

effect. In connection with your inquiry, your attention is directed to Opinion No. 81, issued by this department to Hon. Carl E. Steeb, Secretary of the Board of Trustees of Ohio State University, under date of February 9, 1929, the syllabus of which reads:

“Without legislative authority for that purpose, the Board of Trustees of the Ohio State University has no power or authority to grant to the City of Columbus an easement in and across the lands of said institution for the purpose of a sewer to be constructed and maintained therein by said city.”

In many instances the legislature has authorized the granting of such rights or easements for various purposes. In this connection it should be noted that the Wilberforce University is a private institution and has combined with the state for normal and industrial education.

In the case of *Board of Trustees of Combined Normal and Industrial Department of Wilberforce University vs. Green, et al.*, 113 O. S. 15, the court made a finding in its per curiam opinion in reference to the status of this institution. From the facts stated in the opinion it appears that “Wilberforce University is a private university established for colored students, owning its own real estate and personal property. A normal and industrial department at the University of Wilberforce has been established by the state, which operates various state buildings constructed on land owned by the State of Ohio.”

From the foregoing, it appears that some of the lands utilized in the operation of your university in conjunction with the state is owned by the state, while other lands are owned by Wilberforce University. However, in your communication you refer to “state farm”, and it is therefore assumed that you have reference to state lands as distinguished from lands owned by the Wilberforce University in its own right. It therefore must be concluded that your board of trustees has no power to grant an easement or interest in any lands owned by the state unless there is express legislative authority to that effect, and no such power has as yet been granted by the Legislature. Of course, what has been said would not have application to lands which were owned by the university.

Specifically answering your question, you are advised that the Board of Trustees of the Combined Normal and Industrial Department at Wilberforce University has no power to grant interests in lands under its control which are owned by the state, in the absence of express legislative authority therefor.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1198.

COUNTY COMMISSIONERS—FURNISHING OF TUBERCULAR RELIEF NOT LIMITED TO PAUPERS—ABUSE OF DISCRETION—MAINTAINING PATIENT IN HOSPITAL OUTSIDE OHIO UNAUTHORIZED.

SYLLABUS:

1. *The primary purpose of Section 3143 of the General Code is to provide for relief to persons who are inmates of the county infirmary suffering from tuberculosis, or other residents of the county in a similar status. However, the statute gives some dis-*

cretion to the county commissioners as to what charges are to be made and this discretion will not be disturbed unless their action in a given case amounts to abuse of such discretion. While it is not believed the law contemplates that a person must actually be a pauper before such relief could be granted, if the commissioners would furnish such relief free to one who is fully able to pay, such action undoubtedly would amount to an abuse of discretion.

2. County commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective of whether such person is indigent or otherwise.

COLUMBUS, OHIO, November 15, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request my opinion on the following:

“Section 3143 of the General Code provides for the contracting by the county commissioners with a district tuberculosis hospital, a county tuberculosis hospital, a city tuberculosis hospital or a corporation operating a tuberculosis hospital for the care of the inmates of the county infirmary or other residents of the county who are suffering from tuberculosis.

Question 1. Is the relief to be granted by the county commissioners under this section limited to indigent persons suffering from tuberculosis or may they grant relief to those who are not indigent?

Question 2. May the county commissioners contribute to or pay any part or all of the expenses of maintaining a tubercular resident of the county in a hospital outside of the State of Ohio whether such patient is indigent or not?”

Section 3143 of the General Code, the provisions of which give rise to your inquiry, provides:

“Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, for the care and treatment of the inmates of such infirmary or other residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, and they shall also pay for their transportation.

Provided, that the county commissioners of any county may contract for the care and treatment of the inmates of the county infirmary or other residents of the county suffering from tuberculosis with an association or corporation, incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis; but no such contract shall be made until the institution has been inspected and approved by the State Board of Health, and such approval may be withdrawn and such contracts shall be cancelled if, in the judgment of the State Board of Health, the institution is not managed in a proper manner. Provided, however, that if such approval is withdrawn, the board of trustees of such institution may

have the right of appeal to the Governor and Attorney General and their decision shall be final."

It will be observed that the section above quoted refers to infirmary inmates and "other residents of the county who are suffering from tuberculosis." The section above quoted was last amended by the Eighty-second General Assembly, 107 O. L., 496. The section was also amended by the Eightieth General Assembly, 103 O. L. 492. Sections 3139 to 3147, inclusive, are in pari materia and came into existence by reason of the Legislature's intent to prevent persons being kept at the county infirmary who had contracted tuberculosis. Originally the act related to pulmonary tuberculosis only. However, in the amendments the word "pulmonary" was eliminated. Section 3139 provided that on and after January 1, 1914, no person suffering from pulmonary tuberculosis shall be kept in any county infirmary. The language of this section remains the same as originally enacted. It being made a violation of the law to house tubercular patients at the county infirmary, it would logically follow that some provision must be made for caring for such patients outside, and to effect such purpose provision was made for the maintenance of such persons "in some hospital or other institution in this State devoted to the care and treatment of cases of tuberculosis," as referred to in Section 3140 of the General Code. It is further provided in the section last mentioned that the cost of maintenance of such inmates shall become a legal charge and paid by the county in which the persons have a legal residence. In analyzing the provisions of the entire act, it appears to be clear that it is the intent of the act to provide for residents of the state who are suffering with tuberculosis in institutions within the state, that is, residents of a county infirmary or other persons in the same status as those who are subject to being committed to the county infirmary.

Section 3143, supra, provides a method whereby the commissioners of a county which has not joined in the erection of a district hospital, may provide such care and treatment by contracting with a county, municipal or district hospital, and the section further authorizes the commissioners to provide for the care and treatment of the inmates of the county infirmary or other residents with "an association or corporation incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis." There is nothing in the act to indicate that such hospitals are not subject to the same investigation and supervision as other hospitals, in so far as the care furnished to the patients therein by reason of an arrangement with the county commissioners is concerned.

Section 3145 provides that the medical superintendent shall investigate applicants for admission who are not inmates of a county infirmary and may require satisfactory proof "that they are in need of proper care and have tuberculosis." The section further provides that the board of trustees may require from any applicant in the counties maintaining the hospital payment not exceeding the actual cost incurred in their care and treatment, including the cost of transportation, or such less sum as they deem advisable owing to the financial condition of the applicant.

From the foregoing it will appear to be clear that the purpose of the act is to provide care for patients who are inmates of the county infirmary or residents of the county in need of such care. It would not appear to be contemplated by the act that the county commissioners are to furnish such care and treatment to persons who are in such financial condition as to properly furnish such care for themselves. However, it would appear that it is a discretionary matter with the county commissioners and it is believed it is unnecessary that a person should be a pauper before the county commissioners may financially aid them in such treatment. The protection of other residents of the county is involved and it is believed that the commissioners would have some discretion as to furnishing such treatment to persons who could ill afford to make such expenditure, even though their finances may not have been completely

depleted. However, the county commissioners may abuse such discretion and in all probability if a person is in such circumstances that he can properly afford to pay for such treatments, it would be an abuse of discretion on the part of the county commissioners to furnish said service free. It further appears that the whole act contemplates the furnishing of treatment in some hospital or other institution in the state. While in many instances it may be advisable to take the person afflicted from the state, in order to have a change of climate, inasmuch as funds may not be drawn from the public treasury except in pursuance of express provisions of law, and the law has not as yet authorized the sending of a patient from the state at the expense of the county treasury, I am constrained to hold that the same may not be done.

In specific answer to your inquiry, it is my opinion :

1. The primary purpose of Section 3143 of the General Code is to provide for relief to persons who are inmates of the county infirmary suffering from tuberculosis, or other residents of the county in a similar status. However, the statute gives some discretion to the county commissioners as to what charges are to be made and this discretion will not be disturbed unless their action in a given case amounts to abuse of such discretion. While it is not believed the law contemplates that a person must actually be a pauper before such relief could be granted, if the commissioners would furnish such relief free to one who is fully able to pay, such action undoubtedly would amount to an abuse of discretion.

2. County commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective of whether such person is indigent or otherwise.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1199.

APPROVAL, CONTRACT FOR SIDE TRACK AT WILBERFORCE UNIVERSITY.

COLUMBUS, OHIO, November 15, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the Pennsylvania Railroad Company, operating the Columbus & Xenia Railroad and the Combined Normal and Industrial Department of Wilberforce University, covering the construction by said railroad company of an extension of its side track No. 3, at Wilberforce, for a distance of 700 feet, to serve as a switch-back from which a side or switch-back connection will be made to the new Power House of Wilberforce University. Such contract calls for an estimated expenditure of five thousand dollars (\$5,000.00) on the part of the State.

I have carefully examined the provisions of said contract, and subject to the signing of two of the copies by the railroad company, find the same correct in form and legal and am approving same.

Respectfully,
GILBERT BETTMAN,
Attorney General.