

legislative intent that these ballots should be counted, in officially determining the result of the election and canvassing the returns thereof, in every election without awaiting a contest or other investigation.

The board of education is charged with the duty of canvassing the returns of the election about which you inquire, under the provisions of Section 5120, G. C., supra. Since such ballots are required to be counted and the board of education must canvass the returns and determine the results of the election, it of necessity becomes the duty of the board of education to open the envelopes referred to, count the ballots and tally the same in so determining the result of such election."

It is therefore my opinion that envelopes containing uncounted ballots for members of township boards of education should be returned to the clerk of the board of education of the school district in which such election is held; and that such board of education when canvassing the returns of such election should open such ballots and, if from the same they are able to determine the voters' choice, such ballots should be counted and tallied in accordance with such determination and all such ballots should be preserved for the prescribed time for the purposes of such judicial or other investigation as may be necessary. All ballots other than the uncounted ballots should be returned to the board of deputy state supervisors of elections in accordance with law.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1549.

DAYTON STATE HOSPITAL—SUPERINTENDENT WITHOUT AUTHORITY TO BIND STATE BY CONTRACT FOR MOTION PICTURE FILMS.

SYLLABUS:

The superintendent of the Dayton state hospital is without authority to bind the state or said institution by a contract for supplying moving picture films to be exhibited at said institution.

COLUMBUS, OHIO, January 9, 1928.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads:

"Inclosed find copies of correspondence and contract with the Skirboll Gold Seal Productions, Inc., concerning the contract made by Dr. McClellan, as superintendent of the Dayton State Hospital under date of June 28th, seventeen days previous to his relinquishing the superintendency of that institution.

Dr. Hooper, who succeeded Dr. McClellan as superintendent of the Dayton State Hospital, contends that this contract is void inasmuch as the showing of the pictures, according to the terms of the contract, did not begin until November, four months after the expiration of Dr. McClellan's incumbency, thereby usurping the powers of the incoming superintendent and con-

tracting a debt of \$475.00 against the institution's Industrial and Entertainment Fund."

You also inclose copies of certain correspondence from the former and present superintendent of The Dayton State Hospital; and also correspondence from The Skirboll Gold Seal Productions, Inc., and copy of the agreement between the said company and the superintendent of The Dayton State Hospital. Said agreement evidences that on the 28th of June, 1927, H. H. McClellan, the then superintendent of said hospital, signed an order to said productions company wherein there was ordered thirty Columbia pictures to be exhibited at the Dayton State Hospital beginning the month of November, 1927. There are twenty-two clauses in said agreement, the same being claimed to be a standard exhibition contract. According to stipulations in the contract the said company is entitled to playing dates on payment for these pictures as they fall due, namely, four pictures to be paid for during November, four to be paid for during December and the balance to be paid as per stipulation in contract. This contract was signed by Dr. McClellan as superintendent of the Dayton State Hospital seventeen days previous to his relinquishing the superintendency, and according to the terms of the contract a showing of the pictures was not to begin until four months after the expiration of Dr. McClellan's incumbency as superintendent of said state institution.

The new superintendent, Dr. Hooper, on the 28th day of July, 1927, advised the aforesaid Productions Company that owing to a change in the management of the institution that the contract become ineffective July 15, 1927, as Dr. McClellan, the former superintendent, was without authority to contract a debt for said purpose of four hundred seventy-five dollars (\$475.00) against the institution's industrial and entertainment fund.

Your question is as to whether under the circumstances the Dayton State Hospital is bound and must abide by the terms of the contract. The answer involves a consideration of the powers and duties of the superintendent of the Dayton State Hospital, as to contracting and making purchases for the said institution.

Section 154-57, General Code, reads as follows:

"The Department of Public Welfare shall have all powers and perform all duties vested in or imposed upon the Ohio Board of Administration and the fiscal supervisor-secretary thereof, excepting the power to purchase supplies for the support and maintenance of state institutions provided for in section one thousand eight hundred and forty-nine of the General Code, by this chapter transferred to the Department of Finance; and said Department of Public Welfare shall also have all powers and perform all duties vested in or imposed upon the Board of State Charities, and the Board of Clemency. Wherever powers are conferred or duties imposed by law upon the boards and officers mentioned in this section such powers and duties, excepting as aforesaid, shall be construed as vested in the Department of Public Welfare. The Department of Public Welfare, with the approval of the governor, may assign labor of prisoners and inmates of institutions under the administration of the Department of Public Welfare on any public work of the state."

Section 1838, General Code, referring to the former Board of Administration, reads as follows:

"The board, in addition to the powers expressly conferred, shall have all power and authority necessary for the full and efficient exercise of the executive, administrative and fiscal supervision over all said institutions."

Section 1840, General Code, reads as follows :

"The board shall accept and hold on behalf of the state, if deemed for the public interest, any grant, gift, devise or bequest of money or property made to or for the use or benefit of said institutions or any of them, whether directly or in trust, or for any pupil or inmate thereof. The board shall cause each such gift, grant, devise or bequest to be kept as a distinct property or fund, and shall invest the same, if in money, in the manner provided by law ; but the board may, in its discretion, deposit in a proper trust company or savings bank any fund so left in trust during a specified life or lives, and shall adopt rules and regulations governing the deposit, transfer or withdrawal of such funds and the income thereof. The board shall, upon the expiration of any trust according to its terms dispose of the funds or property held thereunder in the manner provided in the instrument creating the trust.

The board shall include in the annual report a statement of all such funds and property and the terms and conditions relating thereto ; provided that monies or property deposited with officers of institutions by relatives, guardians, conservators and friends for the special benefit of any pupil or inmate, shall remain in the hands of such officers for use accordingly ; but each such officer shall keep an itemized book account of the receipt and disposition thereof, which book shall be open at all times to the inspection of any member of the board of administration or of the Board of State Charities."

Section 1842, General Code, reads in part as follows :

"Each of said institutions shall be under the executive control and management of a superintendent or other chief officer designated by the title peculiar to the institution, subject to the rules and regulations of the board and the provisions of this act.

Such chief officer shall be appointed by the board to serve for the term of four years unless removed for want of moral character, incompetency, neglect of duty, or malfeasance, after opportunity to be heard."

Section 1947, General Code, reads in part as follows :

"The institutions for the care and treatment of the insane in this state shall be respectively designated as follows: * * * that near Dayton, as the Dayton State Hospital; * * * "

Section 1835, General Code, reads in part as follows :

"The Director of Public Welfare shall appoint a fiscal supervisor, and such other employes as may be deemed necessary for the efficient conduct of the business, prescribe their titles and duties and fix their compensation, except as otherwise provided herein. The Department of Public Welfare shall have full power to manage and govern the following institutions :

* * *

The Dayton State Hospital.

* * * "

It is clear from the foregoing statutes that the Director of Public Welfare having succeeded to all the powers and duties of the former Board of Administration, has

full authority and control over the Dayton State Hospital, with the exception that purchases of supplies must be made upon application to the state purchasing agent.

Section 154-6, General Code, provides in part as follows:

"Offices are created within the several departments as follows:

In the Department of Finance

* * *

Superintendent of purchases and printing.

* * * "

Section 154-37, General Code, reads in part as follows:

" * * * The Department of Finance shall succeed to and exercise all powers of the state purchasing agent in the office of the Secretary of State, and the Secretary of State and Auditor of State with respect to the purchase of supplies and equipment required for the use and maintenance of state officers, boards and commissions, the commissioners of public printing and the supervisor of public printing, and shall exercise all powers and perform all duties as to purchases heretofore vested in the Ohio Board of Administration under the provisions of section one thousand eight hundred and forty-nine of the General Code.

Wherever powers are conferred or duties imposed upon any of such departments, offices or officers with respect to the matters and things herein mentioned, such powers and duties shall be construed as vested in the Department of Finance. In addition to the powers so transferred to it, the Department of finance shall have power to purchase all other supplies, material and equipment for the use of the state departments, offices and institutions,
* * * "

It is also provided by statute that the Superintendent of Purchases and Printing in the Department of Finance has authority to purchase all supplies and equipment for the state institutions.

It is therefore evident that the superintendent of the Dayton State Hospital had no authority to make a valid contract binding the State of Ohio unless it was approved by the Director of Public Welfare, and in a supplemental communication you informed me that no authority has ever been given to the superintendent of the Dayton State Hospital to contract for moving picture films and the showing of the pictures. This being true, it seems clear that the former superintendent of the Dayton State Hospital was without authority to bind the State of Ohio or the said institution by a contract in regard to the supplying and showing of said moving pictures.

You suggest that the superintendent was without authority to contract a future debt against the industrial and entertainment fund; also, that the said fund is maintained by sales of cigars, tobacco, candy, etc., and the giving of entertainments, some of which consist of moving picture shows.

The superintendent of said institution has the custody of said fund and the control over its disbursement. He, therefore, is the trustee of said fund.

As to whether said fund is bound in any contract by the said superintendent depends upon the nature and purpose of said contract and the manner of executing the same; also whether he executes said contract as trustee of said fund and contracts with regard thereto.

As I am not in possession of all the facts in the case I can not say whether said fund is bound in the instant case.

Respectfully,

EDWARD C. TURNER,

Attorney General.