

to the exceptions above noted, and likewise said warranty deed and encumbrance estimate No. 638, both of which are hereby approved.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2296.

**PUBLIC RECORD—BOOK KEPT BY SUPERINTENDENT OF INFIRMARY
CONSIDERED SUCH—FORMER INFIRMARY INMATE MAY INSPECT
THIS BOOK AT ANY REASONABLE TIME UNDER SUPERVISION OF
SUPERINTENDENT.**

SYLLABUS:

One who has formerly been a resident of the county infirmary and discharged therefrom under Section 2527-3, General Code, is entitled to inspect the book kept by the superintendent of the infirmary under Section 2527 of the General Code, if such inspection is made at a reasonable time under the supervision of said superintendent.

COLUMBUS, OHIO, September 5, 1930.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication which reads as follows:

“I desire your opinion on the question set out below. By the latter part of Section 2522 of the General Code of Ohio, it is provided as follows:

‘*Records and accounts.* The commissioners shall keep a separate book in which the clerk, or if there be no commissioners’ clerk, the county auditor, shall keep a separate record of their transactions respecting the county infirmary, which book shall be known as the infirmary journal and shall be kept in the manner provided by Sections 2406 and 2407 of the General Code of Ohio, and said book shall at all reasonable times be open to public inspection.’

By Section 2527 of the General Code, it is provided as follows:

‘*Record to be kept by superintendent.* The superintendent of the infirmary shall enter in a book to be provided for him and kept for that purpose, so far as it can be ascertained, information in reference to each person received into the infirmary as follows: Name, sex, age, nativity, date of admission, length of residence in the state, and in the county, from what township received, whether insane, idiotic or epileptic, whether diseased, deformed, crippled, blind, deaf and dumb, date of discharge from the infirmary and reasons therefor, date of all deaths and causes thereof, the number of births and parentage of all children born in the infirmary.’

You will note the reading of the former section that the ‘Infirmary Journal’ kept by the county auditor is open for public inspection. The query that has been put up to me is whether or not the book kept by the Superintendent of the infirmary as provided for in Section 2527 of the General Code is likewise open for public inspection?

The above question is arising by reason of the fact that an inmate of the county infirmary who has been recently discharged from said infirmary by a

proceeding in Probate Court under Section 2527-3 of the General Code of Ohio, is demanding his right to inspect the books of said infirmary as a citizen of Monroe County. It seems to the writer that said person would have an adequate opportunity to inspect the financial record by looking at the infirmary journal, in the county auditor's office. It seems questionable to me that such person would have a right to inspect the book kept by the superintendent of the infirmary which has in it the history, as it were, of the inmates."

It is obvious that Section 2527, General Code, provides for the keeping of a record by the superintendent of an infirmary and undoubtedly such a record is a public record because it is made by a public official as a part of his duties.

In the case of *Wells vs. Lewis*, 12 O. D. (N. P.) 170, it was held that all of the records in the office of the county auditor relating to the valuation of property and the taxes on the same are public records.

In the case of *State ex rel vs. Dittley*, 12 O. N. P. (N. S.) 319, it was held that the proceedings of the Tax Commission of Ohio constitute a public record, and it was further held that they are open to inspection by any and all persons who choose to examine them.

In the case of *State ex rel vs. Adams*, 8 O. C. C. (N. S.) 513, it was held that a certificate of a medical witness and the findings in cases of inquests held by the probate judge are part of the record in such proceedings.

Section 2522, to which you refer, expressly provides that the record kept by the commissioners shall at all reasonable times be open to public inspection. By reason of the express provision in Section 2522, authorizing the inspection of records it of course could be argued in those instances wherein inspection of records were not provided for that no such rights exist. It was a rule of common law that no person was entitled to inspect public records, either personally or by agent, unless he had such an interest therein as would enable him to maintain and defend an action for which the records sought can be furnished as evidence or necessary information, and such interest must be direct and tangible. 34 Cyc., 592. However, it is not believed that the general rule hereinbefore stated is the rule in Ohio. In the case of *Wells vs. Lewis*, hereinbefore mentioned, it was held:

"Public records are the people's records. The officials in whose custody they happen to be are mere trustees for the people, any one of whom may inspect such records at any time, subject only to the limitations that such inspection does not endanger the safety of the record, or unreasonably interfere with the discharge of the duties of the officer having custody of the same."

The case last mentioned further pointed out that the right to inspect public records is not confined to persons having a private interest to be subserved by such inspection.

In the case of *State ex rel vs. Dittley*, hereinbefore mentioned, it was held that mandamus will lie to compel the Tax Commission of Ohio to permit an examination of the records and reports of corporations made thereto.

In the case of *Krickenberg vs. Wilson*, 3 O. N. P. (N. S.) 179, it was held that a petition under the Brannock law for a residence district election in a municipal corporation, filed by the mayor of such corporation, is a public document and open to inspection by any one who is a citizen, etc.

It is believed that under the rule in Ohio records that are made by public officials are open to the inspection of all persons interested, whether the interest is private or public, at all reasonable hours, unless the Legislature has seen fit to prohibit such inspection.

Based upon the foregoing, and in specific answer to the question which you propound, it is my opinion that one who has formerly been a resident of the county infirmary and discharged therefrom under Section 2527-3, General Code, is entitled to inspect the book kept by the superintendent of the infirmary under Section 2527 of the General Code, if such inspection is made at a reasonable time under the supervision of said superintendent.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2297.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE DAYTON MORGAN ENGINEERING COMPANY TO MAKE SURVEYS OF THE BED AND BANKS OF THE MUSKINGUM AND TUSCARAWAS RIVERS AT AN EXPENDITURE OF \$5,000.00.

COLUMBUS, OHIO, September 5, 1930.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain contract in triplicate entered into by and between yourself as Superintendent of the Public Works of the State of Ohio and the Dayton Morgan Engineering Company, by which in consideration of the sum of five thousand dollars to be paid to said company, it contracts and agrees to make surveys of the bed and banks of that portion of the Muskingum and Tuscarawas Rivers that lies between Dresden in Muskingum County and the north line of the city of Dover in Tuscarawas County, such surveys being with the objects and for the purposes set out in said contract.

With the exception of the territory to be covered by said survey and the resulting amount of services to be performed by the Dayton Morgan Engineering Company and the amount to be paid to said company for its services, the contract here in question is substantially the same as to its terms and provisions as the contract which you recently submitted for my approval and which was approved in Opinion No. 2259 of this office directed to you under date of August 23, 1930.

In view of the somewhat extended discussion of the questions presented by said contract in the former opinion of this office above referred to, I do not deem it necessary to discuss the provisions of this contract or any of the legal questions suggested thereby in this opinion. Following the conclusions reached in said former opinion and finding that this contract has been properly executed by yourself as Superintendent of the Public Works of this state and as Director thereof and by the Dayton Morgan Engineering Company, said contract is hereby approved as to legality and form as is evidenced by my approval endorsed upon said contract and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

With said contract you have submitted to me Encumbrance Estimate No. 372, executed by the Director of Finance, showing that the sum of five thousand dollars, which is the contract price for the services to be rendered by the Dayton Morgan Engineering Company under said contract, has been released by the Controlling Board out of the appropriation for maintenance made for your department. Said encumbrance estimate is likewise herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.