

2006.

LONGVIEW STATE HOSPITAL—NO AUTHORITY TO USE UNCLAIMED BODIES FOR STUDY AND RESEARCH—AUTHORITY MAY BE GIVEN BY COLLEGE TO WHICH BODY IS ASSIGNED.

SYLLABUS:

No statutory or other authority for officials of Longview State Hospital to utilize portions of unclaimed bodies for purpose of study and research. However, if college or society to which body is consigned under Section 9984, G. C., consents, no legal objection could be made.

COLUMBUS, OHIO, April 21, 1928.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

"We have the following letter from Dr. E. A. Baber, Superintendent of the Longview State Hospital:

"I would be pleased if you would get an opinion for me relative to the jurisdiction of the State Hospital Medical Department using neurological material from unclaimed bodies of patients who have died in the institution, for purposes of study and research.

We have been in the habit of sending such bodies to the Anatomical Society as directed by Section 9984 to 9989 of the General Code for anatomical study at the Medical College of the University of Cincinnati. There are, however, certain neurological aspects which we desire to study and which are not used by the medical college.

In order to make this study worth while, the neurological material must be removed very shortly after death as certain post mortem changes interfere with its accuracy if this is not done. As the Medical College retains the bodies for 30 days before using, the tissues which we require are not in adequate condition for this study.

I wish to be assured of our legal rights in removing certain sections of these bodies before delivery to the anatomical society.

May we have your opinion upon the question raised in Dr. Baber's letter?"

The directors of the Longview Hospital constitute an administrative board for the management and control of the hospital, which is a public institution existing by virtue of statute. Since the board is statutory, its powers are limited to those expressly granted by statute or such as may be necessarily incident to the powers expressly granted. The rule applicable was discussed in the case of *State ex rel. vs. Auditor*, 103 O. S. 465, with reference to school boards, the court on page 467 stating:

"As administrative boards created by statute their powers are necessarily limited to such powers as are clearly and expressly granted by the statute. This same doctrine as to inferior boards or commissions was recently laid down in *State ex rel. Locher, Prosecuting Attorney vs. Menning*, 95 Ohio St. 97. The following appears in a per curiam opinion concurred in by all the members of the court:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

I have no difficulty, therefore, in reaching the conclusion that the authority to proceed in the manner desired must either be found expressly in the statute or construed as necessarily incident to powers expressly granted. It logically follows, of course, that, if by legislative mandate another course of procedure is directed, any right to proceed in the manner desired is clearly negatived. As the letter of Dr. Baber points out, the disposition of unclaimed bodies of patients is governed by Sections 9984 to 9989 of the General Code. Section 9984 is as follows:

"Superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, before burial, shall hold such bodies not less than thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. Before or after burial such superintendent, director, or other officer, on the written application of the professor of anatomy, or the president of a county medical society shall deliver to such professor or president, for the purpose of medical or surgical study or dissection, the body of a person who died in either of such institutions, from any disease, not infectious, if it has not been requested for interment by any person at his own expense."

The succeeding section provides for the delivery of a body which may be subsequently claimed by a relative or other person for private interment. Section 9986 requires the interment of the bodies after medical or surgical examination or dissection at the cost of the party in charge of the corpse. Section 9987 provides for notification in writing to the relatives or friends of the deceased person. Section 9988 is in the following language:

"The bodies of strangers or travelers, who die in any of the institutions above named, shall not be delivered for the purpose of dissection unless the stranger or traveler belongs to that class commonly known as tramps. Bodies delivered as herein provided shall be used for medical, surgical and anatomical study only, and within this state."

Where disposition of the body is not made in accordance with these sections, the provisions of Section 3496 of the General Code are controlling. That section is in the following language:

"In a county in which is located a state benevolent institution, the board in control of said institution shall pay all expenses of the burial of a pauper that dies in such institution, except when the body is delivered in accordance

with the provisions of Section 9984 of the General Code, and send an itemized bill of the expenses thereof to the county commissioners of the county from which the pauper was sent to the institution. Such county commissioners shall immediately pay the bill to such board in control."

From the sections which have been quoted, it is apparent that there is no authority originally in the superintendent of the Longview Hospital to utilize the corpse for any purpose whatsoever. Section 9984 of the Code requires that he shall hold unclaimed bodies for thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. On application being made in writing by these authorities, the superintendent is required to deliver to such authorities the body for purposes of medical or surgical study or dissection. I think it may be presumed that this mandatory requirement as to delivery of the body contemplates its delivery in its natural state without mutilation in any respect. In the event that the body is not claimed under these sections, the provisions of Section 3496 becomes applicable and it is the duty of the superintendent to provide for the burial of the body and to secure reimbursement of the expense involved from the county from which the inmate was sent to the institution. This section likewise contains no express or implied authority to dissect the body or to remove any of its parts in any way.

I am, therefore, forced to the conclusion that there exists no original authority in the superintendent of the Longview State Hospital, or any of its officials, to remove neurological material from unclaimed corpses of patients who have died in the institution. However beneficial the use of this material may be to the officials of the hospital, the statutory duty with relation to the disposal of unclaimed bodies clearly negatives the right of removal.

I may suggest, however, that I see no reason why, after a body has been claimed by a college or medical society, an arrangement cannot be entered into whereby authority may be given by such college or medical society to the professional attaches of the hospital to remove certain portions of the body for medical or surgical study or dissection. In other words, if the college or society sees fit to allow professional students to utilize the bodies to which it is entitled for the purposes for which it may use them, I see no objection to such course.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2007.

PERSONAL PROPERTY—ESCHEATED TO STATE—DISPOSITION OF SAME.

SYLLABUS:

1. *Personal property which, by virtue of Section 8579 of the General Code, escheats to the state, may be collected by the prosecuting attorney of the county, whether the same be in money or other form and, if such personal property is in a form other than money, it is the duty of the prosecuting attorney to reduce such property to money and pay over the proceeds to the county treasurer.*