

Sec. 6501. "If one or more commissioners of a county are petitioners for an improvement, or own land that will be benefited or damaged by the improvement petitioned for, the auditor shall notify the judge of the court of common pleas of the county who shall within ten days appoint as many disinterested freeholders of the county as may be necessary to take the place of such interested commissioner or commissioners; * * *"

Sec. 6508. "When in the opinion of the commissioners, by resolution entered on their journal, any land owned by the county or any highway therein, under their supervision, is in need of drainage, and such drainage will also specially benefit other land, the commissioners may file a petition without bond, for such improvement in the court of common pleas of the county. Upon such petition being filed the court of common pleas shall act in the same manner, and conduct the same proceedings, and make the same findings and orders as are provided in this chapter for the board of county commissioners. * * *"

The sections above referred to are the only sections having to do with county ditches that in any way disqualify a board of county commissioners from acting in the premises.

Section 6501, supra, is applicable only when "one or more commissioners of a county are petitioners for an improvement, or own land that will be benefited or damaged by the improvement petitioned for."

Section 6508, supra, is applicable only when the board of county commissioners file a petition for such an improvement.

There being no section of the General Code to the contrary I know of no reason why a board of county commissioners, which has been petitioned for the cleaning out of a ditch, is disqualified to act in the premises merely because the course of such ditch runs through a farm owned by the county.

Respectfully,

EDWARD C. TURNER,

Attorney General.

1217.

COUNTY COMMISSIONERS—TO SECURE POSSESSION OF PROPERTY OF A COUNTY CHARGE SHALL FILE PETITION IN PROBATE COURT OF COUNTY WHERE PROPERTY IS LOCATED.

SYLLABUS:

Under the provisions of Section 2548, General Code, when a person becomes a county charge and is possessed of or is the owner of property, real or personal, the county commissioners shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located. Said property includes money of a former inmate in the custody of a state hospital for the insane, which was deposited upon the admission of said inmate and remained after the discharge from the said institution.

COLUMBUS, OHIO, October 31, 1927.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"One L. S. was admitted to a state hospital for the insane in 1909 through regular Probate Court commitment, the diagnosis being Paranoia. At the time of her admission she had in her possession cash amounting to \$480.70. The Support Bureau of the Board of State Charities (now the Division of Charities, Department of Public Welfare) acting under the provisions of Section 1815-3 et seq., made an investigation of the financial status of the patient and her responsible relatives and filed the following report under date of November 28, 1910:

'The husband by reason of his crippled condition is unable to pay his wife's support. He will care for the child. The Probate Court will appoint a guardian to take charge of the money on deposit at the hospital. \$250.00 will be reserved for the patient's burial and the balance will be invested for the son.'

The above seems to be the understanding had between the investigator and the Probate Court at the time.

It develops that no guardian was ever appointed and the money remaining to the patient's credit in the State Hospital is now \$420.70, \$60.00 having been used for the patient's needs.

On July 2, 1925, this patient was granted trial visit from the State Hospital. Her name remained on the books of the hospital until January 1, 1927, when she was discharged as IMPROVED, as she had subsequently been admitted to the Preble County Home.

The question now arises as to the disposition of the money belonging to the patient and on deposit in the State Hospital. Under the provisions of Section 2548, G. C., the County has made claim to this money. Inasmuch as during the eighteen years of this woman's residence in the State Hospital no collection was made by the State for her support, and she was therefore a public charge, has not the State a claim prior to that of the County?

Your opinion as to the proper disposition of this money and the necessary procedure is respectfully requested."

Under commitment of the Probate Court L. S. was admitted in 1909 to a state hospital for the insane. She had in her possession cash amounting to \$480.70 which was placed on deposit in said state hospital to said patient's credit. The then Board of State Charities acting under the provisions of Sections 1815-3 et seq. of the General Code, after making investigation of the patient's financial status, reported that the husband of said patient was crippled and unable to pay for her support but would care for the child and also that the Probate Court would appoint a guardian to take charge of the money on deposit in the state hospital. It appears, however, that no guardian for this patient was ever appointed and that the money, less sixty dollars used for the patient's needs remains on deposit in the state hospital, although the patient was discharged January 1, 1927, and has become an inmate in the Preble County Home. Preble County has made claim to this money based on the provisions of Section 2548, General Code. The patient in question was an inmate of the state hospital for eighteen years and no collection was made by the state for her support.

Your questions are (1) as to whether or not the state has a claim prior to the county, and (2) what is the proper disposition of this money and the necessary procedure.

I find nothing in the chapter on state hospitals, or elsewhere in the General Code, authorizing the Superintendent of the state hospital or other officials thereof to hold on deposit monies or other valuables of said patient. It is therefore evident that a guardian should have been appointed to take charge of said money and to invest the same for the benefit of the patient. As this was not done the Superintendent of said institution has been merely the custodian of the money belonging to the patient and

upon her discharge from the institution should have turned over to the patient the money belonging to her less the amount used for the patient's incidental needs. No guardian having been appointed, upon the discharge of the patient from the state hospital the patient was qualified to act in her own right, and entitled to the possession and control of her property and this right still continues and she is entitled to the possession of the balance of the money so placed on deposit to her credit.

However, as she is an inmate of the Preble County Home the county commissioners of the county may proceed to get possession of her property under Section 2548, General Code, which reads as follows:

"When a person becomes a county charge or an inmate of a city infirmary and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located, and the proceedings therefor, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the county commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary."

Section 2549, General Code, reads as follows:

"The net proceeds arising from the sale of such property shall be paid to the county or city treasurer, and by him placed to the credit of such person to be paid out on the warrant of the county auditor, upon the order of the county commissioners, or by the city auditor upon the order of the proper officer of the infirmary. The superintendent shall open an account with the person and charge him with board at a reasonable rate and items furnished for his exclusive use, which account shall be approved by the county commissioners or by the proper city officer at the close of each month."

Section 2550, General Code, reads as follows:

"Upon the death of such person or when he lawfully ceases to be a county charge or is lawfully discharged from a city infirmary, whose property or effect have been so disposed of, and the avails thereof so applied, any balance due and in favor of such person on the books of the institution shall be paid by the superintendent of the infirmary to him, or in case of his death to his legal representative. When any such fund has become exhausted or any balance paid in manner described above, the superintendent shall file with the proper probate court a complete statement showing receipts, itemized expenditures and balance, if any, and such court shall file such report with the records relating to the original order of sale of such person."

From a reading of the above sections, it is evident that under the prescribed procedure the county commissioners may seek the possession of such money by filing a petition in the Probate Court of Preble County and the county commissioners should then apply the net proceeds to the maintenance of such person so long as she remains a county charge. Under Section 2549, General Code, the net proceeds from said property should be paid to the county treasurer and by him placed to the credit of the

inmate, to be paid out on the warrant of the county auditor upon the order of the county commissioners.

It is noted that under Section 2550, General Code, upon the death of such inmate or when such inmate lawfully ceases to be a county charge any balance of the property or effects of said inmate shall be paid by the Superintendent of the County Home to the inmate, or in case of death to her legal representative.

You state that no collection was made by the state for the support of said patient during the time that she was an inmate of said state hospital. I am informed that it was determined that owing to the small value of her estate and the financial and physical condition of her husband that no claim was made against either of them for the payment of her maintenance at the state hospital.

It is therefore my opinion that the commissioners of Preble County may properly claim this money now on deposit at the said state hospital and that the procedure for obtaining possession thereof is provided as hereinbefore indicated.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1218.

MAYOR—ABSENT FROM DUTIES OF OFFICE—PRESIDENT OF COUNCIL NOT ENTITLED TO COMPENSATION PROVIDED FOR MAYOR.

SYLLABUS:

When, for any reason, the mayor of a city is unable to perform the duties of his office, and the president of council thereby becomes acting mayor, said president of council is not entitled to the compensation provided for the office of mayor during the period while he is so acting, but is entitled only to the compensation provided for the office of president of council.

COLUMBUS, OHIO, October 31, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication, as follows:

“Section 4273, G. C., provides:

‘When the mayor is absent from the city, or is unable for any cause to perform his duties, the president of the council shall be the acting mayor. While the president of the city council is acting as mayor, he shall not serve as president of council.’

The pertinent part of 4274, G. C., reads:

‘In case of death, resignation or removal of the mayor, the president of council shall become the mayor, and serve for the unexpired term and until the successor is elected and qualified. * * *

It has been our understanding that the compensation fixed by council for the president of council is in full for the performance of all the duties imposed upon him by law, one of which is to act as mayor when such mayor is unable for any cause to perform his duties.