1504.

COUNTY INFIRMARY—UNDER PROVISIONS OF SECTION 2541 G. C. NO INSANE PERSON MAY BE RECEIVED AT ANY COUNTY INFIRMARY—SAID SECTION NOT IMPLIEDLY REPEALED—DISCUSSION AS TO WHEN PERSON HAVING SOME PROPERTY MAY BE ADMITTED OR REFUSED ADMISSION TO COUNTY INFIRMARY.

1. *By reason of the provisions of section* 2541 *G. C. no insane person may be received or kept at a county infirmary.*

2. *Section* 2541 *G. C. has not been impliedly repealed by the reference, in such sections as sections* 2535 *and* 2538 *G. C., to insane persons in the county infirmary, such reference being attributable to inadvertence on the part of the legislature.*

3. *Question of when a person having some property may be admitted or refused admission to a county infirmary, discussed.*

COLUMBUS, OHIO, August 19, 1920.

HON. A. V. BAUMANN, JR., *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—Acknowledgment is made of your letter reading as follows:

> "I respectfully request your opinion upon the following:
>
> A resident of Sandusky county, Ohio, was adjudged insane by the Probate Court of this county and committed to the State hospital. A guardian was appointed by the Probate Court of this county. After being there for some time she was discharged and joined her husband in Erie county. She was there but a few weeks when she was taken to the home of her mother and stepfather in Seneca county, where she has lived for the past four or five years. During the time she was in Seneca county her support was arranged by her guardian and paid out of the income of her property. Calling your attention to the 19th Ohio State, page 28, General Code section 3477, and the general rule that an insane person has no mental capacity to change residence, I ask that you advise me as to whether or not in your opinion this woman has such a residence in Sandusky county that she may properly be received at the county home.
>
> Also advise me as to when, in your opinion, a person having some property may be admitted or may be refused admission to the county home."

In personal conference with you, the further information is learned that when the person in question was discharged from the state hospital, she was not discharged "as cured," but merely released as a harmless insane person. In other words, that said person is now insane and has been insane ever since the time of her commitment to the state hospital.

Section 2544 G. C. (108 O. L. Part I, p. 269) provides the method for admission into the county infirmary, or *"county home"* as it is now called (Section 2419-3 G. C. as amended 108 O. L. Part I, p. 68). Section 2544 reads as follows:

> "In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a state-

ment of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

The reference made by the above quoted section to the "legal settlement" of the person whose admission to the county home is sought, requires in each instance a consideration of sections 3477 G. C. and 3479 G. C. (108 O. L. Part I. p. 272) which define legal settlement.

However, under the facts stated by your letter the first question to determine is not the question of the legal settlement of the person you have in mind. The first question to determine is whether an insane person may be legally received or kept in a county home at all. If a negative answer must be given to that question, there is no occasion for considering your first question farther.

Your attention is called to section 2541 G. C. which says:

"No insane or epileptic person shall be received or kept at any county infirmary in this state."

Said section is free from ambiguity, and indicates in language which is about as clear as it is possible to use, what the legislature's intention was on the admission of this particular class of persons to the county infirmary.

It is true that in certain other sections which have to do with the county infirmary, notably sections 2527, 2535 and 2538 G. C., reference is made to insane inmates of the infirmary. By section 2527 G. C. the superintendent of the infirmary is required to keep a record showing in reference to each person received into the infirmary, the following things, among others:

"* * * whether *insane,* idiotic or epileptic * * *."

By section 2535 G. C. the superintendent of the county infirmary is required to submit annually a report giving certain statistical information regarding the inmates of the institution. Among the things which such report must show are these:

"* * * the number of other inmates remaining; how many of sound mind; * * * *how many insane* * * * *how many epileptics;* * * * *how many idiotic* * * *."

By section 2538 G. C. similar statistics are called for on a monthly basis, and this section likewise calls for a report as to

"* * * how many of sound mind; * * * *how many insane* * * *; how many epileptics * * *; how many idiotic * * *."

The inconsistency just noted has been further heightened by the language of what was section 2551 G. C., said section being recently repealed. 108 O. L. Part I, p. 275. Said section was to this effect:

"Section 2551. When a person *insane* or otherwise becomes a county charge, or the inmate of a corporation infirmary, and is possessed of or owns real estate * * * the county commissioners or proper officers of the corporation infirmary shall take possession of, and when they deem it advisable to the best interests of such person, sell such property or other interests."

However, the explanation of inconsistency just mentioned is not difficult. Formerly, statutory authority *did* exist for the admission of insane persons into a county infirmary. See sections 707 and 708 Revised Statutes. Speaking of them the supreme court, in Brown vs. Infirmary Directors, 49 O. S. 578, 580, said:

"* * * they authorize such commitment only until the person can be admitted to an asylum, or, when not entitled to admission, such person is at large and dangerous."

In 93 O. L. 276, sections 707 and 708 R. S. were repealed. The act also contained this section:

"Section 5. That on and after June 1, 1900, it shall be unlawful to receive, or keep, at any county infirmary in the state of Ohio, any insane or epileptic persons and all sections authorizing the receiving or committing of such insane and epileptic persons to the infirmaries of the state are hereby repealed."

The section just quoted is the forerunner of section 2541 G. C. hereinabove referred to.

It seems reasonably clear that while the legislature has, subsequent to the enactment of section 2541 G. C., given its attention to section 2535 G. C. (see 102 O. L. 433; 108 O. L. Part I, p. 268) and section 2538 G. C. (see 95 O. L. 262), making reference to insane persons in the county infirmary, such references are made through inadvertence and are not to be taken as impliedly repealing the provisions of section 2541 G. C.

Your first question may therefore be disposed of without reference to the matters of residence and legal settlement, by saying that an insane person may not be received or kept in the county home.

Your second question is general in its nature and calls for a discussion, which must also be general, of the circumstances under which "a person having some property" may be admitted or refused admission to the county home.

The legislature has not undertaken to fix any specific amount or value of property, the possession of which disentitles the possessor to admission to a county infirmary. On the contrary, it does not appear that the possession or non-possession of property is at all the test of admission, and some persons having no property may be ineligible to admission, while others having property may be admitted.

In section 2544 G. C., quoted above in connection with the discussion of your first question, the qualifications for admission to the infirmary are not specifically mentioned. The language there is merely

"* * * that the person complained of is *entitled* to admission to the county infirmary * * *"

and again, that

"* * * the superintendent of the infirmary is satisfied that such person *should become* a county charge * * *."

Somewhat more definite is section 3476 G. C. (108 O. L. Part I, page 272), which is the first section of that part of the code relating to poor relief. Said 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. * * *."

The first sentence of section 3476 G. C. enjoins the giving by the township trustees or the proper officers of each city of public support or relief *"to all persons therein who are in condition requiring it."* This same phrase, is, we think, to be read into the subsequent sentence relative to relief granted by the county. In other words, the test of the right to apply for and receive relief either at the hands of the township or municipal corporation, or at the hands of the county, is the ***necessitous condition*** of the applicant and not necessarily his condition in respect of his ownership of property.

In the case of Beach vs. Trustees of Marion Township, 2 O. D. Reprint, p. 221, the court had occasion to construe a statute providing for poor relief of any person who "is in a suffering condition and ought to be relieved at the expense of such township." At page 223 the court says:

> "It is not enough that the person relieved should be 'in a suffering condition.' His case must present such circumstances, as, in the estimation of reasonable men, will show that he 'ought to be relieved at the expense of the township.' If he is poor, without property, still, if he has *credit*, and by his own promise to pay, or request, can have his suffering condition relieved, he is not entitled to aid from the trusteees. * * *. If he have money and property in abundance, but they are distant, and he is a stranger in a strange land 'in a suffering condition,' unable to procure relief upon his credit, he is entitled to be relieved at the public expense."

That a person does not have to be a pauper—"a person entirely destitute of property or means of support" (Century Dictionary definition) * * *—in order to be admitted to a county infirmary, is, of course, clearly shown by sections 2548 G. C. (108 O. L. Part I, p. 270) et seq. Section 2548 G. C. says:

> "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."

There is nothing in said section to indicate that the amount of property of the person becoming an inmate must be small; for aught that appears, it might be substantial, the legislature being careful to indicate the manner of distributing a possible balance arising upon the death or discharge of the inmate. However, the possession by such person of a large amount of property yielding an income sufficient to take care of his needs would ordinarily suggest to the superintendent of the infirmary that such person was not one who, in the words of section 2544 G. C., "should become a county charge." Yet it is not impossible to imagine circumstances under which even such persons should be admitted into the infirmary. Section 3467 G. C. recognizes this when it refers to

"* * * those who are permanently disabled * * * 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."

From the foregoing it will appear that no set rule can be availed of to determine your question. Each case must rest on its own peculiar facts. That the poor relief laws should receive a liberal rather than a strict technical construction is pointed out in the Beach case above cited. In that case the court, referring to such laws, says:

"They are to be liberally construed, especially in favor of the destitute and unfortunate poor who are alike entitled to the commiseration and regard of a jury, of courts and the legislature. These laws have provided almost the only, and this but an inadequate, tribute which wealth and property pay to destitution and distress."

Respectfully,
JOHN G. PRICE,
Attorney-General.