

the date of the birth of the child. Said child was born in said city and is now under the age of two years. The mother and the child are indigent. The paternity of said child cannot be established.

"I desire your opinion on this question: Is the city of L. responsible for the maintenance of said child or is the county in which said city is located responsible?"

I assume for the purpose of this opinion that the relief is to be furnished is temporary and partial relief.

It is a well known principle of law in Ohio that an illegitimate child takes the domicile of its mother.

*Sturgeon v. Korts*, 34 O. S., 525.

And it follows that the same would be true of the legal settlement of the illegitimate child.

Section 3476, General Code, reads in part 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 clear from this section that it is the intent of the law that the proper officer of the city shall afford at the expense of such municipal corporation public support or relief to any person therein whose condition requires it.

I am, therefore, of the opinion that where an indigent illegitimate child has a legal settlement in a city, the cost of temporary and partial relief for its support shall be charged to such municipal corporation and not to the county in which such city is located.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3455.

COUNTY COMMISSIONERS—EMPOWERED TO ACCEPT GIFT OF REAL ESTATE FROM INMATE OF COUNTY HOME, SPECIFIC PROVISION NOT TO BE INCORPORATED IN DEED OF GIFT—WHEN COUNTY LIABLE FOR COMMISSIONERS' TORTS.

*SYLLABUS:*

1. *County commissioners are empowered to accept a gift of real estate from an inmate of the county home.*

2. *In the event a deed of gift of real estate is made to the commissioners of a county by the inmate of a county home, no provision should be contained therein which would prevent the county commissioners from complying with the require-*

*ments of Section 2548, General Code, by selling the land given and applying the proceeds from such sale in the manner provided in said section.*

3. *The county is not liable for negligent acts of its county commissioners unless such liability is expressly imposed by statute.*

COLUMBUS, OHIO, July 24, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

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

“I have two propositions concerning which I would like to have your opinion.

“The first proposition involves the taking over of real estate owned by a person becoming an inmate of the County Home. Section 2548 of the General Code of Ohio makes provision whereby the County Commissioners can bring a proceeding in the Probate Court in the county in which the real estate in question is located to sell real estate owned by a person becoming a county’s charge. We have two or three small tracts of real estate which are owned by persons who have become inmates of the County Home which tracts of real estate are only worth a small amount. To go through Probate Court to acquire and dispose of said tracts of land would entail almost as much expense as the tracts would sell for at a forced sale. The parties owning said tracts of real estate are willing to deed same voluntarily to the County Commissioners who in turn can dispose of same at very little expense. Could the Commissioners legally accept a deed from an inmate owning real estate? Could the Commissioners then dispose of the same and apply the proceeds to the maintenance of the persons so deeding said Commissioners said real estate? Could Commissioners hold said real estate so deeded to them and rent it out and apply the proceeds for the above purpose? Would such property so held by said Commissioners be subject to tax while held by said Commissioners?

“The second proposition involves the payment by County Commissioners for dynamite and electric blasting caps with which to ignite said dynamite which materials were furnished by a company dealing in said materials to a contractor constructing roads for the County Commissioners which said contractor became bankrupt and of which said contractor no bond was required as provided by law. The contractor in question had several contracts in the county for which bonds were given as required by law. On one or two of the smaller jobs the Commissioners apparently overlooked requiring the contractor to give bonds in accordance with law relating to public contractor’s bonds. The contractor made an assignment for benefit of creditors and then went into bankruptcy and wholly failed to finish the contracts and left numerous material men unpaid.

“The company furnishing the above styled dynamite and dynamite caps of said contractor on one or two of the smaller jobs for which no bond was required now seeks to hold the Commissioners for said materials in question on the theory that the County Commissioners, not having required the bond provided by law for the protection of the material men, are liable directly to the material men for the material so furnished

and which went into the construction of said roads contracted for by the county Commissioners.

"In addition to the proposition as to whether the County Commissioners would be liable under such circumstances for their negligence in not requiring said bond there is the added question of whether or not dynamite and dynamite caps is that class of material used in the construction of said improvement for which the material men could secure a lien under Section 2365-1 and following sections of the General Code. I might further add that the road improvements in question are two or three years old now and said bills have been unpaid to said material men for some two or three years."

Answering your questions categorically:—your attention is called to Section 18, General Code, which reads:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

Under the provisions of this section county commissioners are empowered to accept a gift of real estate from an inmate of a county home.

Section 2548, General Code, to which you refer, reads as follows:

"When a person becomes a county charge or an inmate of a city infirmary and is possessed of or is the owner of property, real or personal, or has an interest in remainder, or in any manner legally entitled to a gift, legacy or bequest, whatever, the county commissioners or the proper officers of the city infirmary shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located, and the proceedings therefore, sale, confirmation of sale and execution of deed by such county commissioners or officer of the city infirmary shall in all respects be conducted as for the sale of real estate by guardians. The net proceeds thereof shall be applied in whole or in part, under the special direction of the county commissioners or the proper city officer as is deemed best, to the maintenance of such person, so long as he remains a county charge or an inmate of a city infirmary.

As stated in Lewis' Sutherland on Statutory Construction, Vol. II, Section 346, it is a fundamental rule of statutory construction that

"Where there is an act or provision which is general and applicable, actually or potentially, to a multitude of subjects and there is also another act or provision which is particular and applicable to one of these subjects

and inconsistent with the general act, they are not necessarily so inconsistent that both cannot stand though contained in the same act, or though the general law were an independent enactment. The general act would operate according to its terms on all the subjects embraced therein, except the particular one, which is the subject of the special act. That would be deemed an exception unless the terms of the later general law manifested an intention to exclude the exception. \* \* \* In adjusting the general provisions in a general act to the particular provisions of a special act, considerations of reason and justice and the universal analogy of such provisions in similar acts are proper to be borne in mind and ought to have much weight and force."

Since Section 18, General Code, is general in its nature and Section 2548, General Code, is specific, it follows from the application of the above rule of statutory construction that in the instant case if a deed of gift is made to the county commissioners by the inmate of the county infirmary, the county commissioners may accept the same, but they will be required to dispose of the property and apply the proceeds in whole or in part to the maintenance of the donor so long as he remains a county charge. Such a construction allows the spirit and intent of both sections to be carried out with a minimum of expense to the governmental subdivision involved.

From the foregoing it is apparent that in the event a deed of gift of real estate is made to the commissioners of a county by the inmate of a county home, no provision should be contained therein which would prevent the county commissioners from complying with the requirements of Section 2548 by selling the land given and applying the proceeds from such sale in the manner provided in said section.

This conclusion disposes of your inquiries concerning the power of the county commissioners to lease said donated land, and of the taxation of the same if leased.

In answer to your inquiry concerning the possible liability of the county commissioners for dynamite and electric blasting caps furnished to a road construction contractor, now bankrupt, which contractor did not furnish bond as required by Section 2365 et seq. of the General Code, it is to be noted that counties as political subdivisions of the state partake of the state's immunity from liability, and since the state is not liable except by its own consent, the county is not liable unless the state has imposed such liability by statute.

An examination of the statutes fails to disclose any provision which allows the county to be sued for the omission of the duty imposed by Section 2365-1, General Code, to see that the bond required by this section is furnished before each contract is let.

As the bond required by Section 2365-1, General Code, was not furnished in the instant case, and since there is no liability on the part of the county for the omission to furnish such a bond, the question of whether or not dynamite or dynamite caps is such material as enters into the construction of a road so as to be covered by the terms of the bond, is not of public concern and need not be discussed herein.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*