

3368

1. HOSPITAL CARE—DOES NOT INCLUDE CARE IN REST HOMES OR NURSING HOMES—SECTION 3391 G. C.
2. COUNTY OF RESIDENCE—OBLIGATION—TO PAY FOR CARE AND TREATMENT OF PERMANENTLY DISABLED INDIGENT PERSONS IN REST OR NURSING HOMES—PAYMENT MAY NOT BE MADE FROM POOR RELIEF FUNDS.
3. COST OF CARE AND TREATMENT—TEMPORARILY DISABLED INDIGENT PERSONS IN REST OR NURSING HOMES—MAY NOT BE PAID FROM POOR RELIEF FUNDS IF PATIENTS ARE NOT HOMELESS.
4. INDIGENT HOMELESS PERSONS—TEMPORARILY DISABLED—COST AND CARE, TREATMENT IN REST OR NURSING HOMES MAY BE PAID FROM POOR RELIEF FUNDS.

SYLLABUS:

1. "Hospital care," as the same is defined in Section 3391, General Code, does not include care in rest homes or nursing homes.

2. Payment for the care and treatment of permanently disabled indigent persons in rest or nursing homes is the obligation of the county of residence of such persons and may not be made from poor relief funds.

3. The cost of the care and treatment given to temporarily disabled indigent persons in rest or nursing homes may not be paid from poor relief funds if such persons are not homeless.

4. The cost of care and treatment furnished in rest or nursing homes to indigent homeless persons who are temporarily disabled may be paid from poor relief funds.

Columbus, Ohio, June 29, 1948

Hon Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion which reads:

"Local relief authorities are frequently confronted with the fact that an indigent person receiving poor relief, or eligible

therefor, is temporarily or permanently not able to care for himself or herself because of illness, such as chronic heart ailment, cancer, epilepsy, arthritis, physical infirmity because of age, or because of convalescence from illness, injury or an operation. Many such cases require constant and continuing nursing or bed care.

“The question has been raised as to the right of the poor relief authorities of the respective local relief areas, including the county and the cities therein, to provide such care by placing such cases in so-called rest or nursing homes and to expend poor relief funds therefor. It has been suggested on the one hand that such care constitutes hospitalization and that, therefore, such cases may not be provided for over a period of three months, as limited by General Code Section 339I. It has been suggested also that the authority to provide food, clothing and services in suitable quarters, that is to say, in so-called rest or nursing homes, is to be found in the first paragraph of General Code Section 339I.

“I request your opinion upon the questions presented above for the reason that they are important in determining the functions and responsibilities of the respective local relief areas.”

To deal adequately with the situation presented in your request for my opinion, it will be necessary to consider the different questions separately. It appears to me that three questions are presented in your request: First, can local relief authorities expend relief funds to place permanently disabled indigents in rest homes; second, is care in a rest home, “hospital care,” as the same is defined in the “poor relief law,” Section 339I et seq., General Code; third, is care in a rest home included in the definition of “poor relief” as the same is found in Section 339I, General Code?

It is generally to be noted that in common law there is no responsibility for a state to furnish poor relief. This responsibility is purely statutory and the scope and extent of such aid rests entirely upon statutory interpretation. 4I Am. Jur. 707, states:

“There is no obligation at common law upon the state or any of the instrumentalities of government to furnish relief to the poor; accordingly, such obligation, if any, must rest upon statute. And statutes have been enacted universally throughout the union charging the public, through some designated instrumentality of government, with the duty of supporting the poor who are unable to support themselves. * * * *Thus, to what extent, under what circumstances, at what place, and by what agencies poor persons shall be relieved at the expense of the*

public are all purely legislative questions, and the courts cannot go further than the legislative will has been expressed."
(Emphasis added.)

This rule of law is firmly established in the state of Ohio. The same statement of law as quoted above can be found in 31 O. Jur. 43, Sec. 2, and was recently reaffirmed by the Supreme Court of Ohio. In *State, ex rel. Ranz v. City of Youngstown*, 140 O. S. 477, the first branch of the syllabus states:

"There is no common-law obligation on the part of any public authority to grant poor relief."

In view of this uncontroverted statement of the law, in order for local relief areas to provide care in rest homes, there must be statutory authority.

The first question which is presented is whether poor relief authorities can expend relief funds to place permanently disabled indigents in rest homes. The "poor relief" sections of the General Code, Section 3391 et seq., General Code, were passed many years subsequent to the original provisions for relief found in Section 3476 et seq., General Code. It is clear by the provisions of the "poor relief" sections and judicial interpretation that these two provisions must be read in *pari materia*. Section 3391-2, subsection 8, General Code, provides:

"Except as modified by the provisions of this act, Section 3476 and other sections of the General Code of like purport shall remain in full force and effect and nothing in this act shall be construed as altering, amending, or repealing the provisions of Section 3476 of the General Code, relative to the obligation of the county to provide or grant relief 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."
(Emphasis added.)

It is to be noted that by express mandate of the General Assembly four classes of indigents remain the responsibility of the county as a political subdivision, reference specifically being made to the provisions of Section 3476 et seq., General Code. These four classes are: "Persons who do not have the necessary residence requirements"; "those who are permanently disabled"; "paupers"; and "such other persons whose peculiar

condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control". The class of permanently disabled persons is specifically enumerated in this section. In Section 3476, General Code, referred to in Section 3391-2, subparagraph 8, General Code, it is in part provided:

"* * * It is the intent of this act (General Code Section 3476 et seq.) 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. *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 they can not be satisfactorily cared for except at the county infirmary or under county control. * * *"
(Emphasis added.)

The identical classifications are made in this section of the General Code. The General Assembly has manifested its intent in both provisions for relief enacted at widely separated times, that permanently disabled persons are a responsibility of the county without aid from the local relief authorities. It is clear that the responsibility for permanently disabled indigents rests on the county. I have reached substantially this same conclusion as to these four enumerated groups in opinions rendered by me June 7, 1946, and April 9, 1948, viz., Opinion No. 996, Opinions of the Attorney General for 1946, page 395, and Opinion No. 3021, Opinions of the Attorney General for 1948.

The General Assembly has made ample provisions to allow counties to provide hospitalization for indigent sick persons. These provisions allow the counties to contract for hospital care with private institutions in addition to other types of hospitalization. Section 3138-1, General Code, provides:

"That the board of county commissioners of any county may enter an agreement with one or more corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said

commissioners, shall provide for the payment of the amount agreed upon, either in one payment, or installments, or so much from year to year as the parties stipulate. Nothing herein shall authorize the payment of public funds to a sectarian institution. County commissioners shall have authority to employ the necessary and properly qualified employes to assist them in carrying out all responsibilities devolving upon them by reason of any agreement, or agreements entered into in accordance with the provisions of this section."

Summarizing the statements made heretofore, it is clear that the General Assembly did not intend to include the class of "permanently disabled persons" in the provisions of the "poor relief law," Section 3391 et seq., General Code.

The second question which I find in your request is whether care in a rest home is "hospital care," as the same is defined in Section 3391, General Code. The provisions for hospital care were added to the "poor relief law" by the 97th General Assembly, to become effective September 30, 1947. (122 O. L. 178). The definition of "hospital care" as found in Section 3391, General Code, is:

"* * * 'Hospital care' means the customary accommodations, facilities, medicines and supplies furnished by a hospital at public expense, for a period not to exceed three months in any calendar year for one individual. * * *"

It cannot be said that "customary accommodations, facilities, medicines, and supplies" which are furnished in hospitals are available in rest homes. These homes do not have any of the facilities that are usually found in hospitals. In fact you state in your request for my opinion that the accommodations that are offered here will not be of this type. I cannot see how this can be construed in any way to be the services and accommodations that are commonly offered in a hospital.

The third question which is presented in your request for my opinion is whether or not this type of care could be included in the general definition of "poor relief" as the same is found in Section 3391, General Code. The pertinent portion of Section 3391, General Code, provides:

"'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 ex-*

*pense to persons in their homes, in the case of homeless persons, in lodging houses or other suitable quarters or in hospitals. * * **
(Emphasis added.)

This section of the General Code then goes on to provide for the different forms of relief and the amount of rent that can be paid. It is clear that if these persons have a home they could not be placed in a rest home to receive convalescent care of a temporary nature. By construction of the first sentence quoted, supra, the commodities and services stated shall be given to persons in their homes. On the basis of the rest of the provisions in this section of the General Code, it is clear that the care as is given in rest homes was not intended to be a part of the aid that was to be given indigents who are temporarily disabled.

The provision made for homeless persons in the section quoted, supra, is sufficient statutory authority to expend relief funds for the care of homeless persons in rest homes. The term "other suitable quarters" certainly is broad enough when used in conjunction with "in lodging houses" to include rest homes and the type of commodities and services enumerated in your request for my opinion.

Therefore, it is my opinion and you are informed:

1. "Hospital care," as the same is defined in Section 3391, General Code, does not include care in rest homes or nursing homes.
2. Payment for the care and treatment of permanently disabled indigent persons in rest or nursing homes is the obligation of the county of residence of such persons and may not be made from poor relief funds.
3. The cost of the care and treatment given to temporarily disabled indigent persons in rest or nursing homes may not be paid from poor relief funds if such persons are not homeless.
4. The cost of care and treatment furnished in rest or nursing homes to indigent homeless persons who are temporarily disabled may be paid from poor relief funds.

Respectfully,

HUGH S. JENKINS,
Attorney General.