

The lease is accompanied by contract encumbrance record No. 48, which has been executed in due form and which shows that there are unencumbered balances in the appropriation account sufficient in amount to pay the monthly rental under the lease for the month of July, 1939, and I have been given to understand that the monthly rental for the period of January to June, 1939, has been previously paid to the lessor by the Division of Aid for the Aged.

This lease is accordingly approved by me and the same is returned herewith.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1187.

RELIEF—BOARDS OF TOWNSHIP TRUSTEES—DUTY TO
FURNISH HOSPITAL SERVICE TO NEEDFUL INDIGENT
—LEGAL SETTLEMENT—CONTRACTS WITH PHYSI-
CIANS—AMENDMENT—HOUSE BILL 675, 93RD GENERAL
ASSEMBLY—SECTIONS 3480-1, 3490, 3491, G. C.

SYLLABUS:

1. *The enactment of House Bill No. 675 by the Ninety-third General Assembly did not alter the duties imposed by Section 3480-1, General Code, on boards of township trustees to furnish services of a hospital to needful indigent persons having a legal settlement in such township. O. A. G. 1939, No. 948, discussed.)*

2. *Where prior to the enactment of such House Bill No. 675 boards of township trustees have entered into contracts with physicians to furnish medical relief and medicines to indigents within the township for a period of one year pursuant to the authority of Sections 3490, et seq., General Code, which contracting period had not expired prior to the effective date of such House Bill No. 675, such boards of township trustees may annul such contracts under authority of Section 3491, General Code, since the taking away of their power and duty to furnish such services is a proper cause for such annulment.*

COLUMBUS, OHIO, September 13, 1939.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion which reads:

"In your opinion of July 27, 1939, (No. 948 A. G. O.) it was held in the second syllabus 'that the provisions of House Bill No. 675, superseded those of section 3476, General Code,

with reference to the duties of township trustees, and took away from the boards of township trustees the powers and duties formerly possessed by them under authority of such section 3476.'

Since the rendition of the above mentioned opinion several township trustees have inquired of me whether or not they are required to furnish indigent persons the services of a physician or surgeon as provided by section 3480 and also whether they are required to furnish to indigent persons medical services or the services of a hospital as provided by section 3480-1, General Code, or must the same be furnished by the county commissioners under House Bill No. 675.

No mention is made in House Bill 675 relative to hospital services. Paragraph 4 of section 1 of said act says, 'Medical care' means medicines and services, wherever rendered, of a physician or surgeon * * * furnished at public expense."

As poor relief now is to be administered by the township trustees as provided by House Bill No. 675, my personal opinion is that the furnishing to indigent persons medicine, physicians' services and the services of a surgeon must be furnished by the County Commissioners, and that hospitalization expense must be borne by the township trustees as provided by section 3480-1. There are in this county several indigent persons, I am informed, that need surgical, hospital and medical services and I would like to have your opinion on the following questions:

1—Since the passage of House Bill No. 675 is it the duty of the township trustees to furnish to indigent persons medicine, physicians' services, or hospitalization expenses, or is it the duty of the County Commissioners to furnish the same?

2—Prior to the passage of House Bill No. 675 the Trustees of several townships in this county contracted for one year with physicians to furnish medical relief and medicine to indigent persons under their charge as provided by section 3490, General Code. If it is held that the township trustees, under House Bill No. 675, is precluded from furnishing medicine and physicians services by House Bill No. 675, what effect, if any, will such holding have on such contract in view of the fact that section 28 of article 2 of Ohio Constitution that the General Assembly 'shall have no power to pass laws impairing the obligation of contracts?'

3—What effect, if any, has House Bill No. 675, on the payment of hospital expenses of indigent persons who may be sent to hospitals under sections 3480-1 and 3484-2 of the General Code? In other words, have the trustees of townships authority to pay the expense of hospitalization under those sections of the

General Code, or must such persons be sent to a hospital by the County Commissioners and the Commissioners to pay the expenses thereof?"

In an opinion rendered by me under date of July 27, 1939, addressed to the Bureau of Inspection and Supervision of Public Offices, bearing number 948, I held that:

"Since the enactment of House Bill No. 675, by the Ninety-third General Assembly, which act provides a complete system for the dispensing of poor relief, including that formerly dispensed by boards of township trustees under authority of Section 3476, General Code, the provisions of House Bill No. 675, supersede those of Section 3476, General Code, with reference to the duties of township trustees, and take away from boards of township trustees the powers and duties formerly possessed by them under authority of such Section 3476, General Code."

Such opinion, in effect, holds that the board of township trustees, since the enactment of House Bill No. 675, has no longer the authority to furnish any of the services to indigents mentioned in your first inquiry, other than hospitalization services, for the reason that the duty to furnish such services has been transferred to local relief authorities as defined in such House Bill No. 675. Under such act, the county relief authority is the board of county commissioners as to all of the area outside of the geographical limits of cities.

You will note that the services referred to in your request as hospitalization expenses are not included within the term "poor relief" by the enactment of House Bill No. 675. "Poor relief" is defined by such act (Section 3391, General Code) as follows:

" 'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, or, in the case of homeless persons, in lodging houses or other suitable quarters. Payments for shelter shall not exceed the average rental for comparable types of shelter in the area in which such shelter is provided. Average rentals shall be determined by local relief authorities subject to the approval of the state director. Poor relief may take the form of 'work relief,' 'direct relief' or 'medical care' as herein defined. * * *"

"Medical care" is defined by such section as follows:

" 'Medical care' means medicines and the services, wherever

rendered, of a physician or surgeon or the emergency services of a dentist, furnished at public expense.”

The duty of the boards of township trustees to furnished services of a hospital to indigents is contained in Section 3480-1, General Code, which reads:

“When an indigent 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 county, 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 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 county, 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 person. 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 thereof incurred by the county, municipality or township rendering such service. The municipality or township of legal settlement is hereby subrogated to all the rights of the county, municipality or township rendering such service to such person.”

I have found no language in House Bill No. 675 which purports to relieve boards of township trustees of such duty.

In your second inquiry you refer to contracts having been entered into by boards of township trustees pursuant to the authority of Sections 3490 and 3491, General Code. Such sections read:

Sec. 3490, G. C.

"The trustees of a township, or the proper officers of a municipal corporation in any county, may contract with one or more competent physicians to furnish medical relief and medicines necessary for the persons who come under their charge under the poor laws, but no contract shall extend beyond one year. Such physician shall report quarterly to the clerk of the township or municipality, on blanks furnished him for that purpose, the names of all persons to whom he has furnished medical relief or medicines, the number of visits made in attending such person, the character of the disease, and such other information as may be required by such trustees or officers."

Sec. 3491, G. C.

"Such contracts shall be given to the lowest competent bidder. The trustees or municipal officers shall reserve the right to reject any and all bids, and *to annul such contract at any time for proper cause.*" (Italic the writer's.)

It is fundamental that when a contract is entered into pursuant to the authority of a statute, the statute is as much a part of the contract as though it were specifically written into the contract so entered into. *Banks v. DeWitt*, 42 O. S., 263; *Compton v. Railway Company*, 45 O. S., 562, 619; *Cincinnati v. Public Utilities Commission*, 98 O. S., 320.

It is also fundamental that no person has a vested right in the continued existence of a statute. *Meriwether v. Garrit*, 12 Otto (102 U. S.), 472; *United States v. Railroad Company*, 17 Wall. (89 U. S.), 322.

Your question then becomes: May one of the parties to the contract, who, by reason of change of statute, no longer has the capacity to perform the contract, annul such contract without impinging upon constitutional mandates?

As stated in 6 R. C. L., Contracts, Section 366:

"The decisions of practically all jurisdictions are to the effect that where a contract, legal in its inception, becomes illegal by subsequent enactment, the contract is wholly terminated as soon as the statute takes effect, even though the time specified for its performance has not yet fully expired, and no action can be maintained by either party for failure to perform the obligations of the contract after the illegality has attached."

By the amendment of House Bill No. 675 it has become illegal for the board of township trustees to furnish medical relief to indigents at township expense. The parties have entered into the contract in ques-

tion with constructive knowledge that the legislature might take away the power of the township trustees to perform the contract. The statute under which the contract was entered into especially reserved the right to the township to annul the contract entered into by it pursuant to the authority thereof. Neither of the parties had any vested right in the continued existence of such statutes. It would therefore seem that the contract is possibly terminated by the enactment of House Bill No. 675. It is not necessary to decide such question, for if the contract was so terminated, the township trustees, by reason of the statute, which is a part of the contract, may at any time annul the contract. It would be the duty of the township trustees to annul the contract pursuant to its terms when they no longer had the legal right to perform it, if it should be held that the enactment of House Bill No. 675 did not ipso facto effect such annulment.

Your third inquiry is necessarily answered by my conclusion as to your first.

Specifically answering your inquiries, it is my opinion that:

1. The enactment of House Bill No. 675 by the Ninety-third General Assembly did not alter the duties imposed by Section 3480-1, General Code, on boards of township trustees to furnish services of a hospital to needful indigent persons having a legal settlement in such township. (O. A. G., 1939, No. 948, discussed.)

2. Where prior to the enactment of such House Bill No. 675 boards of township trustees have entered into contracts with physicians to furnish medical relief and medicines to indigents within the township for a period of one year pursuant to the authority of Sections 3490, et seq., General Code, which contracting period had not expired prior to the effective date of such House Bill No. 675, such boards of township trustees may annul such contracts under authority of Section 3491, General Code, since the taking away of their power and duty to furnish such services is a proper cause for such annulment.

Respectfully,

THOMAS J. HERBERT,
Attorney General.