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1. HOSPITAL, DISTRICT TUBERCULOSIS—WHERE UNMARRIED WOMAN OVER TWENTY-ONE YEARS OF AGE COMMITTED TO SUCH HOSPITAL — IN ABSENCE OF CONTRACT, FATHER NOT LIABLE FOR COST OF CARE, TREATMENT OR MAINTENANCE OF SUCH PATIENT.
2. WHERE TUBERCULAR PATIENT COMMITTED TO SUCH HOSPITAL BY COUNTY COMMISSIONERS OF COUNTY OF HIS RESIDENCE OR BY THEIR AUTHORIZATION, AND SUCH COUNTY NOT A PART OF DISTRICT, COUNTY COMMISSIONERS OF PATIENT'S RESIDENCE LIABLE FOR COST OF CARE, TREATMENT AND MAINTENANCE TO EXTENT PATIENT UNABLE TO PAY — SECTION 3139-1 ET SEQ., G. C.

SYLLABUS:

1. Where an unmarried woman over twenty-one years of age is committed to a district tuberculosis hospital, organized pursuant to Section 3139-1 et seq., General Code, the father of such patient is not, in the absence of contract on his part, liable for the cost of the care, treatment or maintenance of such patient.

2. Where a patient afflicted with tuberculosis is committed, by action of the commissioners of the county of his residence or by their authorization, to a district tuberculosis hospital organized under Section 3139-1, et seq., of the General Code, of which district such county is not a part, such county commissioners are liable for the cost of the care, treatment and maintenance of such patient to the extent that he is unable to pay such cost.

Columbus, Ohio, April 17, 1943.

Hon. Edwin L. Clemens, Prosecuting Attorney,
Defiance, Ohio.

Dear Sir:

I acknowledge receipt of your communication requesting my opinion, which reads as follows:

“Inquiry has been made of me by the county commissioners of Defiance county and by the tuberculosis hospital of Lima, Ohio, as to whether or not the county or the individual is liable for the care, treatment and support of a person afflicted with pulmonary tuberculosis.

I wish to call your attention to sections 3139-18 and 3139-20 of the General Code of the state of Ohio and I will appreciate your opinion as to who is liable in the following case to-wit:

- (a) Unmarried daughter over twenty-one years of age.
- (b) Person who is afflicted with pulmonary tuberculosis.
- (c) The county commissioners have determined that the father of this patient is financially able to pay for her support.

Is the order of the state board of health for treatment necessary before liability is created against the board of commissioners and is the board of commissioners liable in the event the board has determined that the father is financially able to pay for the support and care of his daughter?

Heretofore I have taken the stand that the county is not liable in this case if the commissioners have determined that the father is financially able to support his daughter even though she is over twenty-one years of age and unmarried. As a matter of fact, in this case the patient is unable to pay for her own care and treatment. The father claims he is not liable because his daughter is over twenty-one years of age.

I have been informed indirectly that the county health doctor has ordered this client confined to the hospital.

I trust that I have clearly explained in this letter the facts and conditions in connection with this case in order that you may give me an opinion at the earliest possible date.

Section 3139-18 says 'The county commissioners may contract with the board of trustees * * *'. Does this mean that the commissioners *must* furnish care and treatment for the person referred to under the terms and conditions set forth in this letter?"

I am informed that the tuberculosis hospital at Lima is a district hospital but that Defiance County is not a part of the district.

The statutes relating to tuberculosis hospitals to be maintained by counties, either separately or in conjunction with other counties, were the subject of a complete revision by the 94th General Assembly, and are found in Sections 3139 to 3139-22, inclusive, General Code. By the terms of Section 3139, the general supervision of all hospitals and other institutions designed for the care and treatment of persons suffering from tuberculosis is placed under the state department of health, which is

authorized to formulate such rules and regulations for their government as it may deem necessary.

The words "maintenance, care and treatment", as used in the act, are defined to include proper housing and nutrition, the use of approved and modern medical and surgical method of treatment, skilled nursing attention and such educational and pre-vocational rehabilitation or other services as the medical superintendent of each tuberculosis institution may prescribe.

Three methods are provided by the act whereby a county may take care of the tuberculous, resident in such county :

(1) By joining with other counties, not to exceed a total of five in the erection and operation of a district tuberculosis hospital, the procedure for this being found in Sections 3139-1 to 3139-10, General Code.

(2) By providing for and erecting a county tuberculosis hospital, the provision for such county hospital being made by Sections 3139-11 to 3139-15. This procedure, however, is limited to counties having a population of more than 50,000. Inasmuch as the population of Defiance county is less than that number, it could not avail itself of that plan of procedure.

(3) By contracting with another county or district tuberculosis hospital or with a municipal tuberculosis hospital or other hospital for the care, treatment and maintenance of residents of the county suffering from tuberculosis, this method being provided by Section 3139-18, which reads in part as follows :

"Where a county has not provided a county hospital for tuberculosis or has not joined in a tuberculosis hospital district, or where a county tuberculosis hospital is not sufficiently large to provide proper care for all patients who should be hospitalized, the county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper officer of a municipal tuberculosis hospital, for the care, treatment and maintenance of 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 such county or district hospital, or into the proper fund of the municipality caring for such patients, the amount provided for in the contract. They shall also pay for the transportation of patients and attendants. The county commissioners of such county may also contract for the care and treatment of the residents of the county suffering from tuberculosis with a general hospital properly equipped both as to personnel and facilities for the care and treatment of the tuberculosis, or with a person, firm, association or corporation operating a hospital exclusively for the

care and treatment of the tuberculous; but no contract shall be made unless such general hospital or private hospital has been inspected and approved by the state department of health."

It will be noted that the county proceeding under that section is required to pay for the care, maintenance and treatment of its residents the amount provided for in such contract, and also the expense of transportation of the patient and attendants.

Section 3139-20 provides a method whereby the burden of the care of a resident of a county suffering from pulmonary tuberculosis may be thrown upon the county where it has wholly failed to make any provision for the care of such persons in either of the methods above pointed out. That section reads as follows:

"The state department of health, upon a proper presentation of the facts, and upon the recommendation of the board of health of a city or general health district, shall have authority to order removed to a municipal, county or district hospital for tuberculosis, or the Ohio state sanatorium, any person suffering from pulmonary tuberculosis, when in its opinion such person is a menace to the public health, and cannot receive suitable care and treatment at home; provided, however, that such person shall have the right to remove from the state. If such person shall remove from the state, it shall be the duty of the state department of health to notify immediately the health authorities of the state to which removal was made. The expense of removal of such person to a tuberculosis hospital and for his care, treatment and maintenance therein shall be paid by such person or by those legally responsible for the cost of his care, treatment and maintenance. The expense of removal, care, treatment and maintenance shall be paid by the county in which he has legal residence, if such person is unable to provide therefor."

It will be noted from a reading of the last quoted section that it is contemplated by the law that the expense incident to care, treatment and maintenance of the patient therein referred to falls in the first place upon such patient or upon those who are legally responsible for the cost of his care, treatment and maintenance, and that in the event they are unable to provide for such expense, it falls upon the county.

A further situation under which a county may be charged with the cost of the hospitalization of a patient without voluntary action by the county commissioners, is found in Section 3139-21, General Code, which provides in part as follows:

“No person suffering from active tuberculosis shall be kept in any county home. Whenever complaint is made that a person is being kept or maintained in any county home in violation of the requirements of this section, the state department of health shall make arrangements for the care, treatment and maintenance of such person in a tuberculosis hospital which has been approved by the state department of health. The cost of the removal of such person to, and the cost of care, treatment and maintenance of such person in such hospital or institution shall become a legal charge against, and shall be paid by the county in which such person has a legal residence.”

In Section 3139-10, General Code, which is one of the sections relating to the operation of the district tuberculosis hospital, we find language which throws light upon the legislative intention as to the cost of the care and treatment of persons admitted to such hospital. The pertinent portion of that section reads as follows:

“The medical superintendent shall investigate all applicants for admission to the hospital for tuberculosis and may require satisfactory proof that they have tuberculosis and are in need of hospital care. The board of trustees may require from any applicant admitted from the county or counties maintaining the hospital, payment not exceeding the actual cost of care and treatment, including the cost of transportation, if any. If, after investigation, it shall be found that any such applicant or patient or any person legally responsible for his support is unable to pay the full cost of his care and treatment in the district hospital, the board of trustees shall determine the amount, if any, said applicant, or patient or any such person legally responsible for his support, shall pay. The difference between such amount, *if any*, and the actual cost of care and treatment shall be paid by the county in which such applicant or patient has a legal residence. The amount so determined shall be paid on the order of the county commissioners.” (Emphasis mine.)

It appears from all these provisions that the intention of the Legislature was to place upon the county of residence of a person requiring care in a tuberculosis hospital, the burden of paying for such care, to the extent that the patient himself, or those persons legally responsible for his care, are not able to pay such cost.

Your communication states that you have been informed indirectly that the county health doctor ordered the patient in question confined to the hospital. I am in doubt as to what you mean by the “county health doctor”. I do not find any such officer provided for by the statutes. Whatever may be his position, however, if he was acting pursuant to authority given him by the county commissioners, the county would be bound to pay the expense of the care and treatment of such patient, assuming, as

stated in your communication, that she herself was unable to pay for the same.

The mere fact, however, that a person having tuberculosis becomes a patient in a hospital, would not impose any liability on the county of which he is a resident, unless the commissioners had either authorized his entrance into the hospital or it had been accomplished under the circumstances set out in Sections 3139-20 and 3139-21, supra. With those exceptions, the statutes relating to the hospitalization of the tuberculous of any county appear to be by way of conferring power rather than by way of forcing action upon the county commissioners.

In Opinions Attorney General for 1934, p. 499, one of my predecessors had under consideration Section 3143, General Code, which, as it then read, was quite similar to Section 3139-18, which I have quoted. The pertinent portion of Section 3143 read:

"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."

The Attorney General held:

"1. By virtue of Section 3143, General Code, tubercular persons who cannot afford hospital expenses are entitled to hospital care at the expense of the county at the hospital facilities provided for by the county commissioners when such persons are residents of the county even though such residents have a legal settlement within a city in the county.

2. Section 3148-1, General Code, is permissive and former city hospitals for tuberculosis were permitted to continue as hospitals for the treatment of tuberculosis although it was not made mandatory that they continue as such."

The opinion referred with approval to an earlier opinion found in

Opinions Attorney General for 1929, p. 1780, where the same statute was under consideration and where the question submitted was whether the county commissioners were to grant this relief only to indigents. In that opinion the Attorney General said:

“From the foregoing it will appear 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 circumstances 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 such service free.”

As to the liability of the father of the patient who is the subject of your inquiry, I note your statement that she is unmarried, over twenty-one years of age and that she is without means to provide for her own care and treatment. It will be observed that in several of the statutes to which I have referred, dealing with the cost of caring for and treating a patient, reference is made to “those legally responsible for the cost of his care, treatment and maintenance.” In one section the language used is “any person legally responsible for his support.” There is no definition in the statutes, so far as I am able to find, of the intended meaning of these words.

Turning to the general statutes, I find Section 7997, which provides as follows:

“The husband must support himself, his wife, *and his minor children* out of his property or by his labor. If he is unable to do so, the wife must assist him so far as she is able.” (Emphasis mine.)

It was held in *Theissen v. Moore*, 105 O. S. 401, that the obligation of a parent to support his child terminates when the child reaches majority.

There is no statute, so far as I can find, which imposes any general liability on a father for the support of an adult child. There is a provision in Sections 1815-1 to 1815-10 whereby certain relatives are made responsible, in part at least, for the maintenance of persons committed to the state hospitals for the insane, feeble minded and epileptic. By the provisions of Section 1815-9 it appears that those relatives who are thus made responsible do not escape their liability even though the patient is an adult, so long as the relationship exists. That section reads as follows:

“It is the intent of this act (G. C. secs. 1815 to 1815-10) that a husband may be held liable for the support of a wife, while an inmate of any of said institutions, a wife for a husband, a father or mother for a son or daughter, and a son or daughter, or both, for a father or mother.”

But these provisions, confined as they are to the maintenance of patients in state hospitals, cannot be construed as creating any responsibility or liability for care of patients in county hospitals.

Specifically answering your questions, I am of the opinion:

First. Where an unmarried woman over twenty-one years of age is committed to a district tuberculosis hospital, organized pursuant to Section 3139-1 et seq., General Code, the father of such patient is not, in the absence of contract on his part, liable for the cost of the care, treatment or maintenance of such patient.

Second. Where a patient afflicted with tuberculosis is committed, by action of the commissioners of the county of his residence or by their authorization, to a district tuberculosis hospital organized under Section 3139-1 et seq., of the General Code, of which district such county is not a part, such county commissioners are liable for the cost of the care, treatment and maintenance of such patient to the extent that he is unable to pay such cost.

Respectfully,

THOMAS J. HERBERT,
Attorney General.