

at the door of the school house which would be the most accessible to the pupil in traveling from his home "by the nearest practicable route for travel accessible to such pupil", thence by the regularly used path to the center of the highway, thence along the center of the highway (which is the nearest practicable route for travel accessible to such pupil) to a point opposite the entrance to the curtilage of the residence of the pupil, or, if the curtilage of the residence of the pupil does not extend to the highway, to the path or traveled way leading to the entrance to such curtilage, thence to the entrance of the curtilage, along the path or traveled way to said entrance.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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1516.

INDIGENT POOR—OUTDOOR RELIEF FOR POOR IN MUNICIPALITIES  
—TAX LEVY—RELIEF FOR POOR RESIDING IN TOWNSHIP.

*SYLLABUS:*

1. *Outdoor relief, that is partial and temporary relief, for the poor in cities should be furnished by the proper municipal officers, and provision therefor should be made by the proper authorities in the making of tax levies and the adjustment of budgets.*
2. *Township trustees are limited in the granting of partial and temporary relief to the poor, to persons who reside in the territory within the township which lies outside the corporate limits of cities.*

COLUMBUS, OHIO, January 4, 1928.

HON. FRANK WIEDEMANN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"Following a ruling of your office, the county budget commission allowed the sum of \$4500.00 to the township trustees of Marion Township for the coming year of 1928, to take care of poor relief. Also, following your ruling, no money was allowed the City of Marion for poor relief. Of course the tax levied was levied upon all of the property of Marion Township, hence the township trustees have the burden of looking after the poor in the City of Marion as well as in the township. Have the trustees of Marion Township the authority to hire someone who is familiar with poor relief in the city to look after the poor relief work in the City of Marion and pay him a reasonable compensation for his work?

Formerly, the health commissioner of the City of Marion served in this capacity for the city and received therefor from the city the sum of \$25.00 per month. Could the health commissioner of the City of Marion enter into a contract with the township trustees to do this work and still retain the office of health commissioner?"

Sections 3476, 4089 and 4094, General Code, read in part, as follows:

Sec. 3476. "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. \* \* \* 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."

Sec. 4089. "The management of the affairs of corporation infirmaries and the care of the inmates thereof, \* \* \* and the granting of outdoor relief to the poor, shall be vested in the director of public safety."

Sec. 4094. "Upon complaint being made or information given to such director, that a person residing in the city requires public assistance or support, the director shall inquire into the condition and necessities of such person, and if satisfied that relief ought to be granted at public expense, and that the person requires temporary or partial relief only, and that for any cause it would not be prudent to remove him to the city infirmary, the director may afford relief, at the expense of the city, without such removal. \* \* \* "

Sections 5625-4 and 5625-5 (112 v. 393) read in part, as follows:

Sec. 5625-4, "The taxing authority of each subdivision shall divide the taxes levied into the following separate and distinct levies:

\* \* \* \* \*

2. The general levy for current expense within the fifteen mill limitation.

3. Special levies authorized by the provisions of this act within the fifteen mill limitation. \* \* \* "

Sec. 5625-5. "The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expense of any kind may be made, \* \* \* The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. Without prejudice to the generality of the authority to levy a general tax for any current expense, such general levy shall include the amounts certified to be necessary \* \* \* in a township, for the relief of the poor. \* \* \* "

You state in your inquiry that by following a ruling of my office the county budget commission of Marion County made certain allowances to the township trustees of Marion Township for the relief of the poor during the year 1928. You further state:

"Also, following your ruling, no money was allowed the City of Marion for poor relief. Of course the tax levied was levied upon all of the property of Marion Township, hence the township trustees have the burden of looking after the poor in the City of Marion as well as in the township."

The only ruling made by me during the past year with reference to township tax levies for the relief of the poor is that contained in Opinion No. 1041

rendered under date of September 22, 1927, to the Bureau of Inspection and Supervision of Public Offices, a copy of which opinion I enclose herewith. This opinion has apparently been misinterpreted by the budget commission of your county.

I am convinced that upon re-reading the said opinion you will observe that there is nothing in that opinion from which it could be inferred that the City of Marion is relieved from caring for the poor within its limits, or that no money should be allowed for that purpose. The ruling contained in the said opinion is set forth in the syllabus, as follows:

"1. By the provisions of Section 5 of House Bill No. 80, passed by the 87th General Assembly, tax levies made by townships for the relief of the poor should be included in the township's general levy for current expenses, upon all the taxable property lying within the township including that within municipalities which are within the township.

2. The provisions of Section 5625-5 as enacted in House Bill No. 80, passed by the 87th General Assembly, to the effect that tax levies for the relief of the poor within the several townships of the state shall be included in the general levy for current expenses of the township and levied on all the taxable property in the township including the property within the municipalities in the township, are valid and constitutional."

It does not follow from the fact that township tax levies for the relief of the poor are made on all the taxable property in the township, including that within any cities lying in the township, that city authorities are thereby relieved of their statutory duty with respect to caring for the poor and that the township authorities of the township wherein the city is located are charged with that duty.

The statute, Section 3476, *supra*, is clear in its terms, which provide that:

"When a city is located in 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.*" (Italics the writer's.)

This department in an opinion rendered in 1919 soon after the enactment of Section 3476, *supra*, in its present form (Opinions, Attorney General, 1919, page 1628) held:

"The act amending Section 3476 was filed in the office of the secretary of state May 16, 1919, and did not become effective until ninety days thereafter. Under its provisions the city shall furnish all the temporary relief to be given to the poor residing in the city, and it is the duty of the city officials to provide for same in making future levies.

The trustees of the township are limited to territory outside of the city and the proper city officers shall furnish relief to those who reside within its corporate limits. The language used in said amendment, 'when a city is located within one or more townships', includes every city in the state except cities the confines of which are co-extensive with the township, in which case of course the proper city officials are charged with the furnishing of said relief. \* \* \* "

The enactment of Section 5625-5, General Code, does not have the effect of repealing Section 3476, *supra*, or Sections 4089 and 4094, *supra*, which enjoin upon the director of public safety in cities, the duty of extending outdoor relief to the

poor who reside in such city. From the fact that the jurisdiction of the township trustees of Marion Township in granting public support to the needy is limited to persons who reside outside of the city of Marion it follows that they have no authority to employ anyone to dispense public funds for the relief of the poor within the city.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1517.

ELECTION—WRITING IN NAME OF CANDIDATE— ELECTION RETURNS CONTROL.

*SYLLABUS:*

1. *Under the provisions of paragraph 6, Section 5070, General Code, and also under the provisions of Section 5071, General Code, if the name of a candidate regularly nominated is omitted from the ballot, and if an elector writes the name of said candidate in the space provided therefor, the vote for said candidate is valid and must be counted.*

2. *It is presumed as a matter of law that the elector intended to vote for the person shown to have received the vote on the face of the election returns, and in the absence of a contest of election said election returns will control.*

COLUMBUS, OHIO, January 4, 1928.

HON. GEORGE H. BLECKER, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

“Within the time prescribed by law for filing petitions for the November election one Mrs. James E. Fellows of Lexington, Ohio, filed her petition with the board of elections of this city as a candidate for a member of the school board in the Village of Lexington, Ohio, and her petition was signed ‘Mrs. J. E. Fellows.’ I believe there were two other candidates filed petitions, one Harry Palm and one A. E. Leonard. When the ballots were printed by the board of elections inadvertently the ‘Mrs.’ was left off in front of the J. E. Fellows so that it appeared on the ticket as J. E. Fellows being a candidate.

When canvass of the vote was made it was found that James Fellows had received 131 votes, Harry Palm 120, and A. E. Leonard 90 votes, and that was about the first time it was discovered that the name of ‘Mrs.’ had not appeared on the ballot. The result is that James Fellows who received high vote was not a candidate by nomination nor was his name written in but was printed on the ballot by mistake by the deputy state supervisor of elections. Mrs. Fellows, who was the regular candidate, had her name written in, I guess, by about six or seven voters who had discovered the error.

The question was submitted to me by the school board as to whether James Fellows was elected or whether Mrs. Fellows was elected, or what the real situation was and requested that I get an opinion from the Attorney