

Assembly in the enactment of the Conservancy Act, and with other statutory provisions relating to leases of this kind.

I am accordingly approving these leases as to legality and form as is evidenced by my approval endorsed upon said leases and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4380.

POOR RELIEF—MAY NOT BE AFFORDED BY VILLAGE—DUTY OF
TOWNSHIP TO RENDER SAME.

SYLLABUS:

A village has no authority under general law to pay the cost of affording temporary or partial relief provided for by section 3476, General Code, but such expense must be borne by the township in which the persons needing such relief have a legal settlement.

COLUMBUS, OHIO, June 3, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“Within the past few years your office has rendered several opinions on the question of poor relief to residents of townships who live outside of the corporate limits of cities. Two of these opinions are 1930 O. A. G. No. 1598 and 1928 O. A. G. No. 2560.

The opinions cited above are to the effect that temporary relief to a resident of a township who resides outside the limits of a city “should be borne by such township notwithstanding said person is a resident of a village within such township.” The Opinions in question, however, were given in cases in which there was a dispute between a township and a village and neither of them were willing to spend the money for poor relief unless required to do so by law.

There are several villages within our county which have funds available for poor relief if it is within their power to expend monies for this purpose. Their councils are inclined to interpret the above cited opinions to limit the expenditure of money for poor relief to township trustees in those cases. Whereas, we are inclined to the opinion that there is no restriction on the expenditure of village funds for poor relief although the primary duty to furnish relief to residents of villages is placed by statute on the township trustees.

Since the apportionment of the proceeds of the bonds to be issued by this county under the provisions of Amended Senate Bill No. 4 of the first special session of the Eighty-ninth general assembly may depend upon your opinion in this matter, we would appreciate a reply at your earliest convenience.”

I assume you refer to the temporary or partial relief provided for by section 3476, General Code. This section 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. §§ 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 that they can not 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 a city."

This office has consistently held that the cost of affording such relief to persons having a legal settlement in a township outside the limits of a city must be borne by the township even though such persons are residents of a village within such township. The opinions of the Attorney General on this subject are cited in the 1930 opinion to which you refer.

Under section 3497, General Code, municipal corporations are classified as cities and villages, and when the legislature referred only to cities in section 3476, General Code, it must have intended to limit the provisions thereof to cities and to exclude villages. I find no other statute authorizing villages to pay the expense of affording the type of relief provided for by this section.

It might also be noted that in providing for funds for poor relief under section 3476 and other sections, Amended Senate Bill No. 4, to which you refer, makes no provision for distribution by the counties of any of the relief funds raised under said act to villages.

I am of the opinion that a village has no authority to pay the cost of affording temporary or partial relief provided for by section 3476, General Code, but that such expense must be borne by the township in which the persons needing such relief have a legal settlement.

In reaching the foregoing conclusion, which is directed solely to the authority of a village under the general law, I am not unmindful of the doubt which exists as to whether the home rule powers extended to municipalities generally, including both cities and villages, may comprehend the right to provide for the relief of the poor within the confines of the village. Just how far the courts would say that the powers of the village extended in this direction in view of the statutory provisions to which reference has been made, is a question which can not be satisfactorily answered at this time. Furthermore, the decisions of the Supreme Court leave in doubt the additional question as to whether the home rule powers so granted are self executing and available to all municipalities or whether they are in any wise extended in the event of the adoption of a charter. The relief of needy residents seems to be a matter peculiarly of local governmental concern, and thus perhaps within the meaning of "powers of local self-

government" as expressed in the constitution, but in the present state of the law I do not feel that I can categorically say that such power exists. I have accordingly confined my conclusion to an expression of the intent of the legislature as to where the duty and the coincident power in this matter should reside.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4381.

APPROVAL, WARRANTY DEED TO LAND OF CLARENCE HELTERBRAND IN HIGHLAND COUNTY, OHIO.

COLUMBUS, OHIO, June 3, 1932.

MR. HARRY R. MCPHERSON, *Business Agent, Ohio State Archaeological and Historical Society, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed, encumbrance estimate No. 1 and a copy of the authority of the Controlling Board relating to the proposed purchase by the Ohio State Archaeological and Historical Society of forty-three acres of land, more or less, in Brush Creek Township, Highland County, Ohio, comprising a part of the so-called Fort Hill land, from Clarence Helterbrand.

The abstract, certified under date of May 5, 1932, reveals that said Clarence Helterbrand holds a good and merchantable fee simple title to said land subject to the following encumbrances:

1. A mortgage executed by said Clarence Helterbrand to the Farmers and Traders National Bank of Hillsboro, Ohio, dated May 31, 1929, to secure a note for \$250.00, upon which \$75.00 have been paid (page 13, abstract).
2. A cognovit judgment for \$248.04 with interest at 6% from October 7, 1926, and for costs of suit \$6.30 secured by W. B. Roades against Clarence Helterbrand (page 13, abstract).
3. Tax liens, enumerated by the abstracter as follows:
"Taxes and penalties for the year 1931 in total sum of \$4.77 unpaid and a lien.
Taxes for year 1932, amount undetermined unpaid and a lien."

The draft of the proposed deed made by said Clarence Helterbrand and Sadie Helterbrand, his wife, is executed in proper form to convey a fee simple title to the Ohio State Archaeological and Historical Society, with release of dower. Said deed states:

"Grantors are to pay (taxes?) and penalties for the year 1931 and due and payable December, 1931, and June 1932. Taxes for year 1932 and thereafter grantee assumes and agrees to pay as a part of the consideration hereof."