question of levying additional taxes to the electors of the subdivision at a special election in the years 1939 and 1940, to authorize the making of such levy, and to amend section 5625-17a of the General Code,' etc. When we refer to such Amended Senate Bill No. 4, we do not find any definition of the term "poor relief." It, therefore, appears to be the intent of the legislature to limit the expenditure of funds produced by compliance with the provisions of such act to "poor relief," as defined in Section 3391, General Code, rather than to broaden the meaning of the term as so defined. Similar conclusions follow from the requirement that "poor relief" as used in such

House Bill No. 675 shall be synonymous with the term as used in Amended Senate Bill No. 40, and for like reasons.

It would, thus, seem that the maintenance of a county home and its patients or inmates is not within the meaning of "poor relief," as defined in Section 3391, General Code. You will note that the legislature has defined the term "public assistance" for the purpose of such House Bill No. 675, as follows:

"'Public assistance' includes poor relief and also the following: aid for the aged as provided in sections 1359-2 to 1359-15b, both inclusive, of the General Code; aid to dependent children, as provided by sections 1359-31 to 1359-45, both inclusive, of the General Code; support of children placed in boarding homes, as provided by sections 1352-3 and 1352-4 of the General Code; treatment and care of crippled children as provided by sections 1352-8 to 1352-9, both inclusive, of the General Code; aid to needy blind, as provided by sections 2965-1 to 2968-3, both inclusive, of the General Code; soldiers' relief, as provided by sections 2934 to 2941, both inclusive, of the General Code; care and support of persons in county homes or children in county children's homes; unemployment compensation, as provided by sections 1345-1 to 1345-33, both inclusive, of the General Code; workmen's compensation, as provided by sections 1465-37 to 1465-112, both inclusive, of the General Code, and all other forms of aid to recipients from public funds."

You will further observe that the legislature has not included "public assistance" within its definition of "poor relief." At no place in such House Bill No. 675 is the term "public assistance" mentioned except in Section 3391, General Code. It may well be that the legislature has defined "public assistance" in such section solely for the purpose of distinguishing between "poor relief" and "public assistance." Such is the most apparent purpose of such definition. Such being true, I am constrained to answer your third inquiry in the negative.

By reason of the fact that Sections 3391-1 and 3391-2, General Code, place the duty of furnishing poor relief to all persons in the county area who are in need of such poor relief, it is evident that the board of county commissioners, after it has been determined that a person is a county charge, may not cease to perform its statutory duty so imposed unless authorized by statute. In Section 3391-2, General Code, the legislature has provided that "reasonable effort shall be made to secure support from persons responsible by law and from other sources as a means of preventing or reducing relief

at public expense." Such section further provides that if a person being able to work refuses so to do when offered work at reasonable wages and conditions, he shall not be eligible for poor relief. It further provides that if the person has illegally entered the United States he shall not be entitled to relief. Similar provision is made for an alien who has not declared his intention to become a citizen. Likewise, provision is made for discontinuance where the poor relief was obtained through misrepresentation or fraud. In the event of the happening of any such contingencies, it would not only be the right but the duty of the county to remove the indigent from the poor relief rolls.

Specifically answering your inquiries, it is my opinion that:

1. In addition to institutional relief to indigents under authority of Section 2544, General Code, the county commissioners have the obligations and the duties to furnish institutional relief imposed by Sections 1359-31, et seq., and 3077, et seq., General Code, with reference to indigent orphans and needy children; those to needy blind imposed by Sections 2965, et seq., and 1360, et seq., General Code; and those to needy children in boarding homes imposed by Sections 1352-3 and 1352-4, General Code.

2. In deciding whether indigents under "county control," as that term is used in Section 3476, General Code, should be cared for in the county home or otherwise, the county should follow the procedure outlined in Sections 2544, 2557, 2557-1, 2557-3 and 3476, General Code, with the exception of the fact that the duties therein prescribed to be performed by the township trustees should now be performed by the board of county commissioners by reason of the provisions of House Bill No. 675 of the Ninety-third General Assembly.

3. Where an indigent person has been accepted by the county as a county home charge, the expense of his maintenance may not be paid from poor relief funds as defined in such House Bill No. 675.

4. Where an indigent has been accepted as a county charge, the county may not relieve itself of such charge unless it has been determined that he is no longer entitled to such relief for the causes mentioned in Section 3391-2, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.