

1. Under the provisions of Sections 5840, et seq., of the General Code, an owner of live stock injured or killed by a dog belonging to such owner is not entitled to receive compensation from the county funds for the injury to such live stock.

2. Where the owner of live stock injured or killed by a dog not belonging to such owner, presents a claim to the township trustees who hear such claim, make an allowance thereof and transmit their findings with the testimony to the board of county commissioners, whether or not the board of county commissioners allow such claim in whole or in part rests solely within the discretion of such board, whose action in the premises is subject to review by the Probate Court on appeal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

561.

APPROVAL, NOTE OF LUHRIG SPECIAL SCHOOL DISTRICT, ATHENS COUNTY—\$864.00.

COLUMBUS, OHIO, June 2, 1927.

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

562.

COUNTY COMMISSIONERS—BURIAL EXPENSES OF COUNTY CHARGES
—BURIAL EXPENSES OF INDIGENT PERSON WHO DIED IN A
DISTRICT TUBERCULOSIS HOSPITAL.

SYLLABUS:

It is the duty of the board of county commissioners to pay the burial expenses of county charges and where an indigent person, who had been supported in whole or in part by a city, was committed by the proper county officers to a District Tuberculosis Hospital where such person subsequently died, it is the duty of the county commissioners of the proper county to pay the burial expense of such person.

COLUMBUS, OHIO, June 2, 1927.

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

GENTLEMEN:—I acknowledge receipt of your letter of recent date reading as follows:

“Section 3495 General Code provides for the burial of the dead at public expense in certain instances.

An indigent person who had been supported by a city under authority of the outdoor relief laws developed tuberculosis and was committed by the county commissioners to a joint county tuberculosis hospital where he subsequently died.

Question: Is the city or county liable for the burial expense?”

Supplementing your letter you furnish me with a copy of a letter from one of the state examiners, which reads in part:

"The deceased had received aid from city funds, but developed tuberculosis and was sent to the Chillicothe Tubercular Hospital by the County Commissioners. Sections 3148 to 3153-7 General Code, under which this hospital was established are not very clear as to charges. It would seem to your examiner that inasmuch as the deceased was sent to the hospital by the County Commissioners he became a ward of the county and the burial expense should have been paid by the county or paid by the hospital trustees and charged back to the county and that finding for recovery should be made."

You further inform me that the hospital in question is a District Tuberculosis Hospital established and maintained by six different counties, including Jackson county, which was the legal residence of the deceased.

As stated in your letter, authority for the creation and maintenance of the hospital is found in Sections 3147 and related sections of the General Code, which must be read in connection with Sections 3139, et seq., General Code, relating to "County Tuberculosis Hospitals."

The first paragraph of Section 3148, supra, reads as follows:

"The commissioners of any two or more counties not to exceed ten, may, and upon the favorable vote of the electors thereof in the manner hereinafter provided shall form themselves into a joint board for the purpose of establishing and maintaining a district hospital, provided there is no municipal tuberculosis hospital therein for care and treatment of persons suffering from tuberculosis."

With reference to the admission of patients to the District Tuberculosis Hospital, Sections 3139, 3143, 3145 and 3146 read as follows:

"Sec. 3139. 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."

"Sec. 3143. Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for, the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county, now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, *for the care and treatment of the inmates of such infirmary or other residents of the county who are suffering from tuberculosis.* The commissioners of the county in which such patients reside shall pay to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, and they shall also pay for their transportation." (Italics the writer's.)

* * * * *

"Sec. 3145. The medical superintendent shall investigate applicants for admission to the hospital for tuberculosis who are not inmates of the county infirmary and may require satisfactory proofs that they are in need of proper care and have tuberculosis. The board of trustees may require

from any such applicant admitted from the county or counties maintaining the hospital a payment not exceeding the actual cost incurred in their care and treatment, including necessaries and cost of transportation, or such less sums as they may deem advisable, owing to the financial condition of the applicant."

"Sec. 3146. The district hospital for tuberculosis, as hereinafter provided for, shall be devoted to the care and treatment of those *admitted to the county infirmary within the district afflicted with tuberculosis*, and of other residents of the district suffering from the disease and in need of proper care and treatment."

It has heretofore been determined by this department that the power and duty to determine whether or not a person should become a county charge is by Section 2544, General Code, exclusively vested in the superintendent of the County Home. See Opinions, Attorney General, 1915, Vol. I, 358; 1918, Vol. I, 54; 1919, Vol. I, 965; and Opinion No. 509, rendered under date of May 19, 1927.

In the opinion reported in Opinions, Attorney General, 1919, 965, it was said at page 968 as follows:

"While, as was held in 1918 Opinions of Attorney-General, Vol. I, p. 54, the duty of determining whether a person is qualified to become a county charge rests with the superintendent of the county infirmary under the provisions of Section 2544, and that the course pointed out in that section is the only one by virtue of which a person may be found qualified to become a county charge, it cannot be too strongly stated that the authority vested in the superintendent must not be exercised arbitrarily. If the facts transmitted to him by the trustees disclose that Mr. Wright is in a condition requiring public support and relief, and the truth of these facts cannot be successfully disproved, it becomes the imperative duty of the superintendent to provide for his relief outside of the infirmary at county expense. It is not absolutely necessary, as was said in the opinion last referred to, that a person must be admitted to the infirmary to become a county charge, but as was also said in 1915 Opinions of the Attorney-General, Vol. I, p. 358, in cases where the applicant is suffering from a disease of such character as to endanger the inmates of the infirmary, etc., relief outside of the infirmary at county expense is justified.

It may be suggested or contended that Section 2544 G. C. cannot be applied to persons having tuberculosis, on the theory that such outside relief is only authorized to be given to persons 'entitled to admission' to the infirmary, and that since under Section 3139 G. C. a person suffering from tuberculosis cannot be kept at the infirmary, it must follow that the superintendent cannot provide for his support and relief outside. Such contention, in my opinion, is unsound. On the contrary, as has already been stated above, it has been held that Section 2544 G. C. authorizes outside relief for persons who on account of the peculiar conditions or circumstances of their cases should not be received into the infirmary, and it is my opinion that the purpose of 3139 G. C. is to specifically point out one of the cases that should not be taken into the hospital, but on the contrary, should be provided for outside of the infirmary. Such construction is in harmony with the previous ruling of this department above referred to, and when it is kept in mind that the poor laws of the state should be liberally construed so as to accomplish the object and purpose of their enactment, and should not, excepting only when clearly and imperatively so required by their own language, be so construed as to exclude from their protection an indigent poor

person who is in condition requiring public support and relief, the reasonableness and fairness of my conclusion becomes apparent."

While in your letter you state that the indigent person in question after having been supported or aided by the city was committed to the hospital by the county commissioners rather than by the superintendent of the County Home it seems clear that the patient was a proper object for relief by the county and was in fact treated as a county charge by all concerned. The question, therefore, narrows as to whose duty it is to pay the burial expenses of an indigent person, who had become a county charge and as to whether or not the fact that such person was an inmate of a District Tuberculosis Hospital in any wise affects the question.

The only sections of the General Code *expressly* relating to the burial of the bodies of indigent poor are Sections 3495, 3496 and 9984, which read as follows:

"Sec. 3495. When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state, and whose body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with the provisions of Section 9984, it shall be disposed of as follows: If he were a legal resident of the county, the proper officers of the township or corporation in which his body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death; if he had a legal residence in any other county of the state at the time of his death, the infirmary superintendent of the county in which his dead body was found shall cause it to be buried at the expense of the township or corporation in which he had a legal residence at the time of his death, but if he had no legal residence in the state, or his legal residence is unknown, such infirmary superintendent shall cause him to be buried at the expense of the county.

* * * * *

"Sec. 3496. In a county in which is located a state benevolent institution, the board in control of said institution shall pay all expenses of the burial of a pauper that dies in such institution, except when the body is delivered in accordance with the provisions of Section 9984 of the General Code, and send an itemized bill of the expenses thereof to the county commissioners of the county from which the pauper was sent to the institution. Such county commissioners shall immediately pay the bill to such board in control."

"Sec. 9984. Superintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of workhouses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense, the directors or warden of the penitentiary, township trustees, sheriffs, or coroners, in possession of bodies not claimed or identified, or which must be buried at the expense of the county or township, before burial, shall hold such bodies not less than thirty-six hours and notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the president of a county medical society, of the fact that such bodies are being so held. Before or after burial such superintendent, director, or other officer, on the written application of the professor of anatomy, or the president of a county medical society shall deliver to such professor or president, for the purpose of medical or surgical study or dissection, the body of a person who

died in either of such institutions, from any disease, not infectious, if it has not been requested for interment by any person at his own expense."

Sections 3495 and 3496, supra, were formerly one section, namely Section 1500a, Revised Statutes, and the codifying commission separated them. As amended on May 9, 1908, (99 v. 357) section 1500a read:

"When information is given to the trustees of any township or proper officer of a corporation, that a dead body of any person, having a legal settlement in the county, or whose legal settlement is not in the state or whose settlement is unknown and not the inmate of a penal, reformatory, benevolent or charitable institution, has been found in such township or corporation and such body is not claimed by any person for private interment at his own expense or delivered for the purpose of medical or surgical study or dissection in accordance with law, they shall cause the said body to be buried at the expense of the township or corporation, but if the township trustees or proper officer of the corporation notify the infirmary directors then the infirmary directors shall cause the body to be buried at the expense of the county. Provided, however, that in any township in which is located a state benevolent institution, that the trustees of said township shall pay all expenses of the burial of any pauper that may die in such institution, and the said township trustees shall send an itemized bill of the expenses of such burial of said pauper to the infirmary directors of the county from which said pauper was sent to said benevolent institution, and the infirmary directors of the said county shall immediately pay said bill to the trustees of the township in which said benevolent institution is located."

It will be noted that by the terms of Section 1500a, supra, upon proper notification by the township trustees or proper officers of a municipal corporation, it was the duty of the infirmary directors to cause the body of a dead person having a legal settlement in the county, or whose legal settlement was not in the state or was unknown, and who was not the inmate of a penitentiary, reformatory, benevolent or charitable institution, to be buried at the expense of the county. See opinion of the Attorney General reported in the Annual Report of the Attorney General, 1912, Vol. II, 1302.

In construing Sections 3495 and 3496 in an opinion dated June 11, 1912, reported in the Annual Report of Attorney General, 1912, Vol. II, 1356, the then Attorney General held as follows:

"Under Section 3495, General Code, there devolves upon the county the duty of burying persons dying in benevolent or charitable institutions which are situated in the county and not supported by the state, when such dead person had a legal settlement in the county, or whose legal settlement was not in the state or unknown, and when the body is not claimed for private burial or is not delivered for the purpose of medical or surgical study or dissection, in accordance with law."

In the opinion at page 1357, it was said as follows:

"Section 3495 of the General Code provides for the burial of a person having a legal settlement in the county or whose legal settlement is not in the state, or is unknown, and not the inmate of a penal, reformatory, benevolent or charitable institution. *The benevolent and charitable institutions referred to in Section 3495 of the General Code are benevolent and charitable institutions supported in whole or in part by the state.*

* * * * *

The fact that the county is saved the expense of providing for the indigent poor who are taken care of by private benevolent institutions, is no reason why these institutions should have the burden of burying the pauper dead. A pauper may be kept at some private residence without extra expense to the county out of the goodness of heart of the owner. On his death, he may not desire to have the expense and trouble of burial and he can notify the proper authorities and burial will be provided for by law." (Italics the writer's.)

Section 3496 was subsequently amended on February 19, 1913 (103 v. 58). The amendment made on that date, however, is not material to the present inquiry.

Section 3495, supra, was further considered in a short opinion rendered under date of April 24, 1915, to the prosecuting attorney at Cadiz, Ohio, (Opinions, Attorney General, 1915, Vol. I, page 547). In his letter requesting the opinion the prosecuting attorney stated *inter alia*:

"Each township has been demanding that all its indigent and pauper deceased be buried at the expense of the county. * * *

It does not appear to me that Section 3495 is entitled to the broad construction contained in the letter sent out by Mr. Pettay, at the suggestion of said examiner. I am more inclined to the view that said section is intended to cover only those cases of persons found dead and whose bodies are unclaimed for interment, and that said section does not mean that all the indigents and paupers which were formerly buried at the expense of the township must now be buried at the expense of the county."

The applicability of the section under consideration to indigent poor dying in the county as distinguished from a transient person who might be "found dead" was not discussed in the opinion, which after referring to section 3495, reads as follows:

"While I am not clear as to the exact question you desire answered, I assume that your question is:

Whether the county commissioners, on being duly notified, must bury the body of a person who in life had a legal settlement in the county and who was not an inmate of a penal, etc., institution, or only a person who in life did not have a legal settlement in the state or is unknown.

To my mind, the statute is clear that it is the duty of the county commissioners, they being the successors of the county infirmary directors, to cause to be buried, not only the body of a person who has a legal settlement in the county, but also the body of a person who did not have a legal settlement in the state or who is unknown."

The two opinions last above referred to were approved and followed in an opinion of this department rendered under date of March 2, 1917, Opinions, Attorney General, 1917, Vol. I, 169.

Section 3495 was amended on April 17, 1919, (108 v. Pt. I, 274) to read as it now reads. Subsequent to this amendment under date of April 22, 1921, my predecessor in office in an opinion reported in Opinions of the Attorney General, 1921, Vol. I, 332, held as follows:

"Where an indigent person is a legal resident of the county, the expenses of the burial of such person should be paid by the township in which he had a legal residence at the time of his death; but if such person was also a legal

resident of a municipal corporation, the expenses of his burial should be paid by the municipal corporation and not by the township wherein such corporation is situate."

It will be observed that in none of the opinions above quoted was the question here involved given consideration. At the time the opinions rendered prior to the amendment of Section 3495 (108 v. Pt. I, 274) were written, upon the giving of the notice prescribed in the section as it then read, it was the duty of the proper officers of the county to bury the body of an indigent dead person at the expense of the county whether or not such person was a county charge.

The opinion of April 22, 1921, supra, was rendered after Section 3495, supra, was amended to read as it now reads. That opinion, however, was concerned with the child of an indigent parent, neither of whom was a county charge, and the duty of the county with respect to paying the burial expenses of county charges was not considered.

That a county may be responsible for and, in a proper case, pay the burial expense of one who is indigent, was held in an opinion of this department rendered to your bureau under date of January 28, 1922. Opinions, Attorney General, 1922, 60.

The first syllabus of this opinion reads:

"The county commissioners may contract with the managing officers of a municipal workhouse wherein they agree to provide the burial expense of an inmate who dies therein whose body has not been claimed by relatives or delivered for dissecting purposes under the provisions of Section 9984, General Code."

In the opinion the following language was used:

"Section 3495 G. C., which is a part of the poor laws, provides for the burial of the dead body of a person found in a township or municipal corporation when it is not claimed by any person for private interment or delivered for the purpose of dissection under the provisions of Section 9984 G. C. However, said section 3495 expressly excepts from the operation thereof persons who were inmates of 'a penal, reformatory, benevolent or charitable institution in this state.' The following section provides for the expense of the burial of paupers who die in 'benevolent' institutions. These sections do not provide, and no other section has been found which does expressly provide for the burial of a person who dies in a penal or reformatory institution when the body of such person is not claimed by friends or for the purpose of dissection. However, it cannot be claimed that the legislature has failed to make a provision for the burial of a person who dies in such an institution because such authority is not expressly provided.

* * * * *

It is believed that it is within the power of said commissioners to agree with the workhouse authorities that in event an inmate dies and his body is not claimed by friends or by those authorized to receive it for dissecting purposes, the county will bear the expense of such burial. However, in those cases in which such a contract is not entered into it would seem that it would become the duty of the management of the workhouse to bear the expense of such a burial. The workhouse authorities are charged with the maintenance of the workhouse and are required to provide food and clothing, etc., for the inmates. In the case of the death of an inmate whose body is not claimed it would seem clear that the burial of such body is necessarily an incidental expense of said institution.

If the view herein taken is not correct, then the conclusion must be that there is no authority to bury such a body unless it be under the provisions of the health law. Such a view is clearly untenable."

That the words "penal, reformatory, benevolent, or charitable institution" as used in Section 3495, *supra*, include only institutions supported in whole or in part by the state as held in the opinion of June 11, 1912, is not free from doubt. In any event, this construction was not followed in the opinion of January 28, 1922, last above quoted where it was assumed that a city workhouse was included in the exception as a "penal" or "reformatory" institution. Nor is it entirely clear that this section applies to deceased persons or to cases other than those where "the dead body of a person is found in a township or municipal corporation"; that is, to a case where an indigent person dies in his home as distinguished from a case where the remains of such a person are found some place in the township or municipal corporation. However, the section has been held to apply to all cases where an indigent person other than those expressly excepted dies in a township or municipality and this holding having been uniformly applied and followed, I see no reason to question its soundness.

Even if it be conceded, however, that the phrase in Section 3495, *supra*, "and such person was not an inmate of a *penal, reformatory, benevolent or charitable institution, in this state*" relates only to a state institution, and therefore does not include an inmate of a County Home or a County or District Tuberculosis Hospital within the exception to the operation of the statute, it is my opinion that the section in question does not relate to the inmates of County Homes, County Hospitals, District Hospitals or to other county charges.

That there is a well settled line of demarcation between that class of indigent poor for whom it is the duty of the township or municipal corporation to care for on the one hand and those for whom it is the duty of the county to provide is well settled. This question has been before this department a number of times and was elaborately discussed in an opinion of this office rendered under date of December 16, 1920, and reported in Opinions, Attorney General, 1920, 1177. Suffice it to say it is the duty of townships and cities to furnish relief to all residents of the state, county, township or city under Sections 3477 and 3479, General Code, who need *temporary* relief and to all such residents who need *partial* relief, while it is the duty of the county to furnish relief to persons who do not have the residence requirements prescribed by Sections 3477 and 3479, *supra*, to persons who are permanently disabled, to paupers, and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the County Home or under county control.

As to these last named classes of persons, an examination of the various sections of the General Code relating to the indigent poor convinces me that it was the intention of the legislature to relieve townships and municipalities of any obligation to extend relief to or support persons coming within the four classes above described for whom it is the duty of the county to provide. To relieve the townships and municipalities of caring for these classes of poor when alive and then to require the townships and municipalities to pay the burial expenses of such persons would bring about a situation somewhat absurd, and if Section 3495, *supra*, be held to include inmates of the county infirmary, a construction creating this very situation would be adopted.

Moreover, it will be observed that Section 3495, *supra*, requires the body to be buried at the expense of the township or corporation in which the indigent person had a legal residence at the time of his death. All or a large part of the inmates of a County Home may and often do have a legal residence in the township in which the County Home is situated. Certainly it was not intended that the township in which a County Home was located would be required to bury all the inmates of the home. And it is equally certain that it cannot be said that the legislature has not made provision for the burial of county charges because such authority is not expressly con-

tained in any section of the Code. Such authority is plainly inferable from the various sections relating to the County Home, including Section 2544, supra, which directs the superintendent of the home to "receive and provide" for indigent poor in proper cases. For these reasons it is my opinion that it is the duty of the proper county officers to bury at county expense the body of an indigent person who had become a county charge.

I come now to consider the question as to whether or not the fact that in the instant case the death occurred in a District Tuberculosis Hospital in any wise affects the question.

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 other inmates. Provision was therefore made for what in reality is a County Home for the care of a particular class of unfortunates, the real difference being that those admitted to the hospital are doubly afflicted. I see no reason whatever in so far as the burial expenses of county charges are concerned why a distinction should be made between those charges cared for in a County Tuberculosis Hospital or a District Tuberculosis Hospital or the County Home.

For the foregoing reasons it is my opinion that it is the duty of the board of county commissioners to pay the burial expenses of county charges and that where an indigent person, who had been supported in whole or in part by a city, was committed by the proper county officers to a District Tuberculosis Hospital where such person subsequently died, it is the duty of the county commissioners of the proper county to pay the burial expense of such person.

Respectfully,
EDWARD C. TURNER,
Attorney General.

563.

DISAPPROVAL, ABSTRACT OF TITLE TO GUILFORD LAKE PARK LAND,
HANOVER TOWNSHIP, COLUMBIANA COUNTY.

COLUMBUS, OHIO, June 2, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—An examination of the abstract of title pertaining to Tract No. 4, Guilford Lake Park, located in Columbiana County, Ohio, discloses the following:

This tract, which with others the state of Ohio through your department proposes to purchase, is not described in the abstract, but is described in a memorandum prepared by Mr. Booton of your department, as being a part of the following premises owned by William R. Patterson.

"Situated in the township of Hanover, county of Columbiana and state of Ohio, being a part of the southeast and southwest quarter of section 2, township 15, range 4, beginning at the southwest corner of said section; thence north 14 chains and 43 links to the section line and to the southwest corner of land formerly owned by Abraham Gardner; thence north 61.25° east 13 chains and 95 links to a corner; thence north 21° east 5 chains to a corner; thence south 86° east 24 chains and 50 links to a corner; thence north 5 chains