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QUARANTINE — HOSPITALIZATION — EXPENSES, INCLUDING SPECIAL NURSES' CARE TO PERSONS UNABLE TO PAY — PAID BY MUNICIPALITY OR TOWNSHIP WHERE QUARANTINE MAINTAINED — WHERE LEGAL SETTLEMENT IN SAME COUNTY WHERE INDIGENT QUARANTINED, UPON NOTIFICATION, MUNICIPALITY OR TOWNSHIP LIABLE FOR EXPENSES — SECTION 4438-1 GENERAL CODE.

SYLLABUS:

The expenses incurred in providing hospital services, including special nurses' care to quarantined persons who are unable to pay therefor, are to be paid by the municipality or township in which the quarantine is maintained. Upon proper notification, however, as provided in Section 4438-1, General Code, the municipality or township of legal settlement, if within the same county in which the indigent is quarantined, shall be liable for the expenses so incurred.

Columbus, Ohio, February 4, 1942.

Hon. Paul T. Landis, Prosecuting Attorney,
Lima, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

"An indigent family with a legal settlement in Amanda Township, Allen County, Ohio has been receiving poor relief at the hands of the Allen County Relief Authority. A child of this family became ill with scarlet fever, requiring medical care and eventually was placed in St. Rita's Hospital in Lima, Ohio, at the insistence of the physician in charge. Since the child was afflicted with a contagious disease she had to be isolated, which necessitated the employment of three shifts of special nurses for a period of approximately two weeks, pneumonia having also developed in the meantime.

We understand that under Section 3391 of the General Code the Allen County Relief Authority would be responsible for the medical care rendered in this case and it has assumed responsibility for the same.

We also recognize that under Attorney General's Opinion No. 2648 for 1940, special nurses' care may not be paid by the local Poor Relief Authority. We further understand that under Section 3480-1 of the General Code in a case such as this, the Township of legal settlement would be responsible for the services of the hospital in cases other than contagious where the proper notices have been given (and they were given in this case).

There is no contagion or detention hospital located in Lima or Allen County. It seems, therefore, that the only way for the medical profession of our community to handle a case of contagious disease that requires hospitalization is to place it in one of our general hospitals and provide for the isolation of the patient, as was done in this case.

We would like your opinion, based upon the foregoing facts, as to the following:

1. This being a case of contagious disease, are the Township Trustees of Amanda Township required to pay for the services of the hospital?

2. If this is a case where the township trustees are responsible for the services of the hospital, do the services of the special nurses fall within the classification of hospital services so as to make the township trustees responsible for them also?"

In your letter of inquiry no mention is made as to the activities of the district board of health in the case under consideration. I assume,

however, that by the use of the term "isolated" you have reference to a state of quarantine and that the physician and board of health performed the duties imposed upon them by statute upon discovery of the infectious disease in question.

By the terms of Section 1261-30, General Code, it is provided that district boards of health shall exercise all the powers and perform all the duties now conferred and imposed by law upon the board of health of a municipality. The duties of a board of health in cases of quarantine are set forth in Section 4436, General Code, which reads 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 persons (person) or persons quarantined, when able to make such payment, and when not, by the municipality or townships in which quarantined."

Where the municipality or township of quarantine differs from the municipality or township of legal settlement, liability for the expenses incurred is placed upon the latter provided there has been compliance with the requirements as to notice, etc. In this regard Section 4438-1, General Code, provides as follows:

"When a person with a contagious disease, quarantined by a city or general health district, has a legal settlement in a municipality or township within the same county but other than that in which quarantined, and such person is unable to pay the expenses of such service, the city or general health district rendering such service shall notify, in writing, the proper officials of the municipality or township of legal settlement of such person that such services are being rendered. Such written notice shall be sent within three days if the fact of non-residence is disclosed upon the beginning of such service or admission to a hospital or other institution of quarantine, or within three days after discovery of such fact if the same be not disclosed as above. Thereupon the municipality or township of legal settlement shall be liable for such expenses, either actual or at the established rate of the hospital or other institution of quarantine, and shall pay the same within thirty days after date of the sworn statement covering the expenses of such quarantine, which sworn statement shall be sent to the proper officials of the municipality

or township of legal settlement within twenty days after the discharge of such quarantined person. If the notice of such service be not sent to the municipality or township of legal settlement within three days after the disclosure by the person quarantined or the discovery of such non-residence, the municipality or township of legal settlement shall be liable only after the receipt of such proper notice. Nothing herein contained shall prevent the removal of such quarantined person by the municipality or township of legal settlement, at its expense, but such removal shall not relieve such municipality or township from liability for the expenses theretofore incurred by the city or general health district in which such person has been quarantined. Any such person who does not, upon discharge, pay the expenses of such quarantine shall, for the purposes of this act, be deemed indigent insofar as the city or general health district is concerned. The municipality or township of legal settlement is hereby subrogated to all the rights of the city or general health district in which such service was rendered."

From the foregoing, it will be noted that upon proper certification the expenses incurred in providing the necessaries of life, including medical attendance, medicine and nurses, for persons quarantined on account of contagious diseases shall be paid by the person so quarantined when able, and when not so able, by the municipality or township of quarantine.

This liability arises upon the rendition of services and the inability of the recipient to satisfy the claims. In the case of *Barberton v. Lohmers*, 18 C.C. (N.S.) 196, it was held that the statute in question imposes a legal obligation underlying the prescribed duties of boards of health and that affirmative action by the board of health is not a condition precedent to the bringing of an action.

Upon proper notification the liability of the township or municipality of quarantine is transferred to the township or municipality of legal settlement. In the instant case, therefore, since notice has been given, Amanda Township, the township of legal settlement, is liable for the expenses of hospitalization, including the expenses entailed in providing medical attendance and special nurses.

In your letter of inquiry reference has been made to Section 3391, General Code, and Opinion No. 2648, Opinions of the Attorney General for the year 1940, wherein I ruled that expenses involved in providing special nurses' care may not be paid by the local poor relief authority.

The opinion in question and the laws pertaining to the administration of poor relief are not controlling in the instant case.

Section 3391, et seq., General Code, imposes a duty on local relief areas to provide poor relief generally, including medical care. Sections 4436 and 4438-1, General Code, on the other hand, are not general in scope but are limited to the expenses incident to quarantine. While the expenses of quarantine might in some instances include expenses properly classified under medical care, and hence within the term "poor relief" as used in Section 3391, General Code, this possible repugnancy does not constitute an implied repeal of the earlier enactments concerning the maintenance of indigent quarantined persons.

In view of the presumption against an implied repeal and the presumption that special statutes are intended to remain in force as exceptions to statutes of a general nature treating the same subject matter, the statutes fixing liability with respect to contagious diseases have not been superseded and remain in full force and effect.

In specific answer to your inquiry, it is my opinion that the expenses incurred in providing hospital services, including special nurses' care to quarantined persons who are unable to pay therefor, are to be paid by the municipality or township in which the quarantine is maintained. Upon proper notification, however, as provided in Section 4438-1, General Code, the municipality or township of legal settlement, if within the same county in which the indigent is quarantined, shall be liable for the expenses so incurred.

Respectfully,

THOMAS J. HERBERT
Attorney General.