

legislature can authorize a state office building is by the levying of a sufficient tax and the making of an appropriation.

Respectfully,
EDWARD C. TURNER,
Attorney General.

111.

STATE SCHOOL FOR DEAF—POWER OF SUPERINTENDENT TO RECEIVE OR REJECT PERSONS COMMITTED BY COURT—COUNTY MUST PAY FOR EXPENSES OF PUPIL.

SYLLABUS:

1. *When a court seeks to commit a person to the State School for the Deaf, for the purpose of having him receive instruction therein, it is within the discretion of the Superintendent and Trustees of the institution either to receive or reject such person.*

2. *Each county, from which a pupil in the State School for the Deaf came, is obligated to reimburse the State from county funds for the cost of clothing furnished to such pupil, and for the amount of such incidental expense as it may be necessary to pay for said pupil.*

COLUMBUS, OHIO, February 28, 1927.

HON. J. W. JONES, *Superintendent, State School for the Deaf, Columbus, Ohio.*

DEAR SIR:—I have your inquiry of recent date, as to whether or not counties are obligated to pay delinquent bills of pupils in the State School for the Deaf, whether commitment was made thereto by order of a court, or otherwise.

The General Code of Ohio, under Title V thereof, provides for the administration of state institutions. Division I of this title sets out certain general provisions with reference to the government of state institutions, and divisions II, III and IV of this title classifies such institutions as benevolent, correctional or penal.

Under division I, designated "Benevolent Institutions" and in chapter 1 thereof, (Sections 1872 to 1881, inclusive of the General Code) are to be found rules for the administration of the State School for the Deaf.

Sections 1872 and 1873 of the General Code provide for the admission of pupils to this school, and read in part, as follows:

"Sec. 1872. The state school for the deaf shall be open to receive such persons too deaf to be educated in the public schools, residents of the state, as the trustees and superintendent deem from reliable information and examination, to be suitable persons to receive instruction, according to the methods therein employed."

"Sec. 1873. The state school for the deaf shall also be open to receive such blind and deaf children, residents of the state, as the trustees and superintendent deem to be suitable persons to receive instruction therein."

Under the provisions of Division I of this title 5, setting out general provisions for the government of the state institutions, are to be found Sections 1815 and 1816 of the General Code, reading as follows:

"Sec. 1815. 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 incidental expenses paid by themselves or those having them in charge."

"Sec. 1816. In case of failure to pay incidental expenses, or furnish necessary clothing, the steward or other financial officer of the institution may pay such expenses, and furnish the requisite clothing, and pay therefor from the appropriation for the current expenses of the institution, keeping and reporting a separate account thereof. The account so drawn, signed by such officer, countersigned by the superintendent shall be forwarded by such officer to the auditor of the county, from which the person came; and such auditor shall issue his warrant, payable to the treasurer of state for the amount of such bill and charge the amount to the current expense fund. The county auditor shall then collect the account in the name of the state as other debts are collected."

By the provisions of Sections 1872 and 1873 above quoted, the trustees and the superintendent of the state school for the deaf have authority to say who shall be admitted thereto, and when pupils are sent to such institution by order of a court, it is within the discretion of the superintendent and trustees, to accept such pupil or not, as may in their judgment be proper.

It will be noted by the provisions of Sections 1815 and 1816 of the General Code, supra, that *all* inmates of benevolent institutions, except as otherwise provided, shall be maintained at the expense of the State. They shall be neatly and comfortably clothed, and their incidental expenses paid by themselves or those having them in charge, but if payment is not made by themselves or those having them in charge, the superintendent of the institution shall pay such items of expense, keep an accurate account thereof, and forward such account to the auditor of the county from which such person came, and the auditor shall issue his warrant, payable to the treasurer of state, and charge the same to the current expense fund, and shall collect the account in the name of the state as other debts are collected.

Sections 1815 and 1816 of the General Code were before the codification of 1910, designated as Sections 631 and 632 of the Revised Statutes, and in the statutes of 1880, Section 631 reads the same as Section 1815 of the General Code, except that it provides, "all persons admitted to *any* institution," etc. This was amended in 1910, 101 O. L., 76, to read as it now reads, and has not since been changed.

Section 1816 as found in the Revised Statutes of 1880 (Revised Statute 632) provided substantially the same with reference to the payment of the accounts for clothing and incidental expenses of inmates of state institutions as is now provided by the provisions of Section 1816, General Code,^o R. S. 632 requiring the account to be forwarded to the auditor of the county from which the person came, who was required to pay the amount of the bill out of county funds, to the financial officer of the institution and then proceed to collect the same, the only difference being that payment was required to be made in the one case to the State Treasurer and in the other to the financial officer of the institution forwarding the account.

Section 632 of the Revised Statutes was amended, March 25, 1884, to read as follows:

"If there be a failure in any case to pay incidental expenses, or furnish the necessary clothing, the steward or other financial officer of the institution is hereby authorized to pay such expenses, and furnish the requisite clothing, and pay for the same, out of the appropriations for the current expenses of

the institution, keeping and reporting a separate account of the same. The account so drawn up, signed by such officer, countersigned by the superintendent, and sealed with the seal of the institution, shall be forwarded to the prosecuting attorney of the county from which the person came. Said prosecuting attorney shall proceed without delay to collect, in the name of the state of Ohio, the amount so certified in said account, the same as other debts are collected."

This statute, however, was again amended in 1885 to read practically the same as it did before the amendment of 1884, and with a few minor and unimportant changes made in 1915 the statute has been carried along in practically its present form.

As it stood under the amendment of 1884, no provision was made for reimbursing the state from county funds for moneys expended in the interests of the inmates of the several institutions only as collection was made by the prosecuting attorneys of the several counties from which the persons came. By the provisions of Section 632a of the Revised Statutes which was enacted at the same time the amendment of 1884 was made, prosecuting attorney as he collected these accounts was to pay the money to the county treasurer, who in turn, was to remit it to the steward of the institution forwarding the account. This arrangement was continued only from March 25, 1884, to May 1, 1885.

In 1882, the Supreme Court decided the case of *State v. Kiesewetter*, 37 O. S. 547, in the opinion of which the court uses this language:

"In title five the benevolent institutions of the state are classified; and a chapter is devoted to prescribing rules for the government of each class. Chapter one, in which are Sections 631 and 632 applies to all the institutions without reference to the class to which they belong, except as is otherwise provided in chapters relating to particular institutions."

It seems clear that the provisions of General Code Sections 1815 and 1816, apply to all benevolent institutions of the state, and that the State School for the Deaf is classified as one of such benevolent institutions.

As there are no other provisions of law with references to the payment for the clothing and incidental expenses of pupils in the State School for the Deaf, it necessarily follows that the provisions of law applicable to such institutions are those found in Sections 1815 and 1816 of the General Code, and while I do not find in any of the discussions of this subject that the question of whether or not the county was liable for such expenses, whether commitment was made by order of court or otherwise, it would seem that it seems to have been pretty well taken for granted that it made no difference how the inmate of the institution came to be there.

There is no discussion of this phase of the matter in the case of *State v. Kiesewetter*, supra, nor in the opinion of Attorney General Sheets, who discussed this subject generally, in his opinion of January 7, 1904, addressed to A. E. Earheart, Steward for the Institution for Deaf and Dumb, nor is the question raised in an opinion of Attorney General Hogan, addressed to the Superintendent of the State School for the Blind, which opinion may be found in Reports of the Attorney General 1912, page 983, in which the application of these two sections of General Code is discussed.

It is significant that the statute itself makes no distinction, and from the language used, it is evident that it was not the intention of the legislature to limit the cases in which the state institution was to be reimbursed from the county to those in which commitment had been made by court. The statute itself, reads that the account as

made by the superintendent of the institution shall be forwarded to the auditor of the county *from which the person came*, who shall draw his warrant for the amount of the account. It is evident from this wording of the statute that it is meant to apply to all the inmates of such benevolent institutions, no matter how they came to be there. When this account is made for each such inmate, and forwarded to the auditor of the proper county it becomes the auditor's duty to draw his warrant against the proper appropriation for the amount of the account, if there is an appropriation therefor, and proper certificate has been made as provided for by Section 5660 of the General Code, providing further that the inmate came from that county.

Respectfully,
EDWARD C. TURNER.
Attorney General.

112.

DISAPPROVAL, ABSTRACT OF TITLE TO 9.77 ACRES OF LAND BELONGING TO ANDRIES KUYPER, IN COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, February 28, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—An examination of the abstract of title and encumbrance estimate submitted by you to this department, discloses the following:

The abstract under consideration was prepared by McMillon and Kelso, Abstracters, Lisbon, Ohio, under date of April 24, 1926. The abstract as submitted pertains to the following premises, to wit, 9.77 acres in the northeast quarter of Section 2, Township 15, Range 4, Columbiana county, Ohio, and being more particularly described as follows:

Beginning on the north and south line between Sections No. 1 and 2, at a post set 2641.98 feet north of the southeast corner of said Section No. 2, which point is also the southeast corner of said grantors land; thence S. 89 deg. 42' W. along the south line of said grantors land 561.00 feet to a post set at the southwest corner of said grantors land; thence N. 0 deg. 58' W. along the west line of said grantors land 729.30 feet to a post at the northeast corner of land now owned by Garrett C. Camp; thence N. 0 deg. 10' E. along the easterly line of lands now owned by Lucinas A. Gardner 62.40 feet to a stake in the center of the easterly and westerly road running through said Section No. 2, thence N. 77 deg. 40' E. along the center line of said road 336.80 feet to a stake; thence S. 15 deg. 23' E. 168.80 feet to a stake; thence S. 50 deg. 13' E. 260.35 feet to a stone in the east line of said Section No. 2, which line is also the east line of said grantor's land; thence south along said section line 530.10 feet to the place of beginning and containing 9.77 acres of land be the same more or less.

Upon examination of said abstract, I am of the opinion that same shows a good and merchantable title to said premises in Andries Kuyper, subject to the following:

1. There is no government patent shown, but attached to said abstract is a