

4389

CITIZENSHIP—NO PREREQUISITE TO ADMISSION OF TUBERCULAR PERSON TO PUBLIC TUBERCULOSIS HOSPITAL—INDIGENT ALIEN, RESIDENT OF COUNTY—ENTITLED TO BE ADMITTED TO DISTRICT TUBERCULOSIS HOSPITAL—MAY BE HOSPITALIZED AT EXPENSE OF COUNTY.

SYLLABUS:

Citizenship is no prerequisite to the admission of a tubercular person to a public tuberculosis hospital, and an indigent alien who is a resident of the county is entitled to be admitted to a district tuberculosis hospital and to be there hospitalized at the expense of the county.

Columbus, Ohio, October 4, 1954

Hon. William H. Harsha, Jr., Prosecuting Attorney
Scioto County, Portsmouth, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

“The Board of County Commissioners of Scioto County, Ohio, has been presented with an application for admission to the Mount Logan Sanatorium by a person afflicted with tuberculosis who is not a citizen of the United States of America.

“The applicant was admitted to the United States approximately two (2) years ago as a political refugee by the Federal Government and since that time has been residing in Scioto County, Ohio, where he was gainfully employed. Further this applicant has not made a declaration of his intentions to become a citizen of the United States as of this date.

“I respectfully request your opinion as to whether or not the Board of Commissioners of Scioto County may legally admit this person to the district tuberculosis sanatorium at Mount Logan, Ohio, and pay from public funds the cost of his care and maintenance while hospitalized at the district sanatorium.”

The right of a tubercular person, be he citizen or alien, to admission to a public tuberculosis hospital depends upon the language of the statute under which the institution is established and the regulations adopted pursuant to such statute. Generally, the purpose of such statute is two-

fold: to arrest the progress of the disease in the person affected; to isolate the case in order to curb the spread of the disease to the general public. Or, as stated by my predecessor in Opinion No. 3827, Opinions of the Attorney General for 1926, page 493, "from the standpoint of policy and humanitarian interests, it would seem that relief from such disease in any of its forms should be the object of government."

An examination of the statutes relating to the control of tuberculosis will show that the words "person" and "resident" are used, never the word "citizen," as indicating those who may require treatment or isolation. The Ohio Tuberculosis Hospital, for example, is required by Section 3701.63, Revised Code, to be "open to any *legal resident* of this state having or suspected of having tuberculosis and requiring care and treatment in a tuberculosis hospital."

With respect to county tuberculosis hospitals, Section 339.20, Revised Code, provides that "the department of health shall have general supervision of all sanatoria, hospitals, and other institutions engaged in the maintenance, care and treatment of *persons* suffering from tuberculosis." It defines the words "maintenance, care and treatment," as meaning "proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, as the medical superintendent of each tuberculosis institution prescribes."

The statute, Sections 339.21 and 339.22, Revised Code, also authorizes several contiguous counties to join in the construction and maintenance of a district hospital for the care and treatment of "persons" having tuberculosis, and provides that such district hospital for tuberculosis "shall be devoted to the care and treatment of those *persons* affected with tuberculosis who are *residents* of the district and who are in need of hospital care and treatment."

No exceptions can be read into the provisions of a statute not made by the act itself. Nowhere in the statute is citizenship made a requirement of receiving treatment for tuberculosis in public institutions maintained for such purpose. Moreover, the statute requires isolation of tubercular persons under pain of criminal prosecution. Section 3707.08, Revised Code, provides:

"When a person has, or is suspected of having a communicable disease for which isolation is required by the board of health

or the state department of health, the board of health shall, at once cause the individual to be separated from susceptible persons in such places and under such circumstances as will prevent the direct or indirect conveyance of the infectious agents to susceptible persons."

Construing this section in Opinion No. 691, Opinions of the Attorney General for 1951, page 412, it was held that *any person* suffering from active pulmonary tuberculosis, who neglects or refuses to isolate himself as required by the sanitary code, can be prosecuted for such violation, and if found guilty, penalized as provided by Section 4414, General Code, R. C. 3707.48 and 3707.99.

The only requirement is legal residence in the state for admission to a state hospital, and residence in the county or district for admission to a county or district hospital. It may be well to point out that residence or legal residence differs from legal settlement. Residence is the place in which a person has fixed his habitation without any present intention of removing therefrom. Legal settlement is the status required under the poor relief laws by a person who resides in a particular locality for a fixed period without receiving poor relief from either a public or private agency. Thus, a person applying for poor relief must establish legal settlement by residence in the county for the period of one year as provided by Section 5113.05, Revised Code, notwithstanding that he has had his permanent residence at such place. The Attorney General has made this distinction in Opinion No. 2928, Opinions of the Attorney General for 1940, page 967, and in Opinion No. 481, Opinions of the Attorney General for 1945, page 614, he held that hospitalization of tubercular persons at county expense was not poor relief.

As to the county's liability for the cost of hospitalization, it was held in those opinions that the expense of treatment of an indigent in a tuberculosis hospital must be borne by the county of legal residence. The position of this office on that question was restated in Opinion No. 3226, Opinions of the Attorney General for 1948, page 259, where the syllabus reads:

"Where an indigent person is in the state of Ohio and has the intention of remaining in Ohio or meets the requirements for residence, the county commissioners of the county where such person resides can legally pay for hospitalization in a district tuberculosis hospital."

These rulings are in accord with Section 339.40, Revised Code, which provides:

“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 persons legally responsible for the cost of his care, treatment and maintenance. Such expense shall be paid by the county in which he has legal residence, if he is unable to provide therefor.” (Emphasis added.)

Accordingly, in specific answer to your question it is my opinion that citizenship is no prerequisite to the admission of a tubercular person to a public tuberculosis hospital, and an indigent alien who is a resident of the county is entitled to be admitted to a district tuberculosis hospital and to be there hospitalized at the expense of the county.

Respectfully,

C. WILLIAM O'NEILL
Attorney General
