

49

CHARGES FOR CARE AND TREATMENT, OHIO TUBERCULOSIS HOSPITAL—PAID BY RESIDENT WHEN NOT REQUIRED BY LAW—CLAIM AGAINST THE COUNTY, §307.55 R.C.—RIGHT OF APPEAL—§307.56 R.C.

SYLLABUS:

1. Where a claim is made for the refund of moneys paid to the county with respect to care and treatment of a resident of the county at the Ohio tuberculosis hospital, in circumstances where the county was without legal authority to demand and receive such funds, the provisions of Section 307.55, Revised Code, authorize the board of county commissioners to allow such claim against the county.

2. Section 307.56, Revised Code, provides an appeal from an order by the board of county commissioners disallowing a claim against the county under the provisions of Section 307.55, Revised Code.

Columbus, Ohio, January 26, 1959

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

I have your request for my opinion in which you state that a resident of your county made application to the board of county commissioners for admission to the Ohio tuberculosis hospital pursuant to Section 3701.60, *et seq.*, Revised Code, in 1956. This application was approved unconditionally by the board and the resident received care and treatment for a period of eighty-eight days. At some date following the unconditional approval of the application for admission and after some investigation by

the county, it was determined that the resident or his family was able to pay for the care and treatment which had been charged to the county. After some consideration of the request for reimbursement by both parties the wife of the resident and the board agreed upon the amount of \$638.00 as reimbursement to the county which has been paid.

On August 22, 1957, my immediate predecessor issued an opinion, being Opinion No. 960, Opinions of the Attorney General for 1957, p. 401, in which it was held, the first paragraph of the syllabus reading:

“The board of county commissioners has no authority to require reimbursement for charges of care and treatment administered at the Ohio tuberculosis hospital after the application for admission has been approved and a resolution passed accepting the responsibility on the part of the county for the charges for care and treatment administered as provided in Section 3701.64, Revised Code.”

Upon the basis of the foregoing you submit the following inquiry:

“Where the application of a patient is approved for admission to the Ohio Tuberculosis Hospital by the County Commissioners, and said County Commissioners thereafter request and receive reimbursement for said care and treatment, does the applicant later have a right to demand and receive a refund from the County for the full amount of money paid in?”

As stated in Opinion No. 960, *supra*, the charges for *care and treatment* as opposed to charges for *diagnostic, medical, follow-up, rehabilitation and other medical services* are now treated separately by Chapter 3701., Revised Code, as a result of the amendments and new enactments effective September 20, 1955. From the facts stated in your request charges for *care and treatment* are the only charges involved and I shall limit my consideration accordingly.

Once the board of county commissioners has unconditionally approved an application for admission, as in the case you present and the situation presented in Opinion No. 960, *supra*, the board is without authority to thereafter require reimbursement for charges made to the county by the responsible institutional authority with respect to the resident whose application for admission has been so approved. As was stated in Opinion No. 960, *supra*:

“It is well established that boards of county commissioners have only such powers as are expressly conferred or necessarily

implied from express powers. The board of county commissioners must approve applications for care and treatment and bear the charge for such services subject to the deduction of one dollar and twenty-five cents per patient per day as provided in Sections 3701.64 and 3701.83, Revised Code. The question of reimbursement to the county is mentioned only indirectly in Section 3701.65, Revised Code; even here reimbursement in full is the condition upon which the board of county commissioners are billed for care and treatment for a patient found not to have tuberculosis.”

The county now finds itself in possession of funds to which it had no legal right to receive and the person paying the funds has requested its return. In this relation I invite your attention to Section 307.55, Revised Code:

“No claims against the county shall be paid otherwise than upon the allowance of the board of county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the auditor upon the proper certificate of the person or tribunal allowing the claim.

“No public money shall be disbursed by the board or any of its members, but shall be disbursed by the county treasurer, upon the warrant of the auditor specifying the name of the party entitled to such money, on what account, and upon whose allowance, if not fixed by law.”

Section 307.56, Revised Code, provides :

“A person aggrieved by the decision of the board of county commissioners in any case, may appeal within fifteen days to the court of common pleas, notifying the board of such appeal at least ten days before the time of trial. The notice shall be in writing, and delivered personally to the board, or left with the county auditor. At its next session, the court shall hear and determine the appeal, which decision shall be final.”

I conclude that the request for the return of the amount paid to the county as reimbursement for the charges for care and treatment of a patient at the Ohio tuberculosis hospital would come within the provisions of the foregoing sections and that such a request for refund can be granted and allowed by the board of county commissioners as a claim against the county. In the event a claim is disallowed, Section 307.56, *supra*, provides a remedy by appeal. I express no opinion as to the application of Chapter 2506., Revised Code, as it may relate to an appeal of this nature.

In this relation I invite your attention to Opinion No. 5951, Opinions of the Attorney General for 1955, p. 550, the first and second paragraph of the syllabus providing :

“1. The salary provided for justices of the peace in Section 1907.47, Revised Code, should be paid from the county treasury as are other claims against the county.

“2. Claims for such salary may be allowed by the county commissioners as provided in Section 307.55, Revised Code, at such intervals as the commissioners in their discretion may determine.”

Although the section relating to the fixing of salary for justices of the peace involved therein has been declared unconstitutional, the reasoning therein is quite sound. The burden of the salary of the justice of the peace was placed upon the county but no sum was fixed; the sum was to be set by the board of county commissioners. A financial obligation was created against the county and no procedure provided for its payment. Section 307.55, *supra*, provides such a procedure.

In Opinion No. 1146, Opinions of the Attorney General for 1920, p. 428, it was held, reading the syllabus :

“County commissioners may after the issue and sale of bonds abandon a road improvement project when it is found that the fund provided through such bonds for the doing of the work in accordance with original estimates is insufficient.

“In the event county commissioners discontinue such road improvement project, persons who have paid installments of an assessment made in connection with such improvement are to be reimbursed through allowance made and paid in accordance with sections 2460 and 2572 G. C.”

In the situation there presented assessments were made for a proposed improvement; upon abandonment of the project, those payments of assessments for the project were required to be refunded since they represented funds to which the public treasury was not entitled.

It is beyond the scope of my office of course to decide whether the claimant herein is entitled to receive the requested refund since the authority to allow such claims has been given to the board of county commissioners by Section 307.55, *supra*, with a right of appeal to the court of common pleas as provided in Section 307.56, *supra*. I do hold, however, that such a claim is one which may lawfully be allowed by the board acting pursuant to Section 307.55, *supra*.

Therefore, it is my opinion that :

1. Where a claim is made for the refund of moneys paid to the county with respect to care and treatment of a resident of the county at the Ohio tuberculosis hospital, in circumstances where the county was without legal authority to demand and receive such funds, the provisions of Section 307.55, Revised Code, authorize the board of county commissioners to allow such claim against the county.

2. Section 307.56, Revised Code, provides an appeal from an order by the board of county commissioners disallowing a claim against the county under the provisions of Section 307.55, Revised Code.

Respectfully,

MARK McELROY

Attorney General