

1200.

DISAPPROVAL, SEVEN GAME REFUGE LEASES.

COLUMBUS, OHIO, November 15, 1929.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval purported leases numbered 2056, 2057, 2058, 2059, 2060, 2061 and 2062. Said leases purport to grant to the State for Game Refuge purposes, the premises therein described, for the term of five years.

Inasmuch as said leases have not been signed or acknowledged by the grantors, I am returning them herewith without my approval thereon.

Respectfully,

GILBERT BETTMAN,

Attorney General.

1201.

COUNTY COMMISSIONERS—ANNUAL CONTRACT WITH HOSPITAL ASSOCIATION FOR TREATMENT OF INDIGENT SICK AUTHORIZED—CONDITION NOTED.

SYLLABUS:

Under the provisions of Section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonable commensurate with the services performed.

COLUMBUS, OHIO, November 16, 1929.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

“Under General Code, Section 3138-1, the county commissioners are authorized to enter into a contract with the hospital corporation or association for the purpose of taking care of the indigent sick and disabled.

In Fremont we have located what is known as Memorial Hospital. Heretofore, the county commissioners have been sending all their indigent sick and disabled to this hospital and paying the regular charge for services therefor. It has been proposed now to enter into a yearly contract between the county commissioners and the trustees of the hospital, setting up a stipulated sum that the commissioners are to pay to the hospital each year. It appears that the amount now agreed upon will considerably exceed any amounts that have been paid to the hospital in the past for the actual service rendered. The commissioners before entering into this agreement have asked my advice as to whether they are able to make an agreement whereby the amount actually paid each year will exceed what experience has shown to be the average paid for actual services each year.

It has also been proposed to enter into the contract now and make the same effective for the whole year of 1929.

Before advising the commissioners on this matter, I thought it advisable to get the opinion of your office as to whether this action would be valid or not."

Section 3138-1, General Code, to which you refer in your inquiry, reads as follows :

"That the board of county commissioners of any county may enter an agreement with one or more corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners, shall provide for the payment of the amount agreed upon, either in one payment, or installments, or so much from year to year as the parties stipulate. Nothing herein shall authorize the payment of public funds to a sectarian institution. County commissioners shall have authority to employ the necessary and properly qualified employers to assist them in carrying out all responsibilities devolving upon them by reason of any agreement, or agreements, entered into in accordance with the provisions of this section."

Section 3138-2, General Code, reads :

"The board of commissioners may annually, at the June session, levy a tax not exceeding two-tenths of one mill upon the taxable property of said county for the purpose of providing such aid and assistance to any such corporation or association; and all taxes so levied and collected, under this act shall be applied under the order of said board to the purpose for which the same are so levied and collected."

The purpose of these sections is to authorize the county commissioners to contract with that class of corporations and associations therein defined, for medical and surgical treatment, hospital service and attendance necessary to the proper care and maintenance of the sick and disabled persons who are under the law a proper county charge.

There must be kept in mind the provisions of Section 6 of Article VIII of the Constitution of Ohio, which is as follows :

"No laws shall be passed authorizing any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association; provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state or doing any insurance business in this state for profit."

From this it clearly follows that Section 3138-1, supra, may not be construed so as to permit the county commissioners to raise funds and appropriate the same to the mere aid or maintenance of any corporation or association of whatever kind, however laudable its purpose or praiseworthy its accomplishment.

In other words, if the purpose of the proposed contract between the county commissioners and the trustees of Memorial Hospital is to increase the charge for care of the indigent sick and disabled over and above a fair and reasonable charge for the purpose of helping maintain the hospital, such contract would be void, as directly contrary to the Constitution.

A somewhat similar question was presented to the then Attorney General in 1911, wherein the board of county commissioners of Pickaway County proposed to appropriate fifteen hundred dollars to a hospital for "maintaining said hospital," the contract providing that the board of managers of said hospital "shall use and apply so much of said moneys as may be necessary in furnishing and equipping said hospital, etc."

It was ruled (See Annual Report of Attorney General for 1911-12, Vol. II, page 1071) that this was a diversion of public money to a private corporation.

The proposed contract in the instant case would, in any event, be subject to the provisions of Section 5625-33, General Code, which is in part as follows:

"No subdivision or taxing unit shall:

* * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * * ."

It is not clear to me from your statement of facts whether the contract can be made retroactive. You state that you have been paying the regular charge for individual cases, and it therefore would seem that services already rendered have been paid for. If that is the case, the contract could not be made retroactive because the county would then be in the position of paying twice for the same services.

Specifically answering your question, I am of the opinion that under the provisions of Section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1202.

APPROVAL, ABSTRACT OF TITLE TO LAND OF SARAH C. B. SCARBOROUGH IN XENIA TOWNSHIP, GREENE COUNTY.

COLUMBUS, OHIO, November 16, 1929.

HON. ROBERT B. BARCUS, *President, Board of Trustees, Wilberforce University, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed, encumbrance estimate and Controlling Board certificate relating