the 30-day period. It is only when the 30-day period has elapsed that the number of names upon the remonstrance is definitely fixed. The remonstrance must be placed in the hands of the county board of education within thirty days from the time of creation of the new school district by the county board, but the remonstrance cannot be considered as filed until the 30-day period has elapsed. Names could no doubt be added to the remonstrance within that time by qualified electors, and names could also be cancelled upon the remonstrance within that time, if such cancellations were made by the original signers."

There is no doubt in my mind, that the persons who had withdrawn their names from the remonstrance in this case, must have signed and filed another remonstrance, and, I am of the opinion that the effect of the communication made to the board under date of May 17, 1933, as stated in your letter, was to restore the names of the signers of this communication to the original remonstrance.

Respectfully,
JOHN W. BRICKER,
Attorney General.

985.

COUNTY CHARGES—COUNTY'S DUTY TO PROVIDE POOR RELIEF AND PAY BURIAL EXPENSES—DEFINITION OF COUNTY CHARGE—COUNTY RELIEF WORKER UNAUTHORIZED TO CONFER STATUS.

SYLLABUS:

1. *The county has the duty to provide poor relief and to pay burial expenses of all persons who are county charges within the meaning of section* 3476 *of the General Code.*

2. *Persons entitled to be received as inmates in the County Home shall become county charges only in the manner provided by section* 2544, *General Code.*

3. *A county relief worker is without authority to confer upon persons the status of county charges whether or not the relief sought by such persons is admission to the County Home.*

COLUMBUS, OHIO, June 21, 1933.

HON. RAY B. WATTERS, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—I have your request for my opinion which reads as follows:

"This office has been requested to ask the Attorney General for an opinion covering the following statement of facts:

A man, who was a resident of the City of Akron, was found to be permanently disabled, and was sent to a local hospital by a Summit County relief worker for treatment, where he died two days later. It is conceded by the City and County authorities that under Section 3495 G. C. he must be buried at public expense.

Question: Is the City or County liable for the burial expense?"

Section 3495 of the General Code, in so far as it applies to your question, reads as follows:

> "When the dead body of a person is found in a township or municipal corporation, and such person was not an inmate of a * * * benevolent or charitable institution, in this state * * * (such body) 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 the 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; * * *

Section 3496, General Code, provides for payment of burial expenses of a pauper dying in a benevolent institution by the county from which he was sent to such institution.

It has in the past been contended that the institutions mentioned in the exception to section 3495 are state institutions only and inmates of county homes and county hospitals must be buried by the township or corporation according to the provisions of that section.

In a former opinion of this office, reported in Opinions of the Attorney General for 1927, volume II, page 938, at 945, it was held that section 3495 has no application to county charges, and regardless of the interpretation of the exception to that section, the expense of burying such persons must fall upon the county. Therefore, the question does not arise whether or not the indigent deceased was actually an inmate of a county home or similar charitable institution. If he were a charge of the county, it must pay for his burial.

In determining whether or not the deceased in question was a county charge, section 3476, General Code, is material. After providing for temporary or partial relief by townships and cities, that section reads:

> "Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they can not be satisfactorily cared for except at the county infirmary or under county control."

Except where the question of residence is present, the important line of demarcation between the class of indigent poor to be cared for by the township or municipal corporation, on the one hand, and the class to be provided for by the county, on the other, is the period of time during which relief is necessary and the amount of relief required. Temporary and partial relief must come from the township or municipality and relief to those permanently disabled and to paupers must be given by the county. This question was thoroughly discussed in an opinion of this office, reported in Opinions of the Attorney General for 1920, volume II, page 1177.

Your question states that the man referred to "was found to be permanently disabled." However, according to additional information furnished by you at my request, this finding was not made either by the Superintendent of the Summit County Home, or by the County Commissioners. It was made by a regularly employed county relief worker who "was operating under the authority of the Board of County Commissioners and the Superintendent of the County Home." This relief worker was the only person having to do with the administration of the poor laws in the county who was at all familiar with the case.

Section 2544 of the General Code reads:

"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."

In an opinion of this office, reported in Opinions of the Attorney General for 1918, volume I, page 54, it was held as appears from the first three branches of the syllabus:

"1. 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 G. C.

2. The course mapped out in section 2544 G. C. is the only one by virtue of which a person may be found by the superintendent of the infirmary qualified to become a county charge.

3. Primarily the duty to provide for the indigent poor rests with the trustees of each township and the proper officer of each municipal corporation, and this condition continues until the indigent poor becomes a county charge under the provisions of section 2544 G. C."

The facts stated by you show that the Superintendent of the County Home did not proceed to "account such person as a county charge" after the proper officers of the corporation upon inquiry were of the opinion that the person was entitled to admission to the county home, and transmit a statement of the facts to such superintendent. This is the procedure provided in section 2544.

Some doubt is cast upon the validity as applied to every case of the first branch of the syllabus of the 1918 opinion, supra, by the subsequent amendment of section 2544 (108 O. L. Pt. 1, 266). The prior section (102 O. L. 433) provided that a person declared to be a county charge, under its procedure, should be sent to the County Home or "otherwise given relief." Under the present section, a person declared to be a county charge *must* be sent to the Home. Section 3476 still provides for county relief for those who cannot satisfactorily be cared for (1) except at the County Infirmary; or (2) under county control. Under the present law, there appears to be no express statutory procedure for finding a person of the latter class to be a county charge.

If the deceased could not be cared for satisfactorily except in the County Home, the amendment to section 2544 appears immaterial, and under the 1918 opinion, the procedure provided by that section was mandatory. It may be that the illness which prompted the relief worker to send the person in question to the hospital was of an acute nature and not connected with his permanent disability. If the disability which rendered the person a proper subject of public

relief was such that he could not have been permanently cared for in a satisfactory manner except at the County Home, he never in fact became a charge of Summit County because the procedure prescribed by section 2544 was not followed.

That the county may give relief otherwise than in the County Home in a proper case, is clear. Opinions of the Attorney General for 1931, volume II, page 1214. In another opinion of this office which will be found in Opinions of the Attorney General for 1927, volume II, page 938, it was held that burial expenses of an indigent person committed to a district tuberculosis hospital, not by the Superintendent of the County Home, but by the Board of County Commissioners, should be borne by the county. This opinion was rendered after the amendment of section 2544, although this fact was not mentioned. Recognizing that the Superintendent of the County Home did not "account" such person as a county charge, the then Attorney General said:

> "* * * 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.*"

In the question presented by you, the only person in authority who treated the man as a county charge was the county relief worker.

In the 1927 opinion, supra, the fact was stressed that the person seeking relief had tuberculosis, which made him ineligible for admission to the County Home under section 3139, General Code. Thus it would have been vain to follow the procedure prescribed by section 2544, since the only possible result of following that procedure is admission to the County Home. While it does not appear from your inquiry, the fact may be that the person in question was not in a condition to become an inmate of a county home. If that is the case, a commitment by the County Commissioners to another institution would have rendered the county liable for burial expenses if the person were a proper object for county relief and were in fact treated as a county charge by all concerned. This follows from the 1927 opinion.

Even though the person in question was not a proper object for care in a county home, in my opinion, based upon the facts stated, he never became a county charge. In a large county, particularly during the periods of economic stress, no doubt relief workers must be depended upon to make investigations as to who are proper county charges. However, I find nothing in the 1927 opinion of this office or in the other authorities to support the proposition that such workers may determine what persons are proper county charges.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that:

1. The county has the duty to provide poor relief and to pay burial expenses of all persons who are county charges within the meaning of section 3476 of the General Code.

2. Persons entitled to be received as inmates in the County Home shall become county charges only in the manner provided by section 2544, General Code.

3. A county relief worker is without authority to confer upon persons the status of county charges whether or not the relief sought by such persons is admission to the County Home.

Respectfully,
JOHN W. BRICKER,
Attorney General.