

of the court to suspend a fine in violation of the provisions of law cannot operate as an actual suspension in legal contemplation. Therefore, it would seem that the fines imposed in the cases you mention are still owing to the state. In an opinion of my predecessor, found in Opinions of the Attorney-General, 1918, p. 362, the syllabus reads:

“A mayor is without authority to allow fines and costs in cases to go unpaid and if he does so, such fines and costs may be recovered as follows:

In cases of violations of municipal ordinances, recovery can be had in the name of the corporation, as provided in sections 4561 and 4562 of the General Code, but these suits must be commenced within one year after the violation of the ordinance.

In the case of a violation of an ordinance, where resort cannot be had to these sections, and in state cases, mandamus will lie against the mayor, at the instance of the interested party, to compel him to issue execution on the judgment for fines. At the instance of the officers to whom costs in these cases are due, mandamus will also lie against such mayor to compel the issuance of the execution to collect the costs in these cases.”

It would seem that the above holding is applicable to the cases you present wherein the fines were not collected after having been assessed, and collection may be made as provided by law.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2214.

COUNTY HOSPITAL—PATIENTS ARE “SUBJECTS FOR CHARITY”—
BILLS FOR TREATMENT SHOULD BE PAID BY HOSPITAL TRUSTEES FROM MAINTENANCE FUND PROVIDED FOR SAID HOSPITAL BY SECTION 3133 G. C.

Where, pursuant to section 3137 G. C. (108 O. L., Part I, p. 258), the trustees of a county hospital find and determine that patients presented to said hospital for treatment are “subjects for charity”, said trustees are without authority to present to the county commissioners bills for the treatment of such patients, and the county commissioners are without authority to pay said bills from county funds. Said bills should be paid by the hospital trustees from the maintenance fund provided for said hospital by section 3133 G. C.

COLUMBUS, OHIO, June 30, 1921.

HON. V. W. FILIATRAULT, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter is at hand, reading thus:

“Operating under sections 3127 to 3138 of the General Code an election was held, question favorably voted upon, bonds issued, a county hospital purchased, trustees appointed and levies made for hospital purposes by Portage county, Ohio.

Section 3137, among other things, provides as follows:

'Fixing Compensation for Treatment—Such trustees may determine whether patients presented at the hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves. They may provide for the free treatment in such hospital of soldiers, sailors and marines of the county, under such conditions and regulations as they shall prescribe.'

Section 3476 G. C. provides as follows:

'Trustees and Municipal Officers Shall Afford Relief—Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or *under county control*. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city.'

Under the practice in Portage county all indigent patients have been admitted upon the recommendation of the county commissioners, who have first made investigations. The hospital trustees have made a charge for these patients and the claims have been paid by the commissioners out of the infirmary fund.

The following questions have arisen relative to this situation and I would appreciate your early opinion upon them:

(1.) Have the commissioners the right to pay the hospital trustees of the Portage county hospital for indigent persons treated therein?

(2.) If the commissioners do have the right, from what fund should those bills be paid?

(3.) Instead of having such bills paid by the county commissioners, should the trustees themselves under section 3137 determine who shall be charity patients and such claims be placed upon the hospital books as 'no charge?'

I might add that I have insisted that the part of section 3476 which reads 'under county control' definitely gives the county commissioners authority to give relief to poor in the county hospital and having done so to pay the bills rendered them by the hospital.

The question, of course, is merely application of county funds, as when the commissioners pay these bills the money is merely paid from one fund to the hospital fund.

The hospital here has been conducted by various boards of trustees and has never been on or even approached a solid financial basis until the appointment of the present board. These men have taken a great deal of interest in the proper conduct of the hospital and are especially anxious to have the hospital be as nearly as possible self-

supporting, and, of course, if these charity patients have to be charged against their fund, the deficit will be still greater than at present."

As indicated by you in your letter, the questions you raise are in reality mere questions of "bookkeeping." That is to say, that whether payment for the treatment of the indigent patients is made by the county commissioners or by the trustees of the county hospital, the expenditure is in either event an expenditure of county funds.

Section 3133 G. C. (108 O. L. Part I, p. 257) says in part :

"Annually thereafter the commissioners shall levy, in addition to all other levies authorized by law, an amount sufficient to properly maintain and conduct said hospital and furnish such extensions and further equipment thereof as may be necessary * * *."

It would seem from that part of section 3137 G. C. (108 O. L. Part I, p. 258) quoted in your letter, namely, the part which says :

"Such trustees may determine whether patients presented at the hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves."

that no authority is given the county hospital trustees to charge anything for the treatment of patients whom they find to be "subjects for charity," and that charges are to be made by them only as to those who are described as "patients *other* than those unable to assist themselves."

In opinion number 1714, rendered by this department on December 16, 1920, to Hon. John L. Cable, prosecuting attorney, Lima, Ohio, the liability of the county to furnish relief under section 3476 G. C. was discussed (See Opinions of the Attorney-General for 1920, Vol. II, p. 1177.) At page 1180, it is said :

"The presence of these last words 'or under county control' following immediately, as they do, the words 'at the county infirmary' clearly means that *outside* as well as *inside* relief for those in a 'peculiar condition' is authorized."

It was further pointed out in said opinion that the phrase "or under county control" was to be interpreted in the light of sections 2544 G. C. and 2546 G. C., as amended in H. B. 150, found in 108 O. L. Part I, p. 266.

In answer to your first question, you are therefore advised that where the trustees of a county hospital determine that patients presented at said hospital for treatment are "subjects for charity," the county commissioners are without authority to pay said hospital trustees for such treatment. If, as your letter suggests, this construction will cause a deficit in the hospital funds, the remedy is, of course, the making by the county commissioners of an increased maintenance levy under and by virtue of section 3133 G. C.

Your third question is answered in the affirmative. It is unnecessary to answer your second question.

Respectfully,
JOHN G. PRICE,
Attorney-General.