1837

1. MENTALLY ILL OR FEEBLE-MINDED PERSONS — COUNTY HOME SUPERINTENDENT—AUTHORIZED TO REFUSE ADMITTANCE TO HOME—EXCEPTION—WHEN PLACED IN HOME BY PROBATE COURT OR BY DIVISION OF MENTAL HYGIENE — COUNTY COMMISSIONERS — AGREEMENT—SECTIONS 1890-27, 1890-56 G.C.

2. ADMISSION OF PERSONS TO COUNTY HOME—STATUTES MAKE NO DISTINCTION AS TO THOSE OVER SEVENTY YEARS OF AGE.

SYLLABUS:

1. The superintendent of a county home is authorized to refuse admittance to such home of persons who are mentally ill or feeble-minded except where they are (a) committed to such home by the probate court pursuant to Section 1890-27, General Code, or, (b) placed in the county home by the division of mental hygiene pursuant to an agreement made with the commissioners in accordance with Section 1890-56, General Code.

2. The statutes relative to admission of persons to a county home make no distinction as to those who are over seventy years of age.

Columbus, Ohio, September 12, 1952

Hon. J. L. MacDonald, Prosecuting Attorney
Columbiana County, Lisbon, Ohio

Dear Sir:

I have before me your request for my opinion, which reads as follows:

"Your opinion is respectfully requested on the following questions involving admissions to County Homes:

"1. Is a County Home Superintendent compelled to admit persons who are mentally incompetent or feeble-minded, and particularly after they have been so adjudged by a competent court?

"2. Does the fact that a person is above seventy make any difference as to their admission?"

The statutes relative to the admission of patients to a county home, formerly known as an infirmary, place the responsibility of determining who shall be admitted, largely on the Superintendent. Section 2544, General Code, reads as follows:

"In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

What is meant by the phrase, "after making the inquiry provided by law," is difficult to determine. At the time this section was enacted in its present form Section 3481 et seq., General Code was in force. Section 3481 provided that when complaint was made to the township trustees that a person in the township required public relief or support, one or more of such officers or some other duly authorized person should visit

such person and make an investigation. Where there existed a public or benevolent association which investigated such cases, it was provided that, "infirmary superintendents, township trustees or officers of a city shall accept such investigation and information." The above section was repealed in connection with the enactment of the new Act effective October 20, 1949, setting up the present organization of public relief embodied in Section 3391-1 et seq., of the General Code. The above quoted Section 2544 appears to give the action of the trustees the character of a recommendation rather than a mandate.

Prior to 1898, it appears to have been customary to send indigent insane and feeble-minded persons to the county infirmary, but on April 26, 1898, the General Assembly enacted a provision reading as follows:

> "That on and after June 1, 1900, it shall be unlawful to receive, or keep, at any county infirmary in the State of Ohio, any insane or epileptic persons and all sections authorizing the receiving or committing of such insane and epileptic persons to the infirmaries of the state are hereby repealed." (93 Ohio Laws, 274.)

This provision was carried into the General Code as Section 2541, in the following language:

> "No insane or epileptic person shall be received at any county infirmary in this state."

This section was the subject of an opinion by one of my predecessors, to wit, No. 5827, Opinions of the Attorney General for 1936, page 1053, where it was held that in view of the provisions of that statute, insane persons could not be housed even in a wing of a county home, although such insane persons were segregated from other inmates.

Section 2541, supra, was repealed by an act found in 117 Ohio Laws, page 550, which became effective January 1, 1938. This act established the Division of Mental Hygiene, in the Department of Public Welfare and made elaborate provisions for the reception, care and treatment of mentally ill, insane, feeble-minded and epileptic persons. Section 1890-56, General Code, a part of that act, reads as follows:

> "The commissioner of mental hygiene or any superintendent may by agreement with the county commissioners discharge for care at county expense in a county home, any patient of a state or receiving hospital who is quiet and not dangerous."

"Any superintendent," as used in the foregoing section, unquestionably means the superintendent of any of the several institutions provided for in the laws above referred to.

The section last quoted appears to give authority to the county commissioners to make an agreement which would require the superintendent of the county home to receive such patients of the state mental institutions as are covered by the agreement.

I note further the provision of Section 1890-27, General Code, which provides that after a hearing and medical examination of a person thought to be mentally ill the probate judge is authorized, "To commit such person to the county home or other place provided by the county commissioners under authority of law."

It has frequently been held by my predecessors that Section 2544 supra, gives the superintendent of a county home the exclusive authority to determine whether a person should be admitted to the county home. Among others we note Opinion No. 509, Opinions of the Attorney General for 1927, page 838; Opinion No. 935, for 1933, page 488; Opinion No. 135, for 1937, page 182. This general rule, however, must be subject to the exceptions which I have above noted as to persons mentally ill, where it would appear that the superintendent could not refuse to accept persons committed by the probate court, or those committed to such home pursuant to an agreement provided by Section 1890-56 supra.

Accordingly, it is my opinion and you are advised that the superintendent of a county home is authorized to refuse admittance to such home of persons who are mentally ill or feeble-minded except where they are (a) committed to such home by the probate court pursuant to Section 1890-27, General Code, or (b) placed in the county home by the division of mental hygiene pursuant to an agreement made with the commissioners in accordance with Section 1890-56, General Code.

Answering your second question, I am not able to find any statute relative to admission of persons to a county home which makes any distinction as to those who are over seventy years of age.

Respectfully,

C. WILLIAM O'NEILL
Attorney General