

1599.

POOR RELIEF—MARION TOWNSHIP IN ALLEN COUNTY NOT RESPONSIBLE FOR CARE OF INDIGENT POOR HAVING LEGAL SETTLEMENT IN PART OF DELPHOS LOCATED WITHIN THAT TOWNSHIP—TAX LEVY FOR POOR RELIEF LEVIED ON ALL TAXABLE PROPERTY WITHIN TOWNSHIP—WHO ELIGIBLE TO VOTE FOR TOWNSHIP OFFICIALS.

SYLLABUS:

1. Under Sections 3476 et seq., General Code, the trustees of Marion Township are not responsible for the care of the indigent poor having a legal settlement in that part of the city of Delphos which is within Marion Township, Allen County.

2. Under Section 5625-5, General Code, tax levies made by Marion Township for the relief of the poor should be included in the township general levy for current expenses upon all taxable property lying within the township including that part of the city of Delphos which is within such township.

3. Electors living in that part of the city of Delphos which is located in Marion Township, Allen County, have a right to vote for the Marion Township offices such as the offices of township trustees, clerk, treasurer, justices of the peace and constables, and all other such offices in which the city electors have some or in all respects a like interest with electors of the townships outside the city limits.

COLUMBUS, OHIO, September 22, 1933.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Allen County, Lima, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“The City of Delphos is located in Allen County and Van Wert County, the territory and population being divided about equally between the two counties. Its population is about fifty-five hundred. The part of the city located in Allen County has a population of approximately three thousand and is within the territorial limits of Marion Township.

1. Are the trustees of Marion Township responsible for the care of indigent poor living in the part of said city which is in Allen County?

2. Do such trustees have the authority to make a levy of taxes for township purposes throughout such township and the portion of said city lying within Allen County?

3. Do the electors living in the part of said city which is located in Allen County have a right to vote at township elections for township officers of such township?

I shall appreciate your opinion on the above questions.”

Delphos, by the last federal census, has a population of five thousand six hundred seventy-two people. Article 18, Section 1, of the Ohio Constitution reads:

“Municipal corporations are hereby classified into cities and villages. All such corporations having a population of five thousand or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.”

With regard to such method, Section 3497, General Code, provides:

"Municipal corporations, which, *at the last federal census*, had a population of five thousand or more, shall be cities. All other municipal corporations shall be villages. Cities which, at any future federal census, have a population of less than five thousand shall become villages. Villages which, at any future federal census, have a population of five thousand or more, shall become cities." (Italics the writer's.)

Section 3498, General Code, provides inter alia, for a proclamation by the Secretary of State of the names of any municipal corporation having a population of five thousand or more and for a copy of such to be sent to the mayor of each such municipal corporation. Thirty days after the issuance of such proclamation such municipal corporation becomes a city.

Since Delphos is a city and not a village, it is necessary to examine the provisions of Section 3476, General Code, which provide:

"Subject to the conditions, provisions, and limitations herein, the trustees of each township or the *proper officers of each city* therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in a condition requiring it. It is the intent of this act (G. C. Sec. 3476 et seq.) that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief *who are residents of the state, township or city as described in Sections 3477 and 3479. * * * When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such city.*" (Italics the writer's.)

Sections 3477 and 3479, General Code, referred to in the above section define "legal settlement."

A former opinion of this office, being Opinion No. 4380 rendered on June 3, 1932, held that Section 3476, General Code, supra, meant to differentiate between villages and cities and consequently villages could not afford poor relief, it being the duty of the township in which such village was located to afford poor relief to indigents who had a legal settlement therein. However, the proper city officials of a city situated in a township should afford relief to indigents who have a legal settlement within the boundaries of a city and not the township trustees, by the express provisions of Section 3476, General Code, supra.

In none of the recent poor relief legislation am I able to find any provisions for the taking care of indigents having a legal settlement within a city by the trustees of a township in which such city is located.

Consequently, I am of the opinion that the township trustees are not responsible for the care of the indigent poor having a legal settlement within the city of Delphos.

In answer to your second question, inasmuch as under Section 5625-5, General Code, the Marion Township trustees are required to include in their levy of general taxes for current expenses the amount necessary for the relief of the poor, I assume you wish to know whether or not such levy should be made upon all the real and personal property in the townships, including that part of the city of Delphos located within the boundaries of Marion Township.

I call your attention to the case of *State ex rel. vs. Ward*, 17 O. S., 543, in which case the opinion states at page 546:

"Neither as a matter of theory or practice, is there any necessary difficulty in the existence and harmonious working of a civil township organization, and, at the same time, of a city organization within the limits of such township, or within the limits of more than one township; and the statutes nowhere provide, either expressly or by just implication, that, on the organization of a city within the limits of a township or townships, the territory within the city limits shall cease to be a part of the township or townships from which the same was taken. But there are clear indications of a contrary legislative intent."

Although, as pointed out supra, Section 3476 of the General Code, requires each city to provide for its own poor, and the township to provide only for the poor who do not have a legal settlement within the boundaries of the city, it was held in a former opinion of this office, Opinions of the Attorney General 1927, volume III, page 1824, as disclosed by the first branch of the syllabus:

"By the provisions of Section 5 of House Bill No. 8 (Sec. 5625-5, G. C.), passed by the 87th General Assembly, tax levies made by townships for the relief of the poor should be included in the township's general levy for current expenses, upon all the taxable property lying within the township including that within municipalities which are within the township." (Parenthesis the writer's.)

Sections 5625-4 and 5625-5, General Code, are the only general authority by which township trustees may levy taxes for the relief of the poor, and there is no provision authorizing a special levy for this purpose. The plain terms of Section 5625-5, General Code, are such as to admit of no construction other than that the taxes for the relief of the poor in a township shall be included in its general levy for current expenses which becoming blended as it does with the levy for all current expenses must necessarily be levied on all the taxable property of the township, including that within the territorial limits of a municipality, or a part of a municipality, which lies within a township as well as the taxable property outside the limits of such municipality.

Your third question is whether or not the electors living in that part of the city which is located in Marion Township, Allen County, have a right to vote at township elections for township officers of such township. Your question is not specific as to which township officers you have in mind, so I cannot answer your question categorically. However, I call your attention to the case of *State ex rel, vs. Ward*, cited supra, the syllabus of such case read as follows:

"1. On the organization of a city of second class divided into wards, the boundaries of which are not coterminous of any township, the territory within such city does not cease to be a part of the township or townships within the limits of which it is situate.

2. Under the statutes, cities of the second class are provided with assessors and supervisors of highways of their own; hence, by implication, electors of such city are not entitled to vote for those officers as officers of the township.

3. But in the offices of township trustees, clerk, treasurer, justices of the peace and constables, electors and tax-payers of the city have in

some or in all respects a like interest with electors of the township outside the city limits, and are entitled to a vote in choice of them. * * * ”

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Specifically answering your questions, I am of the opinion that:

1. Under Sections 3476 et seq., General Code, the trustees of Marion Township are not responsible for the care of the indigent poor having a legal settlement in that part of the city of Delphos which is within Marion Township, Allen County.

2. Under Section 5625-5, General Code, tax levies made by Marion Township for the relief of the poor should be included in the township general levy for current expenses upon all taxable property lying within the township including that part of the city of Delphos which is within such township.

3. Electors living in that part of the city of Delphos which is located in Marion Township, Allen County, have the right to vote for the Marion Township offices such as the offices of township trustees, clerk, treasurer, justices of the peace and constables, and all other such offices in which the city electors have some or in all respects a like interest with electors of the townships outside the city limits.

Respectfully,

JOHN W. BRICKER,

Attorney General.

1600.

COUNTY FAIR—GAMES OF CHANCE PROHIBITED THEREAT—
ENFORCEMENT OF LAWS RELATING THERETO DUTY OF SHERIFF,
PROSECUTING ATTORNEY AND DIRECTOR OF AGRICULTURE.

SYLLABUS:

1. *The County Agricultural Societies or Independent Agricultural Societies do not have the right to permit paddle wheels, pool selling, corn games and other games of chance to be operated during the time they are conducting their fair.*

2. *Even though a County Agricultural Society does not ask for state aid under Section 9880, General Code, they are not permitted to allow the above mentioned games to operate on the fair grounds during the time they are conducting their fair.*

3. *Under Section 9884-9, General Code, it is the duty of the Director of Agriculture to enforce all the provisions of the act (G. C. Sec. 9884-5 to 9884-11). It is also the duty of the Sheriff and the Prosecuting Attorney to enforce Section 9884-11, General Code.*

4. *In the event the County Agricultural Society leases their fair grounds owned by the County to an individual, firm or corporation for the purpose of conducting a street fair or carnival, these laws (G. C. Sec. 9884-5 to 9884-11, inclusive) do not apply to the lessee, but the provisions of Sections 13062 et seq. of the Criminal Code, with regard to gambling, should be enforced by the Sheriff and the Prosecuting Attorney, at such fairs and carnivals.*