

Any such appointee, officer or employee who accepts a certificate of election to either house shall forthwith resign as such appointee, officer or employee and in case he fails or refuses to do so, his seat in the General Assembly shall be deemed vacant. Any member of the General Assembly who accepts any such appointment, office or employment, shall forthwith resign from the General Assembly and in case he fails or refuses to do so, his seat in the General Assembly shall be deemed vacant. But the provisions of this section shall not apply to school teachers, township officers, justices of the peace, notaries public or officers of the militia."

It will be noted that both the constitutional and legislative provisions eliminate township offices from the list of those positions which members of the General Assembly may not assume.

That a township trustee is a township officer seems to be so well settled that no citation of authorities is necessary.

In specific answer to your inquiry, therefore, it is my opinion that a member of the General Assembly is not prohibited from holding simultaneously the office of township trustee.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2715.

INMATE OF COUNTY HOME—COMES INTO POSSESSION OF PROPERTY WHILE RESIDENT THERE—PAYMENT FOR SUPPORT PRIOR TO INHERITANCE MAY NOT BE ENFORCED.

SYLLABUS:

Where an inmate of a county home has no property at the time of admission, but later comes into the possession of property, which is taken possession of by the county under the provisions of Section 2548 and related sections, such property may not be used for the purpose of paying the support of such inmate to said institution for the period prior to the time when the inmate comes into possession of such property.

COLUMBUS, OHIO, December 24, 1930.

HON. GEORGE E. SCHROTH, JR., *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads as follows:

"B. S. is now, and has been since January 21, 1919, an inmate of the Seneca County Home. At the time B. S. became an inmate of said home, he was destitute. He had at said time a mother and sister living and neither of them had any means with which to support him at the time.

On September 11, 1929, M. R. H. was appointed guardian of said B. S. by the Probate Court of Seneca County, Ohio. On May 31, 1929, R. S., mother of B. S., died, and as an heir said B. S. inherited a fair sized estate. The said R. S. inherited all of the estate, of which she died possessed, from a deceased brother who predeceased her by a few years.

Query: For what period of time is M. R. H., as guardian, bound to pay Seneca County, Ohio, for the care and support of his said ward at the county infirmary?"

Your inquiry, of course, arises by reason of the provisions of Section 2548, General Code, and its related sections.

Said section 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 therefor, 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.”

Section 2549, General Code, provides :

“The net proceeds arising from the sale of such property shall be paid to the county or city treasurer, and by him placed to the credit of such person to be paid out on the warrant of the county auditor, upon the order of the county commissioners, or by the city auditor upon the order of the proper officer of the infirmary. The superintendent shall open an account with the person and charge him with board at a reasonable rate and items furnished for his exclusive use, which account shall be approved by the county commissioners or by the proper officer at the close of each month.”

Section 2550, General Code, provides :

“Upon the death of such person or when he lawfully ceases to be a county charge or is lawfully discharged from a city infirmary, whose property or effects have been so disposed of, and the avails thereof so applied, any balance due and in favor of such person on the books of the institution shall be paid by the superintendent of the infirmary to him, or in case of his death to his legal representative. When any such fund has become exhausted or any balance paid in manner described above, the superintendent shall file with the proper probate court a complete statement showing receipts, itemized expenditures and balance, if any, and such court shall file such report with the records relating to the original order of sale of such person.”

Section 2553, General Code, provides in substance that if the guardian, husband, wife or persons entitled to the residuary interest in the property give bond to such county commissioners in a sum sufficient to secure the support of the person while he remains a county charge, the commissioners shall not seek to take possession of such property. Your question, of course, is whether or not such property may be used to pay for the support of such a person prior to the time he came into possession of the property.

Analyzing Section 2548, General Code, it will be observed that it is the duty of the commissioners to take possession of such property when a person becomes a county charge. It is also provided in said section that the net proceeds shall be applied in whole or in part to the maintenance of such person so long as he remains

a county charge. Section 2549 of the General Code requires an account to be opened with such person and requires him to be charged with board at a reasonable rate and items furnished for his exclusive use. The statutes contemplate that a strict account shall be kept by the authorities and any balance remaining at the time of the death of the inmate, or when he lawfully ceases to be a county charge, or is discharged from the infirmary, shall be turned over to him or his legal representative.

In determining the solution of your inquiry, it must be kept in mind that under the theory of the poor laws, where one is unable to provide for himself, his support is furnished by the county free. I have no difficulty in arriving at the conclusion that where one comes into possession of property after having been admitted into such an institution, the sections above mentioned have application. In other words, he has become a county charge and is the owner of property within the meaning of such section. However, I am inclined to the view that such statutes may not be given a retroactive interpretation to the end that such estate may be charged for the support of such inmate prior to the time he came into the possession thereof. In some respects, of course, it would seem that such property should be charged with the support of such inmate. On the other hand, a situation could easily be imagined where a person had been confined to an institution for a number of years and some interested relative or other person may have come into possession of finances which will enable him to assist such inmate and provide a legacy for the purpose of enabling the inmate to spend the remainder of his days outside of a public institution. It will readily be seen that under such circumstances, if such property is to be taken to cover the support for previous years, such a person could easily become again pauperized and be compelled to spend the remainder of his days in the institution, thereby defeating the intent of the donor.

In the case of *Brown vs. Infirmary Director*, 49 O. S. 578, an attempt was made to take possession of the funds of a person who was insane and held at a county infirmary under similar statutes to the ones that are being considered herein. The court held that the sections had no application except when one was admitted to such an institution as a pauper. While the decision probably is not in point in connection with your inquiry, in the body of the opinion the court, in discussing the authority to take possession of property of inmates of the county infirmary, stated:

“The authority given by this section must be strictly pursued.”

Applying a strict construction to the statutes under consideration, which we are required to do, it would appear that there is no authority to apply the property of an inmate of an infirmary to the payment of his support prior to the time he comes into possession of property, as hereinbefore indicated. When such a person enters an infirmary without property, the law makes no requirement with reference to his support, and no obligation has arisen in that respect. When he comes into possession of property, then the law requires him to support himself from that time.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that where an inmate of a county home has no property at the time of admission, but later comes into the possession of property, which is taken possession of by the county under the provisions of Section 2548, and related sections, such property may not be used for the purpose of paying the support of such inmate to said institution for the period prior to the time when the inmate comes into possession of such property.

Respectfully,
GILBERT BETTMAN,
Attorney General.