

did not repeal or amend Sections 6602-104. Section 39 of said House Bill No. 80 provides as follows:

"That any act or proceeding taken prior to the date this act is filed with the Secretary of State authorizing any tax or debt charge to be levied, or any contract or expenditure to be made, shall be in no manner affected by this act, but such act or proceeding shall be completed, and the tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if this act had not been passed; and if such tax or debt charge is authorized by such act or proceeding to be levied outside of the combined maximum tax rate prescribed by Section 5649-5b of the General Code such tax or debt charge shall be levied during the period and for the purpose so authorized outside of the 15 mill limitation established by this act."

The provisions of this section are expressly applicable to the procedure taken in the Mahoning Valley Sanitary District, for the reasons following:

(a) The action of the board of directors was "an act or proceeding taken prior to the date of the filing" of H. B. No. 80, with the Secretary of State.

(b) The proceeding authorized a tax or debt charge to be levied, and a contract or expenditure to be made.

Under these conditions, House Bill No. 80, in "no manner affected" said procedure of the levy made thereunder.

Said enacted bill also provides that:

"The tax or debt charge shall be levied and the contract or expenditure shall be made in the same manner as if this act had not been passed."

House Bill No. 80 also expressly provides that if said tax or debt charge is authorized by such act or proceeding to be levied outside of the combined maximum rate:

"Such tax or debt charge shall be levied during the period and for the purpose so authorized outside of the 15 mill limitation established by this act."

I am therefore of the opinion that said levy may be made outside the 15 mill limitation, and being a proceeding pending at the time House Bill No. 80 was filed in the office of the Secretary of State, Section 39 of said House Bill No. 80, expressly exempts said levy from the provisions of said Bill.

Respectfully,
EDWARD C. TURNER,
Attorney General.

841.

PHYSICIANS FEES—FOR SERVICES RENDERED TO INDIGENTS—
LIABILITY OF TOWNSHIP TRUSTEES AND MUNICIPAL OFFICERS.

SYLLABUS:

By the terms of Section 3480, General Code, a physician or surgeon rendering

services to an indigent person, after notice in writing to the township trustees or proper municipal officer, has a claim against the township or municipal corporation wherein such relief is afforded for no greater amount than the trustees or proper officers determine to be just and reasonable; and where such trustees or proper officers have considered a claim, and, acting in good faith, have made an allowance in part or have rejected the same, no action can be maintained against the township or municipal corporation for any amount in excess of their allowance.

COLUMBUS, OHIO, August 8, 1927.

HON. C. DONALD DILATUSH, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“Recently several different cases have occurred in this county wherein indigent persons, residents of the county, have been in need of medical and surgical relief. This relief has been furnished by physicians and surgeons, after notice sent to the boards of trustees, and in due time statements were presented to said boards therefor.

The boards of trustees, exercising the discretion granted to them in Section 3480 G. C., have allowed these claims in such amounts as they must have determined to have been just and reasonable, but the amount of their allowance in many of these cases was much less than the statements presented.

Sometime ago an indigent resident of one of the townships in this county attempted to commit suicide by shooting himself in the head. He was taken to a private hospital in this county, was operated on and confined in the hospital for a long period of time, eventually recovering. The trustees, immediately after the attempted suicide, requested permission to bring this man to the hospital, and at their request were told what the approximate bill would be. Within three days, formal notice in writing was also sent to the board of trustees by the hospital.

Upon presentation of bill for medical and surgical services, X-ray and hospital charges, the trustees saw fit to allow only a small part of this statement. The case of *Trustees vs. White et al.*, 48 O. S. 577 would seem to indicate that the physician or surgeon has no recourse for the remainder due unless, as stated on page 587, they have the right to proceed in mandamus.

Due to the numerous cases we are having in this county involving this question, I would very much appreciate the opinion of your department as to what recourse, if any, the physician or surgeon has against a board of trustees for the balance remaining due to them for services performed.”

Section 3480, General Code, about which you inquire, provides:

“When a person in a township or municipal corporation requires public relief, or the services of a physician or surgeon, complaint thereof shall be forthwith made by a person having knowledge of the fact to the township trustees, or proper municipal officer. If medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately

notify such trustees or officer, in writing, that he is attending such person, *and thereupon the township or municipal corporation shall be liable for relief and services thereafter rendered such person, in such amount as such trustees or proper officers determine to be just and reasonable.* If such notice be not given within three days after such relief is afforded or services begin, the township or municipal corporation shall be liable only for relief or services rendered after notice has been given. Such trustees or officer, at any time may order the discontinuance of such services, and shall not be liable for services or relief thereafter rendered." (Italics the writer's)

Your attention is directed to the case of *Trustees vs. White, et al.*, 48 O. S. 577, the syllabus of which reads:

"Physicians affording relief to a person in condition requiring relief under Section 1494, Revised Statutes, which provides that the township shall be liable for relief afforded only in such amount as the trustees determine to be just and reasonable', have a claim against the township wherein such relief is afforded for no greater amount than the trustees determine to be just and reasonable. And where the trustees have considered a claim, and, acting in good faith, have rejected it, no action can be maintained against the township."

and to the case of *Trustees vs. Houston, et al.*, 2 O. C. C. 14 the headnote of which reads:

"A physician rendering services to a pauper, can only recover against the township, for such services, such sum as the township trustees deem just and reasonable.

Notice in writing is a condition precedent to the right to recover.
Section 1494, Revised Statutes, construed."

Section 1494, Revised Statutes, construed in both of the above cases, is now Section 3480, General Code, and with the exception of a few changes in substance provides the same now as it did when these cases were decided.

You will note that Section 3480, *supra*, provides *inter alia* that "the township or municipal corporation shall be liable for relief and services thereafter rendered such person, *in such amount as such trustees or proper officers determine to be just and reasonable.*"

As stated by Judge Spear in the case of *Trustees vs. White, et al.*, *supra*, on page 587:

"The trustees are officers constituting a board. The act in question especially enjoins upon the board, as a duty, the auditing of such claims. And, if they refuse to act, or assuming to act, through an arbitrary and unreasonable spirit, refuse to make any allowance, or make an allowance manifestly out of proportion to the value of the services rendered, showing bad faith amounting to a fraud upon the law, we see no reason why a proceeding in mandamus would not afford an adequate mode of redress. But so long as the board acts upon the case made in good faith, we are of opinion that its decision is a finality. The right of the claimant, in the first instance, is to have the board determine what is just and reasonable. When that is determined, the amount so ascertained constitutes the legal

demand against the township. If nothing is found due, then no legal claim exists.

If this rule should work a hardship in any instance, it would not be upon the physicians. They know the law, and are presumed to act in view of its provisions. If, in some cases, it might apply harshly to the sufferer, relief must be had at the hands of the law-making power. It is our duty simply to declare the law as we find it."

Answering your question specifically it is my opinion that by the terms of Section 3480, General Code, a physician or surgeon rendering services to an indigent person, after notice in writing to the township trustees or proper municipal officers, has a claim against the township or municipal corporation wherein such relief is afforded for no greater amount than the trustees or proper officers determine to be just and reasonable; and where such trustees or proper officers have considered a claim, and, acting in good faith, have made an allowance in part or have rejected the same, no action can be maintained against the township or municipal corporation for any amount in excess of their allowance.

Respectfully,
EDWARD C. TURNER,
Attorney General.

842.

DISPOSITION OF FINES IMPOSED UNDER THE PROVISIONS OF SECTIONS 471-1 AND 481, GENERAL CODE.

SYLLABUS:

When fines are imposed under the provisions of Sections 471-1 and 481, General Code, such fines shall be paid into the treasury of the county in which such fines were assessed and credited to the county general fund as provided by Section 12378 of the General Code.

COLUMBUS, OHIO, August 8, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

"Herewith we are enclosing the letter of Charles M. Smith, Justice of the Peace, at Kenmore, Ohio.

He asks to whom he shall remit the fines imposed in the prosecution of parties refusing or neglecting to secure boat licenses, or for the operation of motor boats and likewise row boats and canoes upon the waters of State Reservoirs. We have endeavored to find some section of the General Code, that would indicate what disposition should be made of these fines.

We believe that it has been the general practice of Justices outside of municipalities to transmit the net proceeds of the fines imposed to the