

By giving full effect to the entire statute and construing the same in such a manner so as to avoid absurd consequences, I am constrained to the view, and it is accordingly my opinion, that under the provisions of Section 6064-17 of the General Code, permits may be issued by the Department of Liquor Control on the following bases:

1. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in any village, or city of a population of less than fifty-five thousand.

2. One class D-3 permit may be issued for each fifteen hundred population, or part thereof, in any city of a population of fifty-five thousand or more.

3. One class D-3, class D-4 and class D-5 permit may be issued for each two thousand population, or part thereof, in the territory lying without the corporate limits of cities or villages in any county.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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948.

POOR RELIEF—WHERE BOARD OF TOWNSHIP TRUSTEES AGENT OF COUNTY COMMISSIONERS—MEMBERS COMPENSATED FOR SERVICES FROM TOWNSHIP FUNDS, NOT FROM POOR RELIEF FUNDS—SECTIONS 3294, 3391-1 G. C.—PROVISIONS, HOUSE BILL 675, 93rd GENERAL ASSEMBLY SUPERSEDE THOSE OF SECTION 3476 G. C., IN RE POWERS AND DUTIES BOARDS OF TOWNSHIP TRUSTEES AND TOWNSHIP TRUSTEES.

**SYLLABUS:**

1. *When the board of county commissioners have by resolution designated the board of township trustees as agent in the administration of poor relief under authority of Section 3391-1, General Code, the members of such board of township trustees may not be compensated for their services from poor relief funds but may be compensated for their services from township funds under authority of Section 3294, General Code, but within the limitations therein set forth.*

2. *Since the enactment of House Bill No. 675 by the Ninety-third General Assembly, which act provides a complete system for the dispensing of poor relief, including that formerly dispensed by boards of township trustees under authority of Section 3476, General Code, the provisions of House Bill No. 675 supersede those of Section 3476, General Code, with reference to the duties of township trustees, and take away*

*from boards of township trustees the powers and duties formerly possessed by them under authority of such Section 3476, General Code.*

COLUMBUS, OHIO, July 27, 1939.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN: I am in receipt of your request for an opinion which reads:

"Under the provisions of House Bill No. 675, commencing on the first day of July, 1939, the territory in each county, outside the corporate limits of cities therein, is constituted the 'county local relief area', the local relief authority for which shall be the board of county commissioners of the county.

Section 2 of this bill provides that upon request of the township trustees of any township, the county commissioners shall, by resolution, designate such trustees to act as its agents in the administration of poor relief within such township, to the extent provided in such resolution.

May we respectfully request your opinion on the following question:

1. If the county commissioners have designated the trustees of a township to act as their agents in administering relief within the township, either in a limited capacity or to have entire charge, are such trustees entitled to charge the township the per diem rate for services performed in the business of the township, as provided in Section 3294, General Code, or should their compensation be fixed by the county commissioners and paid from relief funds of the county, and be subject to the limitation as provided in Section 7 of this bill?

2. In case a township has sufficient money in its own general fund, and does not derive any revenue from appropriation made to the State Welfare Department for relief purposes, or from funds allocated to counties for poor relief, and the trustees desire to care for the indigents of their townships under the provisions of Section 3476, General Code, et seq., do the trustees have authority to furnish to the indigent persons in their townships and at the township expense, such items as come within the definition of poor relief as set forth in this act?"

It is a well established rule of law that public officials are entitled to such compensation only as is provided for them by statute for the performance of their official duties. *Anderson vs. Board of County Commissioners*, 25 O. S., 13; *Strawn vs. Board of County Commissioners*, 47

O. S., 404, 408; Clark vs. Board of County Commissioners, 58 O. S., 107; Diebolt vs. Township Trustees, 7 O. S. 237. If the statute prescribes an additional duty for a public official and prescribes or authorizes no additional compensation therefor, it is to be presumed that such duties are to be rendered by him gratuitously. As was stated by the court in the case of Strawn vs. Board of County Commissioners, supra, page 408:

“The fact that a duty is imposed upon a public officer will not be enough to charge the public with an obligation to pay for its performance, for the legislature may deem the duties imposed to be fully compensated by the privileges and other emoluments belonging to the office, or by the fees permitted to be charged and collected for services connected with such duties or services, and hence provides no direct compensation therefor, to be paid out of the public treasury.”

The compensation of township trustees for the performance of their official duties is prescribed by Section 3294, General Code, which now reads:

“Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year *including services in connection with the poor*. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested.” (Emphasis the writer’s.)

Such section was amended by the recent legislature to read as follows:

“Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and three dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. Provided, however, that in townships having a budget of less than ten thousand dollars, the trustees shall be entitled to compensation for not more than one hundred days at said rate of three dollars and fifty cents per day; in townships having a budget of from ten thousand to twenty thousand dollars, the trustees shall be entitled to compensation for not more than one hundred and

twenty-five days at said rate of three dollars and fifty cents per day; and in townships having a budget of twenty thousand dollars or over, the trustees shall be entitled to compensation for not more than one hundred and fifty days at said rate of three dollars and fifty cents per day. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

In my examination of House Bill No. 675 as enacted by the Ninety-third General Assembly, I find no language which purports to provide for additional compensation for township trustees to be paid from poor relief funds. In fact, in such act I find no language imposing any duties upon township trustees. It does authorize the board of county commissioners to designate the board of township trustees as their agents for certain purposes, when requested so to do by the board of township trustees.

If then such House Bill No. 675 does not authorize compensation to the township or the board of township trustees from poor relief funds for services to be performed by them when designated as the agent of the county for poor relief within such territory, it is fundamental that such officers may not be paid from such fund.

Your inquiry also presents the question as to whether they may be paid from the township general fund by authority of Section 3294, General Code. In an opinion of one of my predecessors (Opinions of the Attorney General, 1934, Vol. I, page 402), it was held as stated in the syllabus:

"1. Under section 3294, General Code, the members of a board of township trustees are entitled to receive \$2.50 per day for their services in administering the poor relief law.

2. The \$2.50 per diem fee legally payable to township trustees for services in administering the poor relief laws is subject to the limitation that the total of such per diems plus the total of the fees payable to said trustees for other services performed in the business of the township and payable from the township treasury shall not exceed in any one year the sum of \$250.00."

In the Opinions of the Attorney General for 1919, Vol. I, page 377, I find an opinion of a predecessor Attorney General wherein the syllabus states:

"Where township trustees so manipulate their official transactions in disbursing the poor relief, as to unnecessarily increase their compensation under section 3294, G. C., their service to the extent augmented with such object of personal gain is not 'service

in the business of the township' as provided in said section and such trustees are not entitled to compensation therefor."

Such last opinion is based upon the assumption that the acts of the township trustees in increasing their time expenditures were caused by the capricious acts of such officials and not in furtherance of the general welfare of the township. I am not inclined to the view that such opinion would support the conclusion that if the board of township trustees in their discretion should request the board of county commissioners to appoint such board of trustees as agent of the county local relief area in connection with the administration of the poor relief within such township, such act would prevent the township trustees from being remunerated from the general fund of the township.

The language of present Section 3294, General Code, specifically authorizes payment to the township trustees from the township general fund for their services "including services in connection with the poor." This section was amended by the present General Assembly to become effective on September 2, 1939, by increasing the compensation with respect to the number of days for which they might be compensated. It does not use the language just quoted. However, the language of the section, as so amended, clearly indicates that the compensation therein authorized to be paid is in payment for all official duties of the township trustees, regardless of their nature. The duties which may be imposed upon the board of township trustees under the authority of such House Bill No. 675 are on the trustees in their official capacity as distinguished from their individual capacity. I therefore am of the opinion that the township trustees may be paid for their services, whether as agents for poor relief or otherwise, to the extent authorized by Section 3294, General Code. In an opinion recently rendered by me bearing No. 919, I held that the township trustees might not be paid for their services in connection with poor relief dispensed under authority of House Bill No. 675 of the Ninety-third General Assembly from "poor relief funds" as described in such act. In such opinion, however, although the question was not asked, I suggested that the township trustees might be paid under authority of Section 3294, General Code.

Your second inquiry concerns the effect of the enactment of House Bill No. 675 on the existence of Section 3476, General Code. Such section reads:

"Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents

of the state, county and township or city as described in sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city."

In House Bill No. 675 the legislature has inserted no express repeal of the above quoted section. If the section does not now exist it must have resulted from its repeal by implication by the enactment of the present poor relief law.

In the case of *State v. Hollenbacher*, 101 O. S., 478, 483, the court said:

"The rule is familiar, and everywhere recognized, that a subsequent statute revising the whole subject-matter of the former act, and evidently intended as a substitute for it, although it contains no express words to that effect, operates to repeal the former. But it is equally well settled that repeals by implication are not favored, and, where two affirmative statutes exist, one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation. The fact that a later act is different from a former one is not sufficient to effect a repeal. It must further appear that the later act is contrary to or inconsistent with the former. The question is one of legislative intent. It must clearly appear that the legislature intended not only to enact a new law but to enact it in place of the old one."

The clause in the title of House Bill No. 675, "An act to provide for the administration of poor relief," might indicate that such act was intended to revise the whole subject matter of the former laws concerning the administration of relief to the poor and that such act was intended by the legislature to be a substitute for such former laws. However, in Section 3 of such act (Section 3391-2, General Code), the legislature used the following language:

"\* \* \*

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. 8. Except as modified by the provisions of this act, section 3476 and other sections of the General Code of like purport shall remain in full force and effect and nothing in this act shall be construed as altering, amending, or repealing the provisions of

section 3476 of the General Code, relative to the obligation of the county to provide or grant relief to those persons who do not have the necessary residence requirements and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control.

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From such language it is apparent that the legislature intended to modify to some extent the effect of Section 3476, General Code, but did not intend to disturb in any manner the provisions of the third sentence of such section, for the language of such sentence is repeated in subparagraph 8 of Section 3391-2, General Code, quoted above.

Such Section 3476, General Code, as it existed before the enactment of House Bill No. 675, in so far as it affected township trustees, read :

“Subject to the conditions, provisions and limitations herein, the trustees of each township \* \* \* shall afford at the expense of such township \* \* \* public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships \* \* \* shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township \* \* \* as described in sections 3477 and 3479. \* \* \* When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such city.”

Section 3477, General Code, mentioned in such quoted matter, defines legal settlement for purposes of poor relief and limits it to persons who have resided in the county for twelve consecutive months without having been recipients of public relief or charitable relief.

Section 3479, General Code, provides that the claimant must have resided in the township for three consecutive months under similar circumstances.

From the language of such sections it is apparent that the intent of the legislature in its enactment was to authorize boards of township trustees to furnish what is defined in House Bill No. 675 as “poor relief.” Such act (House Bill No. 675), in defining the term “local relief authority,” states that the term “means the board or officer required by law or by charter to administer or carry on poor relief in any local relief area.” The term “local relief area,” as used in such definition, is defined to be “the taxing district within and for which poor relief funds are expended.” Section

2 of such act (Section 3391-1, General Code) places all of that portion of the territory within the geographical limits of a county lying outside of the cities located therein, in the "county local relief area" and provides that the local relief authority thereof "shall be the board of county commissioners." Such section then provides that poor relief within the cities shall be administered by the city officials.

It is to be noted that the effect of House Bill No. 675 is to make the entire county, outside of the geographical limits of the city therein, a taxing district for the purpose of raising money for purposes of poor relief (Section 3391-1, General Code). The board of county commissioners has been designated, in such act, as the taxing authority and the bond issuing authority for the county local relief area. The act also provides that "poor relief" shall be furnished by the county commissioners "to all persons therein in need of poor relief."

Since the poor relief authorized to be dispensed under authority of Section 3476, General Code, is included in the relief authorized to be furnished under House Bill No. 675 and since the duty is imposed upon the board of county commissioners to furnish this particular type of poor relief to *all* of the people to whom the board of township trustees were authorized to dispense it under the provisions of Section 3476, General Code (see Section 3391-2, sub-paragraph 1), it could hardly be presumed that the legislature intended to expend public funds to such extent as to require persons needing public relief to receive such relief twice. It would rather appear to be that the legislature intended to revise the law with reference to the distribution of temporary poor relief within the home and intended the new act as a substitute for the provisions made in such Section 3476, General Code, for the furnishing of such relief by the board of township trustees to residents of the township. I therefore am of the opinion that the provisions of Sections 3391, 3391-1 to 3391-13, both inclusive, General Code (House Bill No. 675), supersede the provisions of Section 3476, General Code, to the extent that such section authorizes the board of township trustees to dispense temporary poor relief within the homes in the township and that the board of township trustees no longer have the authority or duty to dispense such type of poor relief.

Specifically answering your inquiries, it is my opinion that:

1. When the board of county commissioners have by resolution designated the board of township trustees as agent in the administration of poor relief under authority of Section 3391-1, General Code, the members of such board of township trustees may not be compensated for their services from poor relief funds but may be compensated for their services from township funds under authority of Section 3294, General Code, but within the limitations therein set forth.

2. Since the enactment of House Bill No. 675 by the Ninety-third



General Assembly, which act provides a complete system for the dispensing of poor relief, including that formerly dispensed by boards of township trustees under authority of Section 3476, General Code, the provisions of House Bill No. 675 supersede those of section 3476, General Code, with reference to the duties of township trustees, and take away from boards of township trustees the powers and duties formerly possessed by them under authority of such Section 3476, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

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949.

MEDICAL OR HOSPITAL SERVICE—OTHER THAN CONTAGIOUS—WHEN PERSON HAS NO LEGAL SETTLEMENT IN COUNTY WHERE SERVICE PERFORMED—IF COUNTY, MUNICIPALITY OF TOWNSHIP FAILS TO SEND WITHIN THREE DAYS WRITTEN NOTICE TO COUNTY COMMISSIONERS WHERE PERSON HAS LEGAL SETTLEMENT—FOREIGN COUNTY ONLY LIABLE FOR SERVICES PERFORMED AFTER RECEIPT OF NOTICE—NON-RESIDENT.

**SYLLABUS:**

*Under the provisions of section 3484-2, General Code, if a county, municipality or township renders medical or hospital services, in cases other than contagious, to a person who has a legal settlement in a county other than the one in which such service is rendered and such county, municipality or township fails to send written notice to the county commissioners of the county of legal settlement within three days after disclosure by such person or discovery of such non-residence, the county of legal settlement is liable only for those services rendered after receipt of notice.*

COLUMBUS, OHIO, July 27, 1939.

HON. D. HARLAND JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion on the following:

“General Code Section 3484-2 contains the following language:

‘If the notice of the rendering of such service, required to be sent by the county, municipality, or township rendering the