

2085

1. INMATE OF COUNTY HOME—FUNDS RECEIVED FROM DIVISION OF AID FOR THE AGED—WHEN TURNED OVER TO COUNTY MUST BE DEPOSITED WITH COUNTY TREASURER TO CREDIT OF INMATE AND DISBURSED UNDER SECTION 2549 G. C.
2. NO AUTHORITY IN LAW FOR DIVISION OF AID FOR THE AGED, DEPARTMENT OF PUBLIC WELFARE OR OTHER AUTHORITY TO RESTRICT USE OF MONEYS AWARDED TO INMATE OF COUNTY HOME.

## SYLLABUS:

1. Funds received by an inmate of a county home from the Division of Aid for the Aged, when turned over to the county, must be deposited with the county treasurer to the credit of such inmate and disbursed in accordance with the provisions of Section 2549, General Code.

2. There is no authority in law whereby the Division of Aid for the Aged, the Department of Public Welfare, or other authority, may restrict the use of moneys awarded to an inmate of a county home.

Columbus, Ohio, July 31, 1947

Hon Russell C. Price, Prosecuting Attorney, Wyandot County  
Upper Sandusky, Ohio

Dear Sir:

Your request for my opinion reads:

"Here in Wyandot County we have 11 or 12 inmates of the Wyandot County Home who are eligible for and have received old age pensions. The first monthly payment was made, I believe, the last of May, 1947.

It is my understanding that this award is made to the inmates of the Wyandot County Home eligible for old age pensions by the Division of Aid for the Aged under rules and regulations which they have set up and that such award is made with the understanding that such amounts be used by the county to improve living conditions and the comfort of the inmates of the home. Also, it is made with the further understanding that the amount of money now being appropriated by the county for the maintenance of the Wyandot County Home should not be reduced by reason of the receipt of the money from the State through the Division of Aid for the Aged. In other words, such award is not to be used by the county in order to reduce its operating expenses at the home, but for the purpose of providing additional benefits to the inmates of the home.

The Wyandot County Commissioners would like your opinion as to the following matters:

First, when the award made to an inmate of a county home by the Division of Aid for the Aged is received by the inmates and by them turned over to the county, for their support, in what fund or to the credit of what fund should such money be placed?

Second, can it be left to accumulate over a period of time, for the purpose of making permanent improvements, such as for

one thing perhaps improving of present buildings or for constructing of additional buildings for use as an infirmary, or other purpose beneficial to the health and well-being of the inmates?

Third, are such funds when paid by the inmates to the county under the exclusive control of the county commissioners, and treated as other county funds, or is the use of such funds restricted to rules and regulations which may be set up by the Division of Aid for the Aged, or the Department of Public Welfare, or other authority?"

Your question relates to the proper disposition of moneys received by inmates of the county home from the Division of Aid for the Aged. Any moneys received by an inmate, from whatever source, are the personal property of such inmate, and the mere fact that such funds are received from the Division of Aid for the Aged does not alter such ownership.

The aid furnished is to an individual and is not a grant from the state to the county. That being so, it seems to me that thereafter the disposition of such moneys is a matter of agreement between the inmates and the county commissioners. They may agree upon a fixed amount as the cost of maintenance of the inmate in the county home and the inmate would be obliged to pay such amount to the county commissioners. If such maintenance cost did not equal the entire amount of the award, the inmate would have the right to retain such balance for his personal needs.

The inmate might agree to turn over the entire sum to the county commissioners under an agreement to deduct the cost of maintenance therefrom, and the balance, if any, to be held in trust for him, subject to his order, with the further provision that any balance in the trust fund would be paid to him if and when he left the home, or to his estate at his death.

Since the moneys received are the personal property of the inmate, what right do the county commissioners have to charge and collect for maintenance? This question is considered in Opinion No. 1370, Opinions of Attorney General for 1946. At page 763 it was said:

"As to the obligation of an inmate of a county home to pay the county for his maintenance, the law is not so clear. There is no statute expressly authorizing the county commissioners to charge him for such maintenance. The only provision bearing on the subject is found in Section 2548, General Code,

which authorizes the commissioners, when an inmate of the home is found to have property real or personal, to subject it to a judicial sale and reimburse the county for the cost of keeping him. This statute was held in 1927 Opinions of Attorney General, page 2141, to include money on deposit to the credit of the inmate. But the allowances due a person from the fund for aid for the aged, are by the provisions of Section 1359-26, General Code, inalienable and exempt from judicial process. However, I am of the opinion that while the commissioners cannot enforce collection against an inmate of the county home by a resort to his allowance from the division of aid for the aged, and could not compel him to make a payment so as to bring him within the eligible class for such aid, yet if he voluntarily makes such payment, he does, as a matter of law, make himself eligible for aid. Obviously, the commissioners have it within their power to induce him to make a payment and if possible procure an allowance of such aid and turn it over to the institution, under penalty of being refused admission or being turned out."

Nor is the amount of the allowance necessarily the same as the cost of maintenance. The fifth paragraph of the syllabus of the above opinion reads as follows:

"The division of aid for the aged, in determining whether an award shall be made to an inmate of a public institution, or the amount of such award, is not bound by the sum which the institution seeks to charge, but should determine, under all the facts, what amount is necessary to give the applicant reasonable subsistence compatible with health and well being."

Section 2548, General Code, referred to in the above opinion, reads as follows:

"When a person becomes a county charge or an inmate of a city infirmary, and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located, and the proceedings therefor, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the county commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary."

It will be noted that all moneys taken possession of under the provisions of the above section are to be applied in whole or in part to the maintenance of the inmate, so long as he remains a county charge. Since it was pointed out in the aforementioned opinion that old age benefits paid to an inmate of a county home could not be seized under authority of the above section because of the provisions of Section 1359-26, General Code, it would seem that the provisions of said section, directing the deposit of moneys received thereunder, would not necessarily govern the deposit of money voluntarily paid over to the county commissioners by a recipient of aid for the aged who is an inmate of a county home. However, since the General Assembly has indicated that moneys belonging to an inmate should be used for his maintenance and support, it would seem to me to make no difference whether such moneys were recovered by legal process or received as a voluntary contribution. Regardless of how the money in question comes into the hands of the county commissioners, the fact remains that it is in either case money of the inmate and should therefore be used for his benefit.

Section 2549, General Code, reads as follows:

“The net proceeds arising from the sale of such property shall be paid to the county or city treasurer, and by him placed to the credit of such person to be paid out on the warrant of the county auditor, upon the order of the county commissioners, or by the city auditor upon the order of the proper officer of the infirmary. The superintendent shall open an account with the person and charge him with board at a reasonable rate and items furnished for his exclusive use, which account shall be approved by the county commissioners or by the proper city officer at the close of each month.”

This section contains explicit directions as to how such funds shall be handled. It provides for the deposit of the moneys with the county treasurer and directs how proper charges may be made against the same.

Section 2550, General Code, is as follows:

“Upon the death of such person or when he lawfully ceases to be a county charge or is lawfully discharged from the city infirmary, whose property or effects have been so disposed of, and the avails thereof so applied, any balance due and in favor of such person on the books of the institution shall be paid by the superintendent of the infirmary to him, or in case of death to his legal representative. When any such fund has become ex-

hausted or any balance paid in manner described above, the superintendent shall file with the proper probate court a complete statement showing receipts, itemized expenditures and balance, if any, and such court shall file such report with the records relating to the original order of sale of such person."

This section provides for the distribution of the balance of any such funds upon the death of an inmate or upon his discharge from the institution. The balance of said funds remaining after maintenance costs are in the nature of trust funds and as such must be strictly accounted for.

In view of my opinion with reference to your first question, an answer to your second question is not required.

We have discussed above the control and distribution of funds received by inmates of county homes and the rights and duties of county commissioners with reference thereto. Your third question, therefore, resolves itself into what restrictions or rules and regulations with reference to such funds may be set up by the Division of Aid for the Aged, the Department of Public Welfare, or other authority.

It is a well settled rule of law that public officers have only such powers as are given to them by statute or are necessarily implied therefrom. I am unable to find any authority in law which would enable the Division of Aid for the Aged, the Department of Public Welfare, or other authority, to promulgate rules or regulations which would restrict the use of such funds. I am informed that neither the Department of Public Welfare nor the Division of Aid for the Aged have set up any rules or regulations with reference to the expenditure of such funds. It follows, therefore, that the Division of Aid for the Aged, the Department of Public Welfare, or any other authority, have no authority to make rules or regulations which restrict the use of funds which are paid to inmates as a grant from the Division of Aid for the Aged.

It is my opinion, and you are advised:

1. Funds received by an inmate of a county home from the Division of Aid for the Aged, when turned over to the county, must be deposited with the county treasurer to the credit of such inmate and disbursed in accordance with the provisions of Section 2549, General Code.
2. There is no authority in law whereby the Division of Aid for the

Aged, the Department of Public Welfare, or other authority, may restrict the use of moneys awarded to an inmate of a county home.

Respectfully,

HUGH S. JENKINS,  
Attorney General.