

fill such vacancy, who shall serve until the next regular election for justice of the peace, and until his successor is elected and qualified. The trustees shall notify the clerk of courts of such vacancy and the date when it occurred."

It is apparent from a reading of Section 1723, General Code, that upon the failure of a justice of the peace to give additional surety when required by the trustees of the township, the office shall be deemed vacant, and the trustees shall give notice of a new election to fill such vacancy.

Since a vacancy exists in such office, the provisions of Section 1714, General Code, relative to the filling of a vacancy in the office of justice of the peace apply. Consequently, the trustees of the township in question should appoint a qualified resident of the township to fill such vacancy who shall serve until the next regular election for justice of the peace and until his successor is elected and qualified, which election must be held in the odd-numbered years. (See Section 4785-4, General Code). And, under the principles announced in the case of *State ex rel. Harsha vs. Trexel*, No. 23474, Supreme Court of Ohio, (Ohio Bar, April 11, 1932), the next regular election for such office would be in November, 1933.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4400.

NURSE'S SERVICES—CARE OF INDIGENT INSANE PERSON—PROPER CHARGE AGAINST TOWNSHIP WHERE SUCH PERSON HAS LEGAL SETTLEMENT.

SYLLABUS:

*Upon compliance with the terms of section 3480-1, General Code, the payment for the services of nurses incurred in the care of an indigent insane person temporarily maintained in a city hospital, is a proper charge on the township in which said person had a legal settlement.*

COLUMBUS, OHIO, June 8, 1932.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"Several months ago the Probate Judge of our County, after due consideration, made a finding against a man on a lunacy inquest, and at the time the insane person was not expected to live and was held temporarily in the City Hospital, where the services of two nurses were required to properly care for him. This man was taken to the City Hospital by an agreement of the family, and at that time the Probate Judge had not committed the patient to any institution. The family was indigent and the Trustees of the Township wherein the man had a legal settlement were notified within three days and assumed the payment of the City Hospital bill, but did not agree at any time to pay the two nurses required due to the condition of the patient, and said

Trustees now refuse to pay the nurses. The question for your consideration is whether the County or the township trustees should pay the two nurses for the services rendered in this case.

I might further add that the services of the nurses did not go with the hospital bill as far as the Trustees knew, and it was due to the violent tendencies of the patient that a day and night nurse became necessary for the proper security of all concerned."

Section 10501-53, paragraph 6, General Code, states that a probate court shall have jurisdiction "to make inquests respecting lunatics, insane persons, idiots and deaf and dumb persons, subject by law to guardianship." It should be noted that a finding of insanity under such section does not impose a duty upon the state or county to support such insane person. The procedure for commitment to various state institutions for the insane and the method for the support of such persons are contained in other sections of the General Code. See sections 1953, et seq., General Code.

Section 3480-1, General Code, reads as follows:

"When a person requiring medical services or the services of a hospital, in cases other than contagious, has a legal settlement in a municipality or township within the same county but other than that in which the service is rendered, and such person is unable to pay the expenses of such service, the municipality or township rendering such service shall notify, in writing, the proper officials of the municipality or township of legal settlement of such person that such services are being rendered. Such written notice shall be sent within three days if the fact of non-residence is disclosed upon the beginning of such service or admission to such hospital, or within three days after discovery of such fact if the same be not disclosed as above. Thereupon the municipality or township of legal settlement shall be liable for such services at the established rate of the municipality or township rendering such service and shall pay for the same within thirty days after date of the sworn statement covering such expenses, which sworn statement shall be sent to the proper officials of the municipality or township of legal settlement within twenty days after the discharge of such persons. If the notice of such service be not sent to the municipality or township of legal settlement within three days after the disclosure by such person or the discovery of such non-residence, such municipality or township shall be liable only after the receipt of such notice. Nothing herein contained shall prevent the removal of such person, or the assumption of care of such person, by the municipality or township of legal settlement, at its expense, but such removal or assumption shall not relieve such municipality or township from liability for the expenses theretofore incurred by the municipality or township rendering such service. Any such person who does not, upon discharge, pay for such services at the established rate therefor shall, for the purposes of this act, be deemed indigent insofar as the municipality or township rendering such service is concerned. The municipality or township of legal settlement is hereby subrogated to all the rights of the municipality or township rendering such service to such person."

Your question then resolves itself into a determination as to whether or not

the term "services of a hospital" in the above section includes "nursing." Of course the term hospital in its strictest meaning connotes a building only. It would seem, however, construing the term "services of a hospital" liberally, as is the rule of construction in regard to sections relating to public relief and according to its usual meaning, the same would include nursing services.

In view of the provisions of section 3480-1, General Code, and in consideration of the fact that no legal procedure is disclosed in your communication as a result of which the patient in question became a county charge, I am of the opinion that upon compliance with the terms of section 3480-1, General Code, the payment for the services of nurses incurred in the care of an indigent insane person temporarily maintained in a city hospital, is a proper charge on the township in which said person had a legal settlement.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

4401.

MUNICIPALITY—MAY MAKE REASONABLE CHARGE FOR USE OF WATER METERS—FUND MAY NOT BE USED FOR GENERAL MUNICIPAL PURPOSES.

*SYLLABUS:*

1. *A non-charter city may make a reasonable charge for the use of its water meters by users of water supplied by it.*

2. *A charge for the use of city owned water meters cannot be levied as a tax for the purpose of raising revenue for general municipal purposes, and the payment into the general fund of money realized from meter rentals would constitute an unlawful transfer of funds.*

COLUMBUS, OHIO, June 8, 1932.

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

GENTLEMEN:—I acknowledge receipt of your recent communication which reads in part as follows:

"At the request of the City Solicitor of Warren, Ohio, we are submitting the following question for your opinion:

Is an Ohio non-charter city council vested with power, under Sec-3 of Article XVIII of the State Constitution, to levy and collect a meter use license tax from persons purchasing water from the city owned water system, through city owned meters?

If an affirmative answer is given to the above, the further question arises whether, since the meters are owned by the water works department of the city, the revenue derived from such a license tax could be used for general purposes, and we ask that this question also be considered."

The city solicitor's letter, a copy of which was inclosed with your communication, shows that what is termed as a meter use license tax is a charge which is proposed to be made for the use of water meters.