

be granted by the county shall be given to those persons who do not have the necessary residence requirements." If the county wherein the indigent person is found desired to be reimbursed for the expenses incurred, it is incumbent upon the superintendent of the county infirmary to notify the county of legal settlement within the prescribed time, and failing amicable collection of its expenses incurred in furnishing relief to the indigent person, the county commissioners of the county wherein the indigent person is afforded relief have the right of a civil action against the board of county commissioners of the county of the indigent person's legal settlement.

For purposes of clarity in answering your questions I shall answer them with respect to the first hospitalization of T. D. and then discuss his second hospitalization. It is my opinion in specific answer to your four questions with respect to the first hospitalization of T. D. that since all the procedural steps have been duly and legally taken, Summit County is liable for the expenses in such hospitalization for such non-resident and should be reimbursed by the county officials of the indigent person's legal settlement, i. e. Wayne County. With respect to the second hospitalization, however, inasmuch as T. D. was not found in Summit County but was brought over from Wayne County without any request by the township trustees of his legal settlement nor the county commissioners of Wayne County, in my opinion neither Summit County nor Wayne County is liable for the expenses of hospitalization for this second hospitalization of this non-resident.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2907.

MILK—FUNDS COLLECTED BY MILK SETTLEMENT COMMITTEE IN
CLEVELAND MARKET SALES ARE COLLECTED AND DISTRIBUTED
HOW—LIABILITY OF COMMITTEE MEMBERS DISCUSSED.

SYLLABUS:

1. *Under the provisions of the rules and regulations in force in the Cleveland Market Sales Area the various funds collected by the Milk Settlement Committee must be segregated and distributed for the various purposes for which they were specifically collected.*

2. *When the Milk Settlement Committee, by a proper majority, duly passes a resolution authorizing the expenditure of money under the rules and regulations, it becomes the duty of the secretary and chairman to sign the proper check to the proper payee. In the exercising of such powers by the chairman and secretary, they are acting within the scope of their authority and in the absence of fraud or bad faith it is believed no personal liability and, in any event, no more liability could arise by reason of the signing of the checks than would exist by reason of being a member of the Committee.*

COLUMBUS, OHIO, July 10, 1934.

The Ohio Milk Marketing Commission, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion upon the following:

"The Milk Settlement Committee created by order of the Ohio Milk Marketing Commission within the Cleveland area confronts the following situation and we hereby request your legal opinion to guide the Commission in determining what action it should take.

Par. 2-B and 2-C make the following provisions for deductions from amounts due to producers:

2. (b) From the amount due the Producer for milk so purchased the Distributor shall make and pay the following deductions, simultaneously with making payments to the Producer:

2. (c) Such amount as the Producers Board shall fix, except as otherwise provided in Exhibit C shall be deducted from the remittance to each Producer for each 100 pounds of milk delivered and the proceeds of such deductions shall be distributed in the following manner:

1. The Producer's share of the expense of the Milk Settlement Committee equal to one half the total expense thereof.

2. Contribution to the Cleveland District Dairy Council of 1 cent for each 100 pounds.

3. Dues to the several associations or Producers groups as provided by the regulations of such associations or groups as certified to the Producers Board by the Secretary thereof.

4. To the Cleveland District Dairy Council, in recognition of the services performed by said Council beneficial to the entire milk industry in the Sales Area, any remainder of the fund created by such deductions after payments above provided for.

The total of deductions so made shall not exceed 4 cents for each 100 pounds, unless a resolution providing for a larger deduction shall have been presented to the Commission and approved by such Commission. Each Distributor shall make such deductions from his monthly remittances to Producers and shall pay amounts so deducted to the Milk Settlement Committee, which Committee shall make distribution as provided herein.'

Par. C of Exhibit C of said rules and regulations makes the following provision for payment of operating expenses of the Committee—

'(c) Expenses of the Committee shall be financed from deductions of one cent per 100 pounds of milk from all Producers and contributions of one cent per 100 pounds of milk from all Distributors as provided in Section 2 of these rules and regulations. It is not contemplated, however, that the Committee shall accumulate a reserve of more than sixty days average operating expenses, and whenever possible such deductions and contributions shall be dispensed with. The members of the Committee shall serve without compensation from Committee funds, except that the Secretary, if a member of the Committee, may be compensated, and except that members of the Committee shall be reimbursed for actual expenses, but the Milk Board or the Producers Board may compensate their respective members as may be reasonable and just.'

Par. C-3 of Section 3 of Exhibit C of the rules and regulations provides for an equalization of payments to producers in the following language:

'(c) 3. In order to give effect to the difference between each Distributor's actual cost to him of base milk, according to his base milk classification report and other costs described herein, and the

amount he actually pays his particular Producers based on the average price to be paid for base milk as reported by the accounting firm, an equalization among Distributors shall be made in the following manner:

After arriving at the average price to be paid for base milk received, the accounting firm shall compute the gross amount to be paid Producers by each Distributor, using as a basis for such computation the base milk classification report submitted by such Distributor. A statement showing such computation with respect to each Distributor shall be sent to each Distributor showing also the amount either due him for difference paid his Producers or due the equalization fund. Such amounts due the equalization fund are legal obligations subject to the same conditions as payments to Producers and collectible as such and such amounts are due and payable at the same date Producers' accounts are payable. Within seven days after such due date distributions shall be made by the Committee to all those to whom amounts are due from the equalization.'

Money has been collected by the Milk Settlement Committee from dealers as proceeds of deductions made from amounts due to producers under paragraph 2-C and the Committee has also collected from dealers amounts computed to be payable to the equalization fund under the provision quoted from Exhibit C. A difference of opinion has arisen among the members of the Milk Settlement Committee as to whether the receipts from all of these sources constitute a single fund or whether the deductions made from producers under paragraph 2-C are to be considered as being in the nature of three special trust funds, the amounts in which are to be devoted only to the purposes for which they were deducted, while the amounts collected from distributors and paid into the equalization fund are to be considered as a special fund separate and distinct from the others.

This question becomes important for the reason that the amount at present in the equalization fund is not equal to the amounts payable from the equalization fund by reason of the fact that not all distributors have paid in the amount indicated. Some members of the Milk Settlement Committee are of the opinion that in view of this condition they may not legally pay items of expense of the Committee, dues to the various associations and the amount shown to be payable to the Cleveland District Dairy Council, even though the amounts in the several funds are sufficient for that purpose. The claim is made that all of these funds should be considered as a single fund of the Committee and that any payment from committee funds should be made in proportion to the relation of the total assets to the total amounts payable.

The majority of the Milk Settlement Committee has voted to pay the expenses of the Committee, the Association dues and the amounts to the Cleveland District Dairy Council and checks have been prepared for those payments. Notwithstanding the order of the Committee that these payments be made, the Chairman of the Committee has refused to sign the checks, basing such refusal on the theory that the funds of the Committee constitute a single fund.

Will you kindly advise the Commission as to which interpretation of these rules and regulations is correct?

There is a further consideration that enters into the problem. The Chairman being of the opinion that this money constitutes a single fund fears that in case he signs these checks and it is eventually determined that his view is right, he would be personally liable. Will you kindly advise the Commission whether in your opinion the Chairman acting by instruction of the majority of the Committee in signing these checks would, in any manner, be personally liable in case the payment should subsequently prove to have been illegal?"

The so-called Burk Act, House Bill No. 671, found in 115 O. L., page 288, authorizes your Commission to appoint advisory boards of producers or distributors or both to assist the Commission in the performance of its duties. Paragraph (f) of section 5 further provides that:

"Any such advisory board or any such advisory boards acting in conjunction in any marketing area may submit to the commission recommendations with respect to rules and regulations to be adopted by the commission, or to be adopted with its approval by any such associations of producers, or of distributors, or of both. The commission may adopt or approve any such rules or regulations which may be designed to accomplish the purposes of this act and any such rules or regulations so adopted or approved shall be lawful, any provision of section 6391 of the General Code to the contrary notwithstanding."

Paragraph (g) of section 5 authorizes your Commission to enforce all rules, regulations and orders necessary to carry out the provisions of the act, and implies that prices may be established by the Commission under the authority of the act. Under date of December 22, 1933, your Commission, acting in pursuance of the authority above mentioned, approved the rules and regulations recommended by the advisory board of the Cleveland area, of which the language you quote in your communication is a part. In view of the express provisions of the Burk Act authorizing your Commission to adopt rules and regulations and to approve rules and regulations recommended by the advisory boards, and further, in view of the recent decision of the Supreme Court of the United States in the case of *Nebbia vs. New York*, to the effect that a state may grant power to a commission to fix the sale price for milk, it would seem unnecessary to give further consideration to the fundamental question as to the power of your Commission to approve such an order as is here under consideration.

Your question is, in substance, whether the Milk Settlement Committee, which is appointed pursuant to the rules and regulations, distributes the money received by it in pursuance of its duties as one common fund or whether the moneys received from different sources are impressed with a trust and it is required to disburse said funds for certain specific purposes to the exclusion of all other purposes. In analyzing the provisions of paragraph 2(c), which you quote, it appears that the deductions taken from the producer by the distributor shall be distributed in the following manner:

1. One-half of the total expense of the Milk Settlement Committee representing the producer's share of said expense.
2. Contribution to the Cleveland District Dairy Council of one cent for each one hundred pounds.
3. Dues to the several associations or producers groups as provided by the rules and regulations.
4. To the Cleveland District Dairy Council any remainder of the fund created by such deduction after the three payments hereinbefore mentioned.

It will be noted that four cents is the maximum amount that may be deducted for each one hundred pounds of milk, unless a resolution providing for a larger amount is approved by your Commission. Paragraph 2(c) further provides that each distributor shall make such deductions monthly from the remittances to the producers and pay amounts so deducted to the Milk Settlement Committee, which shall make distribution as provided in the former part of the section.

It will further be noted that paragraph (c) 3 of section 3 of Exhibit C provides for a fund to be collected by the Milk Settlement Committee to be known as the equalization fund, which is a balancing fund into which some distributors pay and from which others withdraw, depending upon the classifications of milk sold.

Obviously, the funds collected by the Milk Settlement Committee are not the funds of the state. The Committee receives such funds under authority of the rules and regulations adopted for the Cleveland area for a sole and specific purpose. It follows that said funds are in the nature of trust funds, the Committee occupying the relation of trustee, and it must carry out the terms of the trust.

The language is clear and unambiguous as to what funds are to be collected and as to what distribution is to be made thereof. It follows that there is no authority after the funds have been collected to regard them as one general fund and pro rate all claims against it. In other words, the payments to the Milk Settlement Committee from producers and distributors for the expense of the Committee cannot be used for any other purpose. It follows that the payments for the support of the Cleveland District Dairy Council must be used for the specific purpose for which the collection is made. Likewise, the payments made by distributors in the equalization fund must be applied to the purpose for which collection is made. Moreover, a distributor who is entitled to receive payments from the equalization fund must look to that fund only and cannot require that funds on hand with the Milk Settlement Committee received from other sources be applied to this purpose. In other words, each of the funds provided for should be earmarked by the Milk Settlement Committee and applied to the purpose for which the collection is made. If the conclusion above mentioned is not correct, then we would have the inequitable result that one dealer's fund which he contributes for a specific purpose would be taken to aid another without his consent. It is believed that no such conclusion can logically be made in view of the provisions of the rules and regulations now in force.

You further inquire as to the individual liability of the chairman of the board in connection with signing checks which were authorized by a majority of the Milk Settlement Committee with reference to certain payments. It is understood that the chairman refused to vote for the resolution authorizing such payments. It is believed that it would become merely a ministerial duty for the chairman to carry out the will of the board. Clearly, an action in mandamus

would lie to require a chairman to perform a ministerial duty. If such were not the law, then it would practically be impossible for public bodies to function, as it very often happens that the presiding officer who is required to execute contracts is not in accord with the will of the majority. Likewise, the directors of corporations could not function if the chairman could refuse to carry out the orders of the board.

In considering the liability of the chairman in connection with his ministerial duties, it will be helpful to examine the authorities with reference to the liability of public officers. It is a well established principle of law that a public officer acting within the scope of his authority is not liable individually, in the absence of bad faith or a corrupt motive as to matters involving judgment and discretion. As to ministerial officers, the rule above referred to is more pronounced. In 32 O. Jur., page 962, the following is stated:

“A ministerial officer, acting under process fair upon its face and issuing from a tribunal or person having judicial power, with apparent jurisdiction to issue such process, is protected and justified in obeying it against all irregularities except his own.”

In support of the proposition above announced, the text cites:

Taylor vs. Alexander, 6 O. S. 144;
Loomis vs. Spencer, 1 O. S. 153;
Bank vs. Smith, 7 O. S. 42;
Fawcett vs. Linthecum, 7 O. C. C. 141.

Also in 46 C. J., at page 1042, it is stated that “ordinarily purely ministerial officers are protected in executing orders of superiors fair on their face, even though such orders were erroneously issued by such superiors”.

Also in this connection it is interesting to note the general rule applicable to the liability of officers and agents of corporations. The following is stated in 10 O. Jur., page 787:

“Officers and agents of corporations are not liable for corporate acts and debts by reason of their official relation to the corporation; they are merely agents of the corporation, and on principle should no more be held liable therefor than any other agent should be held liable for the acts and debts of his principal. In fact, it is not disputed that officers and agents of corporations are protected from private liability while acting within the scope of the corporate powers.”

From the foregoing, it is believed to be clear that the chairman of the Milk Settlement Committee is purely a ministerial officer and no personal liability would lie against him for performing the ministerial duty of signing a check in accordance with the specific provisions of the rules and regulations, when duly authorized by a majority vote of the Committee. At least, there could be no more liability by reason of the signing of the check than there would be by virtue of his being a member of the Committee.

In specific answer to the inquiries presented, you are advised that:

1. Under the provisions of the rules and regulations in force in the Cleveland Market Sales Area the various funds collected by the Milk Settlement

Committee must be segregated and distributed for the various purposes for which they were specifically collected.

2. When the Milk Settlement Committee, by a proper majority, duly passes a resolution authorizing the expenditure of money under the rules and regulations, it becomes the duty of the secretary and chairman to sign the proper check to the proper payee. In the exercising of such powers by the chairman and secretary, they are acting within the scope of their authority and in the absence of fraud or bad faith it is believed no personal liability and, in any event, no more liability could arise by reason of the signing of the checks than would exist by reason of being a member of the Committee.

Respectfully,

JOHN W. BRICKER,

Attorney General.

2908.

APPROVAL, BONDS OF MASSILLON CITY SCHOOL DISTRICT, STARK COUNTY, OHIO—\$41,000.00.

COLUMBUS, OHIO, July 10, 1934.

The Industrial Commission of Ohio, Columbus, Ohio.

2909.

APPROVAL, BONDS OF CUYAHOGA FALLS CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, July 10, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2910.

APPROVAL, BONDS OF BUCYRUS CITY SCHOOL DISTRICT, CRAWFORD COUNTY, OHIO—\$22,000.00.

COLUMBUS, OHIO, July 11, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.