

See also *Estes vs. State Highway Commission*, 235 Ky. 86, 29 S. W., 2d, 583; *Connor vs. Blockwood State Highway Commissioner*, 176 Ark. 139, 2 S. W., 2d, 44, 47; 72 A. L. R., 687 note.

With respect to the right of the state to obligate itself as proposed, in connection with federal conservation work on privately owned land when such work becomes necessary in the public interest involving protection against fire, insects and disease and flood control measures to arrest gully erosion and flash runoff at headwaters of mountain streams, such projects are universally recognized as being in the public interest and moneys expended therefor as being expended for a public purpose even though the actual work is performed on privately owned property. I am of the opinion that the proposal submitted with respect to these matters may lawfully be incorporated in any contract which the state may make looking to the furtherance of federal emergency conservation work projects within the state.

In conclusion, it may be stated as my opinion that, when proper action is taken by the legislature of Ohio authorizing the same, a contract may lawfully be entered into with the federal government in connection with federal emergency conservation work projects within the state of Ohio, as proposed.

Respectfully,

JOHN W. BRICKER,
Attorney General.

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JANITOR—COUNTY COURT HOUSE—APPOINTMENT MADE AND COMPENSATION FIXED BY COUNTY COMMISSIONERS—POOR RELIEF ADMINISTERED WHERE INDIGENT RESIDES AND HAS LEGAL SETTLEMENT—PUBLIC AID IN HOMES—SUPERINTENDENT OF COUNTY HOME UNAUTHORIZED TO AFFORD AID TO PERSONS IN HOMES RESIDING IN ANOTHER COUNTY.

SYLLABUS:

1. *The janitor of a county court house should be appointed by the county commissioners of the county and his salary or compensation fixed by such commissioners. Appointments should be made from a list prepared by the proper civil service commission if such a list exists.*

2. *Indigent persons in need of public relief other than medical or surgical, or the services of a hospital, who reside in a county other than the one in which they have a legal settlement, should be removed to the county of their legal settlement as provided by Sections 3482 and 3484 of the General Code of Ohio if their health permits, and such removal is practicable. Public aid may be extended to them in their homes by the township trustees of the township of their legal settlement or the proper officials of the city of their legal settlement, by authority of Section 3476, General Code.*

3. *No authority exists for the Superintendent of a county home to afford public aid to persons in their homes, when those persons reside in another county, even though they have a legal settlement in the county wherein the county home is located.*

COLUMBUS, OHIO, May 10, 1933.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“Will you please advise me whether or not the position of janitor of a county court house falls under the civil service laws of Ohio? Must the applicant take an examination and be certified by the civil service commission to the county commissioners before he can be hired by them?

Section 2402 of the General Code of Ohio provides that the county commissioners can appoint janitors for the court house. Does that section mean they can only appoint assistants to the janitor who has taken a civil service examination? Also please advise me how the salary of the janitor is determined and whether or not the county commissioners can arbitrarily fix his compensation. May the commissioners accept the lowest bids by applicants for the job and employ such persons?

Will you please advise me also on this point. We have several families whose legal settlement is in this county but who reside in another county. They have been gone from our county more than six months and the County Superintendent of the Infirmary has rendered help to these families and presented the bills to the county commissioners. Will you please advise me whether or not the county commissioners should allow and pay these bills or whether they should send them to the township in which such persons last resided in the county for payment by such township trustees, or whether the county commissioners should pay the bills and deduct such payments from the money which is to be distributed to the townships where these people last resided and have their legal settlement?”

Section 2402 of the General Code of Ohio, provides, as you state, that the county commissioners may appoint janitors for the court house. This statute was enacted many years before provision was made for civil service. The statute is still in force, however, so far as the actual appointment is concerned. The appointment, however, must be made in accordance with the law relating to the civil service.

Section 486-1, General Code, provides in part:

“The term ‘civil service’ includes all offices and positions of trust or employment in the service of the state and the counties, cities and city school districts thereof.

* * * * *

The term ‘classified service’ signifies the competitive classified civil service of the state, the several counties, cities and city school districts thereof.”

Section 486-2, General Code, provides as follows:

“On and after the taking effect of this act (G. C. §§ 486-1 to 486-31), appointments to and promotions in the civil service of the state, the

several counties, cities and city school districts thereof, shall be made only according to merit and fitness to be ascertained as far as practicable by competitive examination; and thereafter no person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted or reduced as an officer or employe in the civil service of the state, the several counties, cities and city school districts thereof, in any manner or by any means other than those prescribed in this act or by the rules of the state or municipal civil service commissions within their respective jurisdictions as herein provided."

Section 486-8, General Code, divides the civil service of the state and the several counties, cities and city school districts thereof into the unclassified and the classified service. Subdivision (a) of this statute lists the positions in the public service which are to be regarded as being in the unclassified civil service. The position of court house janitor is not included in this list. Subdivision (b) of this statute defines the classified service as follows:

"The classified service shall comprise all persons in the employ of the state, the several counties, cities and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class."

There follow definitions of the "competitive class" and of the "unskilled labor class." In my opinion, court house janitors would be included in the classified "competitive class" of the civil service and their appointment, as well as the appointment of their assistants unless those assistants would come within the unskilled labor class, should be made from lists prepared by the Civil Service Commission, in the manner provided by the statutes relating thereto.

There is no provision of law requiring or authorizing boards of county commissioners to advertise for bids or to take bids from applicants for the position of janitor. Appointment of such persons should be made in accordance with the civil service laws and the salary fixed by the commissioners as provided by Section 2413 of the General Code. It will be observed that Section 2410 of the General Code, also authorizes county commissioners to employ janitors for the court house and other county buildings, and Section 2413, General Code, directs that the commissioners shall fix the salaries of those persons.

With respect to your second question, it will be noted from the provisions of Section 3476, General Code, that it is clearly the intent of the law that all temporary or partial relief, sometimes called outside relief, to indigent persons, is to be extended by the township or city in which such persons have a legal settlement. This implies that the cost of such relief should be borne by the township or city, as the case may be. Said section provides inter alia:

"It is the intent of this act (G. C. §§ 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, county and township or city as described in Sections 3477 and 3479."

While the provisions of the statute quoted above, use the word "residents", reference is made to Sections 3477 and 3479, General Code, which define "legal

settlement" in such a way that the term "residents", as so used, may be regarded as being synonymous with "legal settlement."

Sections 3480 et seq. of the General Code, provide the manner of extending such aid and how the expense of it shall be met. Nowhere will be found any provision expressly authorizing a superintendent of an infirmary to extend relief direct to persons in their homes, whether they reside in the county or have a legal settlement in the county and live in another county. This authority may be implied, perhaps, in certain cases, for instance, where persons actually reside in a county and do not have a legal settlement in the state of Ohio, and where persons are permanently disabled and where the aid to be extended is medical or surgical or the services of a hospital, and the persons in need of such aid have a legal settlement in the county but actually reside in another county, and perhaps in some other cases where persons residing in the county need temporary relief only. You do not state in your inquiry the kind of relief that was extended in the instant case, whether it was medical or surgical, or the services of a hospital, or other type of relief.

Where the health of a person whose legal settlement is in a county other than the one where he resides, is such that he cannot be removed to the county of his legal settlement and public aid by way of medical or hospital services is needed by such person, the method of providing it is controlled by Section 3484-2, General Code, which reads, in part as follows:

"When a person requiring medical services or the services of a hospital, in cases other than contagious, has a legal settlement in a county other than the one in which such service is rendered, and is unable to pay the expenses of such service, and such service is rendered by a municipality or township, the municipality, or township rendering such service shall notify in writing the county commissioners of the county of legal settlement that such service is being rendered. * * Thereupon the county of legal settlement shall be liable to the municipality or township rendering such service for the expenses of such service, including hospital service, at the established rate of the municipality or township therefor, and shall pay for the same within thirty days after date of the sworn statement of expenses. * * Nothing herein contained shall prevent the removal or assumption of care of such person by the county of legal settlement, at its expense, but such removal or assumption shall not relieve such county of liability for the expenses theretofore incurred by the municipality or township rendering such service. * * The county of legal settlement is hereby subrogated to all the rights of the municipality or township rendering such service to such person."

By the terms of the foregoing section, where it provides that nothing therein shall prevent the assumption of care of those persons with which the statute deals, by the *county* in which he has a legal settlement, it impliedly authorizes the county to extend such relief direct. If that should be done the Superintendent of the infirmary, as the agent of the county commissioners, would be the logical person to do it. If that is not done and the township or municipality in which the person is located at the time extends the aid, the county of his legal settlement shall pay for it. In that event the county paying is subrogated to the rights of the municipality or township rendering the aid. That is to say,

the county has a valid claim against the township or municipality of legal settlement. I am of the opinion the county would have such a claim if it extended the aid direct. There is no authority, however, for the auditor to deduct such claims from the moneys to be distributed to the township or municipality of legal settlement.

Assuming that the aid of which you speak was extended to families whose health permitted their removal to the county of their legal settlement, that should have been done if the strict letter of the law was to be followed. Sections 3482 and 3484, General Code, provide for such removal, under those circumstances, and set forth the procedure to effect the removal. There are many cases where it is not practical to remove needy persons to the county where they have a legal settlement. One can readily conceive of worthy cases where this should not in justice be done. Said Sections 3482 and 3484, General Code, provide for the removal of such persons to the infirmary or county home of the county of their legal settlement. It would be little short of criminal in my opinion, to remove to a county home a family which, under ordinary circumstances, is self-supporting, but because of temporary illness of the head of the family, or because of conditions as they exist at times like the present, need public aid temporarily, especially if children are involved.

Under such circumstances, temporary relief should be extended to them in their homes and, in my opinion, Section 3476, General Code, justifies such action. The relief should be extended by the township trustees of the township or the proper officers of the city, as the case may be, of their legal settlement. I find no authority for the superintendent of the county home to extend aid under such circumstances, direct.

It seems in the present instance that the relief was extended by the superintendent of the county home direct, and the bills were sent to the county commissioners. There is no authority for the commissioners to pay these bills and have the amount deducted by the auditor from tax settlements with the political subdivision that should bear the expense of the relief.

In my opinion, the bills should be sent to the proper township trustees or city officers, and paid by them.

While the proper procedure was not followed in extending this relief, inasmuch as it was extended by the superintendent of the county home instead of the proper officers of the subdivision of legal settlement of the persons to whom the aid was extended after proper investigation as provided by Section 3781, General Code, now that it has been done by the Superintendent of the county home his acts may be adopted by the township trustees and the bills met by them.

Specifically answering your questions I am of the opinion:

1. The janitor of a county court house should be appointed by the county commissioners of the county and his salary or compensation fixed by such commissioners. Appointments should be made from a list prepared by the proper civil service commission, if such a list exists.

2. The commissioners are without authority to pay the bills in question and have the amount deducted by the auditor from tax settlements made with the political subdivisions which were primarily liable for the public aid which was the origin of the bills. These bills should be sent to the proper political subdivisions and may be paid by them.

Respectfully,

JOHN W. BRICKER,
Attorney General.