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1. HOSPITAL CARE—INDIGENT INJURED IN PERPETRATION OF A FELONY—APPREHENDED BY PEACE OFFICERS—NOT ENTITLED TO HOSPITAL CARE OR ANY OTHER POOR RELIEF WHILE IN CUSTODY UNDER PROVISIONS OF SECTION 3484-2 G. C.—O. A. G. 361, PAGE 420, 1945 OVERRULED.
2. NECESSARY HOSPITAL CARE—POLITICAL SUBDIVISION OF STATE RESPONSIBLE—EITHER CITY OR COUNTY WHICH HAS CUSTODY AND CONTROL OF INDIGENT PERSON—INJURED IN PERPETRATION OF A FELONY—WHILE BEING APPREHENDED BY PEACE OFFICERS.

SYLLABUS:

1. An indigent person who is injured while being apprehended by peace officers in the perpetration of a felony, is not entitled to receive hospital care while in custody under the provisions of Section 3484-2, General Code, or any other poor relief provisions of the General Code. 1945 Opinions of Attorney General, Opinion No. 361, page 420, overruled.

2. The political subdivision of the state, either city or county, which has custody and control of an indigent person, injured while being apprehended by peace officers in the perpetration of a felony, is responsible for necessary hospital care.

Columbus, Ohio, May 7, 1948

Hon. Jack H. Critchfield, Prosecuting Attorney,
Wayne County, Wooster, Ohio

Dear Sir:

I am in receipt of your communication which states:

“This office would appreciate your opinion concerning the following statement of facts. A and B, residents of Akron, Summit County, Ohio, came to Wooster, Wayne County, Ohio, with the intent to hold up Y store. While in the act of perpetrating said robbery, A and B were apprehended by city police, and were wounded while engaged in a gun fight, so as to necessitate hospitalization. Upon recovery, A and B were indicted, convicted and sentenced to penal institutions. Both A and B were indigent.

“Question number one: Is Section 3484-2 of the Ohio General Code, and 1934 A. G. Opinions, No. 2906, applicable to an indigent person whose hospitalization results from the perpetration of a felony?”

“Question number two: Under the aforesaid statement of facts, is Wayne County liable for the payment of hospital services rendered to A and B?”

“Question number three: Is Summit County liable to Wayne County by way of reimbursement for hospital services rendered to such indigent persons?”

Section 3484-2, General Code, provides that in the case of medical services rendered to indigents having a legal settlement in another county in Ohio, the county, municipality or township rendering such services can recover from the county of legal settlement after proper notice has been given.

Opinion No. 2906, Opinions of the Attorney General for 1934, page 1011, deals with the responsibility of townships, counties and cities to provide medical care to indigents who have a legal settlement in another county.

Your attention is directed to Section 3476, General Code, which reads as follows:

“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 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, county and township or city as described in sections 3477 and 3479. 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 cannot be satisfactorily cared for except at the county infirmary or under county control. 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.”

This section of the General Code states the intent which is applicable to the entire division of the General Code relative to the care of the poor (Section 3476 through Section 3484-2, General Code). As you can readily see, Section 3484-2, about which you inquire in your request, is included in this division of the General Code, and it follows that the provisions of Section 3476 would be applicable to Section 3484-2. The intent expressed in Section 3476, General Code, can not be extended to cover the situation set forth in your request. It is stated, "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 * * *." This section goes on to deal with the responsibility of the county for those persons lacking legal settlement requirements. There is no express inclusion for indigents under confinement in penal institutions or in custody. There is no provision in Section 3484-2, General Code, which expressly covers the situation set forth in your request.

Your attention is directed to the provisions of the "poor relief law" (Section 3391 et seq., General Code). This relief law was passed a number of years after the division of the General Code, quoted heretofore. Section 3391-2, subparagraph 8, General Code, states that the provisions of the "poor relief law" must be read in *pari materia* with Section 3476, et seq., General Code. It is also to be noted that "hospital care" for a period of three months per year for each individual was included in the "poor relief law" (Section 3391, et seq., General Code) by the 97th General Assembly (122 O. L., 8-178). Section 3391, General Code, provides in part:

"For the purposes of this act:

"'Poor relief' means food, clothing, shelter, and other commodities and services necessary for subsistence, or the means of securing such commodities and services, furnished at public expense to persons in their homes, in the case of homeless persons, in lodging houses or other suitable quarters or in hospitals."

(Emphasis added.)

This section of the General Code goes on to point out the different forms of poor relief, such as "work relief," "direct relief," "medical care" or "hospital care." It is of importance that the General Assembly enacted these provisions for "persons in their homes" or "in the case of homeless persons, in lodging houses or other suitable quarters or in hospitals." It is impossible, in my opinion, to extend the provisions of this section of

the General Code to cover the situation you present. It is true that Section 3391-2, General Code, which sets forth those classes of persons who are not to have the benefits of the "poor relief law," does not include the class of indigents set out in your request.

In 37 O. Jur., at page 524, it is stated:

"In the construction of statutes it is the expressed legislative intent that is of importance. The law does not concern itself with the legislature's unexpressed intention. The question is not what the General Assembly intended to enact, but what is the meaning of that which it did enact. *That body should be held to mean what it has plainly expressed or to have intended to express its entire meaning by the import of the language used.* Courts should not, even to give effect to what they may suppose to be the intention of the legislature, put upon the provisions of a statute a construction not supported by the terms thereof. *In other words, judicial interpretation must be based upon legislative enactment as the same is found in the statute books.* * * * " (Emphasis added.)

I can not find by analyzing the heretofore quoted sections of the General Code any basis to extend the provisions of poor relief to include the class of indigents in legal restraint of their liberty. The legislative intent as expressed is clear that the General Assembly did not provide care for indigents who are in custody. For indigents to receive aid from the state or its political subdivisions there must be express authority in the enactments of the General Assembly. The clear expressed intent of the General Assembly in both of the heretofore quoted poor relief provisions was not to include indigents who are placed in custody or those who are in legal restraint of their liberty.

The General Code in other sections makes ample provisions for the care of prisoners and persons in custody. The facts as stated in your request show that these men were legally taken into custody by the city police at Wooster, Ohio. Section 13432-1, General Code, provides that police officers can arrest a person apprehended while perpetrating a felony without a warrant and also provides that such a person can be held until a warrant can be obtained. I presume all of the requirements for obtaining a warrant and placing these persons under arrest were complied with by the police of Wooster, Ohio. In Section 3668, General Code, it is stated:

"The council may provide suitable hospitals for the reception and care of such prisoners as may be diseased and disabled, to be

under such regulations, and under the charge of such persons as the council may direct.”

The definition of the word “prisoner,” as found in Webster’s New International Unabridged Dictionary, is:

“*A person under arrest, in custody or in prison; one involuntarily restrained; a captive; as a prisoner of justice, of war or at the bar; to take one prisoner.*” (Emphasis added.)

In *Royce v. Salt Lake City*, 15 Utah, 401, 49 Pac. 290, at page 292, it is stated:

“A ‘prisoner’ is a person deprived of his liberty by virtue of a judicial or other lawful process. * * *” (Emphasis added.)

It is clear that the capturing or taking into custody of a person who is in the act of committing a felony is depriving that person of his liberty by lawful process.

The Court of Texas Civil Appeals in *Brewster County v. Taylor*, 122 S. W. (2d), 1097, states at page 1098:

“* * * For a person to be a prisoner it is not necessary for a complaint to have been lodged against him before he is incarcerated, since peace officers are allowed under certain circumstances to make arrests without warrant, and it will not be presumed that the sheriff violated the law either in making the arrest or in failing to take the prisoner before a magistrate immediately.
* * *”

This same conclusion was reached in an opinion of one of my predecessors, 1928 Opinions of the Attorney General, Vol. II, Opinion No. 2246, at page 1505.

There are many other sections of the General Code which allow municipalities to provide pest houses and hospitals; to contract for hospital aid; to levy taxes for hospital care; to participate with other political subdivisions for hospital care; and to give aid to an existing hospital. These sections of the General Code are Section 3646, Section 3339-15, Section 4021, Section 4022, Section 4035-1 and Section 3621, respectively.

Sections 4125 and 4126, General Code, provide for the care of persons confined in prisons and station houses. These sections of the General

Code make no distinction as to the reason for confinement but simply state that a person confined in a station house or prison shall be provided care. 1931 Opinions of the Attorney General, Vol. I, page 639, Opinion No. 3211, states at page 641:

“From the foregoing sections (Sections 4378, 4128, 4129, 4125, 4126, General Code) it is apparent that the board and maintenance of prisoners held in a city prison or station house should be paid by the marshal or chief of police of the municipality, for which expense the municipal council is authorized to provide. Since the *arrest in this instance was made by a municipal officer*, and the person confined in a municipal prison, *the cost of his maintenance and board should be borne by the municipality.*”

“I am therefore of the opinion that the expense of the board and maintenance of a person held in a municipal prison for trial for the violation of a state statute should be paid by the municipality.”
(Emphasis added.)

Your attention is directed to the emphasized portion quoted above. This opinion states that the responsibility for persons placed under arrest is in the political subdivision subduing the said person.

The General Code provides that the sheriff is responsible for the hospital care of prisoners in his custody. Section 3177, General Code, provides:

“The county commissioners, at the expense of the county, shall provide suitable means for warming the jail, and its cells and apartments, frames and sacks for beds, nightbuckets, fuel, bed, clothing, washing, nursing when required, and such fixtures and repairs as are required by the court. They may appoint a physician for the jail, at such salary as is reasonable, to be paid from the county treasury. Such physician, or any physician or surgeon employed in the jail, shall make a report in writing whenever required by the commissioners, the grand jury or the court. The sheriff shall make a report to the commissioners annually, or oftener if they so require, of the property of the county in the jail, and the condition thereof.”

The General Code also provides that the sheriff shall govern and regulate the county jail according to the rules and regulations prescribed by the Court of Common Pleas. Section 3162, General Code, in part provides:

“The court of common pleas shall prescribe rules for the regulation and government of the jail of the county, not inconsistent with the law, upon the following subjects: * * *

“Fifth—The employment of medical or surgical aid when necessary. * * *”

Section 2850, General Code, in part provides :

“* * * The sheriff shall furnish at the expense of the county, to all prisoners, or other persons confined in the jail, * * * washing and nursing when required, *and other necessities* as the court in its rules shall designate. * * *”
(Emphasis added.)

Section 3157, General Code, provides :

“The sheriff shall have charge of the jail of the county, and all persons confined there, keep them safely, attend to the jail, and govern and regulate it according to the rules and regulations prescribed by the court of common pleas.”

Section 3158, General Code, provides that the sheriff shall keep a record of all sicknesses of the prisoners.

I cite the foregoing sections of the General Code which state the provisions for the care and maintenance of prisoners and persons in custody of the county and city for the purpose of showing that there are ample provisions for hospital care of prisoners. As cited above, this responsibility would be on the political subdivision of the state which has placed the individual in restraint of his liberty. I cannot find in the provisions for poor relief, nor under Section 3484-2, General Code, any expression of the General Assembly that persons injured as you set forth in your request should be cared for by the county of legal settlement. If the county of legal settlement was found to be responsible for the hospital care of indigent persons injured in their apprehension while committing a felony, an untenable classification would be created. Clearly, if a person so apprehended and injured was affluent, the county of legal settlement would not be liable for his hospital care. There is no provision in any of the poor relief sections or in any other section of the General Code which would require payment by the county of legal settlement for the hospital care of affluent persons injured while being captured.

The syllabus of Opinion No. 2246, Opinions of Attorney General for 1928, Vol. II, at page 1505, states :

“1. Persons arrested by peace officers for violating state laws may lawfully be confined in the county jail for such a period of

time as is reasonably necessary, under all the circumstances of the case, to procure a proper warrant or commitment from a magistrate of competent jurisdiction.

“2. It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail. * * *”

The question in this opinion, *supra*, was as to the responsibility for the hospital care of a person injured while being turned over to the county sheriff by the municipal police. The result was found to be, as stated by the above quoted syllabus, that the responsibility for such care was on the political subdivision having custody of the persons restrained of their liberty.

The conclusion that the political subdivision which is exercising control of a lawfully confined person is the responsible agency for hospital care of such person, was also considered in Opinions of the Attorney General for 1939, Vol. II, No. 869, page 1168. This opinion dealt with the problem of hospital care of a prisoner transferred from one county jail to another county jail under the provisions of Section 3170, General Code. At page 1171 of this opinion it is stated:

“* * * Since the legislature did not see fit to provide expressly for payment by the county removing a prisoner for the type of service rendered in the instant case, it would follow that such expense must be borne by the county to which he was removed in the same manner as to other prisoners lawfully confined in the county jail.

“In view of the foregoing, I am therefore of the opinion that it is the duty of the sheriff to furnish, at county expense, such surgical service as may be necessary to the health of a prisoner who has been transferred to such county from the county jail of a second county, under the provisions of Section 3170, General Code.”

This opinion of my predecessor is based on the conclusion that the custody of the person confined is the determinative factor in ascertaining responsibility for the hospital care of such lawfully confined persons.

It is certain that the General Assembly did not intend to include hospital care of indigents, injured by police officers in effecting their capture, as a part of poor relief. This is clear, as the provisions of the poor re-

lief sections of the General Code do not allow for such care. This is supported by the fact that there are voluminous provisions for the care of prisoners and persons in custody in other sections of the General Code. Since it is my opinion that the poor relief provisions of the General Code (Section 3476 et seq. and Section 3391, et seq.) are not applicable to the situation presented by you in your request, my answer to your first question is in the negative.

You do not state in your request whether custody of these aforesaid persons at the time of treatment was exercised by the county or city. Consequently, I cannot answer your inquiry as to whether Wayne County is liable for the payment of hospital services rendered to A and B.

In view of the foregoing, and due to the fact that there is no authority to hold Summit County liable for the support of A and B under any provisions of the General Code, the answer to your third question is in the negative.

In reaching the above conclusion, I am fully aware of the holding in a former opinion of mine rendered on July 23, 1945 (1945 Opinions of Attorney General, p. 421). In said opinion, which dealt with a question dissimilar to the one before me only in that the person concerned therein died before conviction, I was of the view that the liability for hospital care of the person in question could not be determined from the standpoint of custody alone. From what has been said above, it is apparent that I no longer entertain such view. A study of said opinion will disclose that the conclusion reached therein was untenable after once having established the above premise. In other words, the question of custody was in said opinion, as in the instant case, the controlling factor. Having, after reconsideration of this question, reached a different conclusion with respect thereto, I now find it necessary to overrule said opinion.

It is therefore my opinion, and you are informed:

1. An indigent person who is injured while being apprehended by peace officers in the perpetration of a felony, is not entitled to receive hospital care while in custody under the provisions of Section 3484-2, General Code, or any other poor relief provisions of the General Code. (1945 Opinions of the Attorney General, Opinion No. 361, page 420, overruled.)

2. The political subdivision of the state, either city or county, which has custody and control of an indigent person injured while being apprehended by peace officers in the perpetration of a felony, is responsible for necessary hospital care.

Respectfully,

HUGH S. JENKINS,
Attorney General.