

3625.

TUBERCULOSIS—KEEPING PERSON SUFFERING FROM PULMONARY  
TUBERCULOSIS IN BUILDING ADJACENT TO COUNTY HOME NOT  
VIOLATIVE OF SECTION 3139, GENERAL CODE, WHEN.

*SYLLABUS:*

*The keeping of a person suffering from pulmonary tuberculosis in a building constructed on property which is immediately adjacent to that of a county home is not contrary to the prohibition contained in Section 3139, General Code. The approval of plans for the construction of a County Tuberculosis Hospital on such property is a matter within the discretion of the State Department of Health.*

COLUMBUS, OHIO, December 14, 1934.

DR. H. G. SOUTHARD, *Director of Health, State of Ohio, Columbus, Ohio.*

DEAR SIR:—YOUR recent letter requesting my opinion reads as follows:

“Application has been made to the State Department of Health by the county commissioners of Tuscarawas County to consent to the raising of funds for the building of a hospital for cases of tuberculosis.

As authorized by Section 3138-1 of the General Code, it is proposed to place this building immediately adjacent to the Main Building of the County Home.

In view of the provisions of Section 3139, General Code, which prohibit the keeping of a person suffering from pulmonary tuberculosis in a county home, I am undecided as to the action that should be taken by this department, and shall be glad to have your opinion on the question: ‘Is the keeping of a person suffering from pulmonary tuberculosis in a building immediately adjacent to a county home contrary to the prohibition contained in Section 3139 of the General Code.’”

The authority for the erection of a County Tuberculosis Hospital was originally granted by the Legislature in Section I of an Act “to provide for county hospitals”, to be found on page 486 of Vol. 89 Ohio Laws. Section I of the aforesaid Act was repealed in 100 Ohio Laws 86. In 103 Ohio Laws 492 there were enacted certain laws which were carried into the General Code as Sections 3139, 3140 and 3141. These laws became effective, April 17, 1913.

Section 3139, General Code, now reads as enacted in 1913:

“On and after January first, nineteen hundred and fourteen, no person suffering from pulmonary tuberculosis, commonly known as consumption, shall be kept in any county infirmary.”

At the same time there was enacted Section 3140, General Code, which reads as follows:

“Whenever complaint is made to the state board of health that a person is being kept or maintained in any county infirmary in violation of section 3139 of this act, such state board of health may make arrangements for the maintenance of such person in some hospital or

other institution in this state devoted to the care and treatment of cases of tuberculosis, and the cost of removal to, and the cost of maintenance of, such person in such hospital or institution shall become a legal charge against, and be paid by the county in which such person has a legal residence. If such person is not a legal resident of this state, then such expense shall be paid by the county maintaining the infirmary from which removal is made."

Concurrent with the enactment of Sections 3139 and 3140, General Code, there was enacted a law which became Section 3141, General Code, providing for the maintenance of a County Tuberculosis Hospital by the County Commissioners. As amended in 107 O. L. 495, Section 3141, General Code, provides:

"In any county where a county hospital for tuberculosis has been erected such county hospital for tuberculosis may be maintained by the county commissioners, and for the purpose of maintaining such hospital the county commissioners shall annually levy a tax and set aside the sum necessary for such maintenance. Such sum shall not be used for any other purpose. When it shall become necessary to enlarge, repair or improve a county hospital for tuberculosis, the county commissioners shall proceed in the same manner as provided for other county buildings. Plans and estimates of cost for all additions to county hospitals for tuberculosis shall be submitted to and approved by the state board of health and the board of state charities."

As aforesaid, the original provisions of law specifically authorizing the County Commissioners to purchase or erect a County Tuberculosis Hospital were repealed in 100 Ohio Laws 86 and were not reenacted in 103 Ohio Laws 492, when Sections 3139, 3140 and 3141, General Code, were enacted. It was not until 1919, in 108 Ohio Laws, Part I, page 253, that the General Assembly again authorized the County Commissioners to operate and maintain a County Tuberculosis Hospital. That statute became Section 3148-1, General Code, and as amended in 1921 (109 Ohio Laws 212) now reads:

"The county commissioners of any county having more than 50,000 population as shown by the last federal census may, with the consent of the state department of health, provide the necessary funds for the purchase or lease of a site and the erection and equipment or lease and equipment of the necessary buildings thereon for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis.

Any municipality within said county at present maintaining and operating a hospital for the treatment of tuberculosis may continue to maintain said hospital as a municipal hospital, or may lease or sell the same to the county."

The purpose of the provisions contained in Sections 3139, 3142-1 and related sections has been stated by several Attorneys General of this state. See Opinions of the Attorney General for 1914, Vol. I, p. 984; 1914, Vol. II, p. 1094; 1915, Vol. I, p. 99; 1919, Vol. I, p. 967; 1920, Vol. I, p. 603; 1927, Vol. II, p. 938; 1929, Vol. III, p. 1782; 1932, Vol. II, p. 1177.

As stated in an opinion to be found in Opinions of the Attorney General for 1927, Vol. II, page 938:

“The purpose of authorizing the creation and maintenance of Tuberculosis Hospitals is manifest. It was recognized that not only could not a person suffering from this dread disease be adequately cared for in the County Home, but that one so afflicted could not be provided for in the home without endangering the lives and health of all inmates.”

Briefly stated, Sections 3139, 3148-1 and 3141 provide so far as material to your inquiry that no person suffering from pulmonary tuberculosis shall be kept in any county infirmary; the county commissioners may, with the consent of the State Department of Health, provide the necessary funds for the purchase or lease of a site and erection and equipment or lease and equipment of the necessary buildings thereon for the operation and maintenance of a County Hospital for the treatment of persons suffering from Tuberculosis; and for the purpose of maintaining such hospital already erected the County Commissioners shall annually levy a tax.

In addition to the authority conferred upon the County Commissioners to provide for a County Tuberculosis Hospital, it must be observed that under Section 2433, General Code, the County Commissioners are authorized to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a courthouse, county offices, jail, county infirmaries, juvenile court buildings, detention home, and other necessary buildings and sites therefor. The commissioners are given power to determine the style, dimensions, and expense of such buildings and offices by virtue of Section 2419, General Code. It will be observed that while the County Commissioners are authorized and required to provide such buildings as are needed, they are given a wide discretion in determining the question of necessity. *Campbell vs. Hampson* 1 O. S. 119; *Brown County vs. Butt*, 2 Ohio 348; *Hamilton County vs. Mighels*, 7 O. S. 109; *Kepler vs. Barker*, 13 O. S. 177; *Ex Parte Black*, 1 O. S. 30.

According to your inquiry the proposed Tuberculosis Hospital to be erected by the County Commissioners of Tuscarawas County is immediately adjacent to the County Home. Such proposed hospital, I am informed, is to be located at least one hundred yards from the County Home. For the purpose of this discussion the proximity of the proposed hospital to the County Home is important only to determine if in fact the hospital will actually be a part of the County Home. If such were the case, the provisions of Section 3139, General Code, prohibiting persons suffering from pulmonary tuberculosis from being kept in any County Home, would obviously apply.

However, if such proposed tuberculosis hospital is not actually a part of, or connected with, the County Home in such manner as to permit those afflicted with pulmonary tuberculosis from associating with the occupants of the County Home, I can find no legal impediment to the location of the said Tuberculosis Hospital adjacent to the County Home. I assume from the facts stated by you that the proposed Tuberculosis Hospital is in all respects a separate and distinct institution from the County Home which includes among other things, separate laundry and kitchen facilities.

The approval of the plans for the erection of such hospital is subject to the discretion of the County Commissioners and the State Board of Health. The statutes grant broad powers to these officials in determining the necessity for

such hospital, its style, dimensions, expense and location. Whether the keeping of a person suffering from pulmonary tuberculosis in a building immediately adjacent to a County Home is contrary to sound principles of public health, is a question of fact which must be determined by the County Commissioners and the State Board of Health under the discretion granted them by statute, to provide adequate facilities for persons afflicted with pulmonary tuberculosis, and to protect the inmates of the County Home from exposure or contact with persons so afflicted.

As a matter of law, after having reviewed all the statutes pertaining to the authority of County Commissioners to erect a Tuberculosis Hospital, I am of the opinion, in specific answer to your question, that there is no statutory provision preventing the keeping of a person afflicted with pulmonary tuberculosis in a building constructed on property which is immediately adjacent to that of a County Home. The approval of plans for the construction of a County Tuberculosis Hospital on such property is a matter within the discretion of the State Department of Health.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

3626.

APPROVAL—ARTICLES OF INCORPORATION OF THE NORTHWESTERN OHIO MUTUAL PROTECTIVE ASSESSMENT INSURANCE ASSOCIATION.

COLUMBUS, OHIO, December 15, 1934.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

Re: The Northwestern Ohio Mutual Protective Assessment Insurance Association.

DEAR SIR:—I have examined the Articles of Incorporation of The Northwestern Ohio Mutual Protective Assessment Insurance Association of Wapakoneta, Ohio, which you have submitted to me for my approval, and finding the same not to be inconsistent with the Constitution and laws of the United States or of the State of Ohio, I am herewith returning said Articles with my approval endorsed thereon.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*