

In view of the foregoing, I am returning this final resolution without my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

591.

QUARANTINE—HEALTH BOARDS DETERMINE NECESSITIES AND TOWNSHIP TRUSTEES INDIGENT CIRCUMSTANCES OF PERSONS CONFINED—HEALTH COMMISSIONER AS ATTENDING PHYSICIAN, DISCUSSED.

SYLLABUS:

1. *In all cases of quarantine for contagious diseases by the board of health, such board of health having jurisdiction has the sole power to determine what necessities of life, including medical attention, as defined in Section 4436, General Code, shall be furnished to persons so quarantined.*

2. *The question of the indigent circumstances of persons so quarantined should be determined by the township trustees of the township in which such persons may be quarantined at the time any bills authorized by Section 4436, General Code, are presented to the township trustees for payment.*

3. *When a house or other place is quarantined on account of contagious disease by a board of health having jurisdiction, and such board of health has provided necessities and medical attendance, as authorized in Section 4436, General Code, and properly certified such expenses as therein provided to the township trustees for payment, after having determined that the persons so confined are unable to make such payment, the township trustees have no authority to refuse such payment or reduce the amount thereof.*

4. *Under the provisions of Section 4436, General Code, when a house or other place is quarantined on account of contagious disease, a part-time health commissioner may be in attendance of a case in a house or other place so quarantined, without the express or implied consent of the township trustees of the township in which such house or place is located. In the event a part time health commissioner is in attendance in such case, either upon his own order or upon the order of the board of health, he may be compensated for such services by the township trustees in addition to his salary as part time health commissioner, providing the persons quarantined are unable to pay and further providing that such services are not within his duties as health commissioner.*

COLUMBUS, OHIO, July 2, 1929.

HON. EMMITT L. CRIST, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—Your letter of recent date reads as follows:

“Pickaway County has a part time health commissioner who by reason thereof has the privilege of practicing medicine as an individual.

It became necessary to quarantine a certain house in a township under the provisions of General Code 4436, by reason of a contagious disease therein. The health commissioner proceeded to perform his duties under this section,

and in pursuance thereof ordered Doctor 'J' to attend the persons with the contagious disease who were quarantined in said house. During a part of the same period that Doctor 'J' was in attendance, said health commissioner, acting as a private physician, also attended the same persons. The expenses so incurred in furnishing food, supplies and medical attendance to this family were properly certified by the officials of the board of health and sent to the trustees of said township for payment, on the ground that the persons so treated were indigent poor. All of the bills so incurred were paid by said trustees, with the exception of the charges made by the health commissioner acting as a private physician.

The following questions herein arise for your determination:

1. In a case of quarantine for contagious disease, has the board of health sole power to determine what necessaries of life, etc., including medical attention, shall be furnished to persons so quarantined?

2. In a proper case arising under G. C. 4436, is the question of the indigent circumstances of the persons so attended and so furnished with necessaries of life one for the determination of the board of health in charge thereof, or for the township trustees of the particular township wherein the persons so furnished had legal residence?

3. Where a bill properly incurred under G. C. 4436 and properly certified by the officials of the board of health and sent to the township trustees for payment is refused by said trustees or reduced by them, is such refusal or reduction of such a bill within the power of the township trustees?

4. May a part time health commissioner be in attendance of a case as a private physician under G. C. 4436, by order of himself as health commissioner or by the board of health, without the expressed or implied consent of the township trustees of the proper township in a case within their jurisdiction?"

The part time health commissioner, to which you refer, was, I presume, appointed pursuant to the provisions of Section 1261-19, General Code, which are to the effect that the district board of health of a general health district shall appoint a district health commissioner, who shall be a licensed physician, upon such terms and for such period of time not to exceed two years, as may be prescribed by the district board. Section 1261-30 provides that the district board of health shall exercise all the powers and perform all the duties conferred and imposed by law upon the board of health in a municipality, in addition to the powers and duties conferred in Sections 1261-16 to 1261-43, inclusive, of the General Code. The sections of the General Code relating to municipal boards of health are contained in Title 12, Division 5, Subdivision 2, Chapter 11, being Sections 4404 to 4476, inclusive, of the General Code.

Section 4436, to which you refer, providing for the maintenance of persons confined in quarantined houses, is as follows:

"When a house or other place is quarantined on account of contagious diseases, the board of health having jurisdiction shall provide for all persons confined in such house or place, food, fuel and all other necessaries of life, including medical attendance, medicine and nurses when necessary. The expenses so incurred, except those for disinfection, quarantine or other measures strictly for the protection of the public health, when properly certified by the president and clerk of the board of health, or health officer where there is no board of health, shall be paid by the person or persons quarantined, when able to make such payment, and when not, by the municipality or townships in which quarantined."

It is here expressly provided that food, fuel and all other necessaries of life, in-

cluding medical attendance, and nurses when necessary, shall be provided for all persons confined in a house or place quarantined, by the board of health having jurisdiction. Manifestly the express power to provide such necessaries involves the authority to determine what necessaries are required.

In an opinion of my predecessor, found in Opinions of the Attorney General for 1927, Vol. II, p. 1392, this section was under consideration. The syllabus is in part as follows:

“In all cases of quarantine it is the duty of the board of health to determine what food, fuel and other necessaries of life, including medical attendance, medicine and nurse, are needed by the persons quarantined, and furnish the same to such persons, if it is necessary to do so. * * * *”

The above holding of my predecessor, in which I concur, is dispositive of your first question. In answer thereto, I am accordingly of the opinion that in all cases of quarantine for contagious diseases by the board of health, such board of health having jurisdiction has the sole power to determine what necessaries of life, including medical attention, as defined in Section 4436, General Code, shall be furnished to persons so quarantined.

Your second question has also been passed upon by this office in an opinion found in Opinions of the Attorney General for 1923, Vol. I, p. 355, in which I concur. The third branch of the syllabus is as follows:

“It is the duty of the authority who is to pay such bills to determine whether such quarantined person is able to pay or not. Whether or not the quarantined person is unable to pay is a question of fact which would depend upon the particular circumstances in each case, and such determination should be made at the time the bill is presented for payment.”

The third question presented is predicated upon your first two questions. Manifestly, if the board of health has the power to determine what necessaries are required within the meaning of the provisions of Section 4436, and it is determined that persons so quarantined are unable to pay for such necessaries, and medical attendance, to hold that the township trustees may refuse payment of such necessaries or medical attendance, or reduce the amount of payment therefor, would be to controvert in effect the holding that the determination of what necessaries are required rests in the board of health having jurisdiction. In answer to your third question, therefore, I am of the opinion that when a house or other place is quarantined on account of contagious disease by a board of health having jurisdiction, and such board of health has provided necessaries and medical attendance, as authorized in Section 4436, General Code, and properly certified such expenses as therein provided to the township trustees for payment, after having determined that the persons so confined are unable to make such payment, the township trustees have no authority to refuse such payment or reduce the amount thereof.

Coming now to your fourth question, in an opinion of this department, found in Opinions of the Attorney General for 1915, Vol. I, p. 981, the syllabus is as follows:

“A board of health is empowered to employ a health officer to perform physicians' services in quarantine cases, under Section 4436, G. C., and said health officer may be compensated by the municipality in addition to his salary for such services as are not within his duties as health officer when the persons quarantined are unable to pay.”

In this opinion, after considering the provisions of Sections 3808 and 12912, General Code, the following language is used:

"For these reasons I therefore concur in the opinion of my predecessor that a health officer appointed by a city board of health is not an officer of a municipality within the meaning of that term as used in Section 3808 and 12912 of the General Code, and that therefore such health officer may lawfully be paid from the funds of the municipality for services rendered to persons who are unable to make payments for the same within the terms of Section 4436 of the General Code, when such services do not come within the duties of such health officer as determined by the board and for which he receives compensation in the salary by the board fixed for such appointee."

This opinion further held that the health commissioner appointed pursuant to the provisions of Section 4408 was an employe and that therefore the question of whether or not such services are within the duties of such health officers, as determined by the board, was dispositive of the matter of additional compensation.

Section 4411 provides that the board shall determine the duties and fix the salaries of such employes. Section 1261-19, General Code, providing for the appointment of a district health commissioner, reads in part as follows:

" * * * The district health commissioner shall be the executive officer of the district board of health and shall carry out all orders of the district board of health and of the state department of health. He shall be charged with the enforcement of all sanitary laws and regulations in the district, and shall have within the general health district all the powers now conferred by law upon the health officers of municipalities. * * * "

Apparently the board of health has authority to determine what the duties of the health commissioner shall be at the time of employing such health commissioner and fixing his compensation, and manifestly if such duties included the attendance of persons quarantined, as contemplated in Section 4436, who are unable to pay for medical services, such health commissioner would not be entitled to compensation in addition to his salary.

The question of the express or implied consent of the township trustees of the township having jurisdiction of such cases would not, in my opinion, have any bearing upon the question of the authority of the part time health commissioner to be in attendance on such cases or upon the matter of his compensation for such attendance. In the case of *Village of Barberton vs. Frederick Lohmers*, 18 C. C. (n. s.) 196, the syllabus is as follows:

"Under favor of Section 1536-741, Revised Statutes, a physician who renders medical service to a quarantined smallpox patient, who is unable to pay therefor, is entitled to recover compensation from the municipal corporation which was promptly apprised of the situation, but took no action with reference thereto."

In this case the board of health was apprised of the situation but failed to take any action. The court held that under Section 2128, Revised Statutes, now Section 4436, General Code, even in the absence of affirmative action of the board of health, a physician who rendered professional services to persons quarantined, who were unable to pay for such services, was entitled to recover therefor from the municipal corporation.

While your fourth question makes no reference to two physicians being in attendance, this fact is referred to in the second paragraph of your letter. Section 4436 provides that medical attendance shall be furnished in such cases but makes no reference to the extent of such attendance or the number of physicians which may be necessary in any given case. Conceivably in the event of an emergency, when conditions required the services of a second physician, in addition to those of the physician ordered in attendance by the board of health, the health commissioner would be justified in rendering professional services and, under the holding of the court in the case of *Barberton vs. Lohmers*, supra, should be compensated therefor unless such services are within his duties as health commissioner.

Specifically answering your fourth question, I am of the opinion that under the provisions of Section 4436, General Code, when a house or other place is quarantined on account of contagious disease, a part time health commissioner may be in attendance of a case in a house or other place so quarantined, without the express or implied consent of the township trustees of the township in which such house or place is located. I am further of the opinion that in the event a part time health commissioner is in attendance in such case, either upon his own order or upon the order of the board of health, he may be compensated for such services by the township trustees in addition to his salary as part time health commissioner, providing the persons quarantined are unable to pay and further providing that such services are not within his duties of health commissioner.

Respectfully,
GILBERT BETTMAN,
Attorney General.

592.

PRISONERS—FEMALE—WHEN CONFINED IN OHIO REFORMATORY
FOR WOMEN—WHERE MISDEMEANANTS AND DELINQUENTS BE-
TWEEN AGES OF 16 AND 18 MAY BE DETAINED.

SYLLABUS:

1. *Under the provisions of Section 2148-1, General Code, as amended on April 2, 1929, by the 88th General Assembly, which act becomes effective on July 23, 1929, the Ohio Reformatory for Women may only be used for the detention of females over sixteen years of age convicted of a felony, or for the detention of female prisoners transferred from the Ohio Penitentiary or Girls' Industrial School.*
2. *Females convicted of a misdemeanor, under the statutes of Ohio, may be sentenced to the workhouse or county jail, or remanded to the workhouse or county jail, for failure to pay a fine and costs imposed as a whole or part of a sentence, in the same manner as male prisoners are now sentenced to such institution.*
3. *Females over sixteen years of age, and under the age of eighteen years, convicted of delinquency, may be sentenced to the Girls' Industrial School.*
4. *That Section 2148-12a of the General Code, is repealed by implication.*

COLUMBUS, OHIO, July 3, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

"Our opinion has been requested regarding the effect of House Bill