

OPINION NO. 73-026

Syllabus:

Where an indigent was, at the time of his death, being cared for at county expense in a county home or any similar institution, the county is responsible for the burial expenses. (Opinion No. 562, Opinions of the Attorney General for 1927, approved and followed; Opinion No. 70-138, Opinions of the Attorney General for 1970, questioned.)

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, March 21, 1973

I have before me your request for my opinion, which reads in part as follows:

We have been asked by the Summit County

Commissioners to seek your opinion on the following situation.

During January 1961, an indigent, who was a resident of Akron, Ohio, became ill and was sent to the Akron City Hospital. Subsequently, he was sent to the extended care section of the Summit County Home for the Aged. After his recovery, he moved to the residential area of the home. As a matter of his own choice, he lived there until January 1970.

In January of 1970 the Summit County Home was closed by the County Commissioners, and many of the residents were moved to various nursing homes throughout the State of Ohio. The aforementioned individual was moved to the Bel Air Nursing Home in Alliance, Ohio, where he resided until his death nine months later. At the time of his death, he was receiving Aid for the Disabled; he was not eligible for Aid for the Aged, Social Security, or Veterans Benefits.

The funeral home from which this indigent was buried has sent a bill to the Summit County Commissioners and, also, to the City of Tallmadge seeking payment for the expenses which they incurred for his burial. The city officials claim that since the indigent had been a resident of the Summit County Home for approximately five years, the county should be liable for the payment of funeral expenses. The Summit County Commissioners contend that since the indigent resided at the Summit County Home, located in Tallmadge, Ohio, by his own free choice and could have voted in the city, he was a resident of the City of Tallmadge and the city should be liable for the payment of the funeral expenses. Costs for the burial of this person were approximately \$250.

The question that we would like your office to answer is:

Who is liable for the expenses of burying this indigent? Is it the City of Tallmadge, Summit County, or some other political entity or subdivision?

The essential facts are as follows: an indigent resident of Akron entered the Summit County Home for the Aged sometime during 1961; he remained there of his own choice until January 1970; at that time the Summit County Home was closed by the board of county commissioners and the indigent was moved to a nursing home in Stark County; he died there nine months later; at the time of his death he was receiving aid for the disabled.

I assume that the indigent was properly admitted to the county home, and the county thus became liable for his support. Admission to the home is governed by R.C. 5155.22, which provides as follows:

In any county having a county home, when a board of township trustees or the proper officers of a municipal corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to such home, they shall forthwith transmit a statement of the facts to the superintendent of the home. 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 home is satisfied that such person should become a county charge, the superintendent shall admit such person as a county charge and shall receive and provide for him in such institution forthwith, or as soon as the physical condition of such person will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the board.
(Emphasis added.)

The county has the right to take possession of such property as the inmate owns when admitted and to use it for his maintenance so long as he remains in the home. P.C. 5155.23, 5155.24, 5155.25, 5155.26, and 5155.261. And my predecessor has held that a person may be admitted to a county home although he is already receiving some sort of aid from the county. Opinion No. 70-138, of the Attorney General for 1970. Since the individual in question here was originally admitted to the county home as a convalescent, I assume that he was already receiving Aid for the Disabled from Summit County at that time.

When the board of county commissioners decided to close the Summit County Home they provided for the care of this particular inmate by moving him to a nursing home in Stark County. This was done pursuant to R.C. 5155.31, which provides in part as follows:

(A) Whenever the buildings of a county home have become unsuitable for habitation, or whenever the population of such a home is too small for economical and efficient operation, or for any other reason made of record, the board of county commissioners may close such home and provide for the care of the inmates thereof, and of other persons afterwards accepted as county charges, by boarding them in another county home, or rest homes, or in such private homes within the county as the board deems proper, and upon such terms as may be agreed upon by the boards of the respective counties. Such rest and private homes shall be approved and certified by the board and the department of public welfare, division of social administration.

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(Emphasis added.)

I assume that the contract between Summit and Stark Counties, for the continued care of the indigent, did not transfer that responsibility to Stark County since nothing of the sort appears in your letter. The continuing responsibility of Summit

County is, therefore, defined by R.C. 5155.32, which provides as follows:

After a county home has been closed as provided in section 5155.31 of the Revised Code, the board of county commissioners, or a person appointed by the board for that purpose, shall determine who is eligible for county care, and shall certify and convey such persons as are accepted as county charges to the county home with which a contract has been made under such section, and shall perform all the duties of the superintendent of a county home so far as such duties relate to acceptance and discharge of county wards. The board may appoint a person or a welfare agency to perform these duties for it.

Under these circumstances the indigent's situation would appear to be the same as it would have been if the Summit County Home had never closed and he had remained there until his death.

Responsibility for the burial expenses of an indigent, who has been cared for by the county in an institution of some sort, has been the subject of possibly conflicting Opinions of my predecessors. One Attorney General, in Opinion No. 70-138, to which reference has been made above, dealt with a deceased incompetent person, who had been receiving Aid for the Disabled, and had been sent, after release from a state mental hospital, to a convalescent home in a county different from that in which he resided - a case quite similar to yours. After pointing out that various Sections of the Revised Code requiring the state to bear the expense had no application, my predecessor quoted R.C. 5113.15, which reads as follows:

When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a penal, reformatory, benevolent, or charitable institution in this state, and such body is not claimed by any person for private interment at his own expense, or delivered for the purpose of medical or surgical study or dissection in accordance with section 1713.34 of the Revised Code, it shall be disposed of as follows:

(A) If such person was a legal resident of the county, the proper officers of the township or municipal corporation in which his body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

(B) If such person had a legal residence in any other county of the state at the time of his death, the superintendent of the county home of the county in which such body was found shall cause it to be buried at the expense of the township or municipal corporation in which he had a legal residence at the time of his death.

(C) If such person had no legal residence in the state, or his legal residence is unknown, such superintendent shall cause him to be buried at the expense of the county.

Such officials shall provide, at the grave of such person, a stone or concrete marker, on which his name and age, if known, and the date of his death shall be inscribed.

In reliance upon the language of this Section, my predecessor concluded that the deceased was to be buried at the expense of the township or municipal corporation in which he had a legal residence at death. In view of the fact that the deceased had been receiving Aid for the Disabled from the county, that he was no longer an inmate of a state institution, and that he had been sent to a convalescent home, this result is questionable. The series of statutes set out above seem to me to require that such an individual be treated as a charge of the county.

This was the result reached by another of my predecessors in Opinion No. 562, Opinions of the Attorney General for 1927. There, the question was whether the city or the county should pay the funeral expenses of an indigent, who, after having been supported by the city, developed tuberculosis and was committed to a county hospital where he died. The Opinion discussed G.C. 3495, the predecessor of R.C. 5113.15, in the following language:

That the words "penal, reformatory, benevolent, or charitable institution" as used in Section 3495, supra, include only institutions supported in whole or in part by the state as held in the opinion of June 11, 1912, is not free from doubt. In any event, this construction was not followed in the opinion of January 28, 1922, last above quoted where it was assumed that a city workhouse was included in the exception as a "penal" or "reformatory" institution. Nor is it entirely clear that this section applies to deceased persons or to cases other than those where "the dead body of a person is found in a township or municipal corporation"; that is, to a case where an indigent person dies in his home as distinguished from a case where the remains of such a person are found some place in the township or municipal corporation. However, the section has been held to apply to all cases where an indigent person other than those expressly excepted dies in a township or municipality and this holding having been uniformly applied and followed, I see no reason to question its soundness.

Even if it be conceded, however, that the phrase in Section 3495, supra, "and such person was not an inmate of a penal, reformatory, benevolent or charitable institution, in this state" relates only to a state institution, and therefore does not include an inmate of a County Home or a County or District Tuberculosis Hospital within the exception to the operation of the statute, it is my opinion that the section in question does not relate to the inmates of County Homes, County Hospitals, District Hospitals or to other county charges.

That there is a well settled line of demarcation between that class of indigent poor for whom it is the duty of the township or municipal corporation to care for on the one hand and those for whom it is the duty of the county to provide is well settled. This question has been before this department a number of times and was elaborately discussed in an opinion of this office rendered under date of December 16, 1920, and reported in Opinions, Attorney General, 1920, 1177. Suffice it to say it is the duty of townships and cities to furnish relief to all residents of the state, county, township or city under Sections 3477 and 3479, General Code, who need temporary relief and to all such residents who need partial relief, while it is the duty of the county to furnish relief to persons who do not have the residence requirements prescribed by Sections 3477 and 3479, supra, to persons who are permanently disabled, to paupers, and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the County Home or under county control.

As to these last named classes of persons, an examination of the various sections of the General Code relating to the indigent poor convinces me that it was the intention of the legislature to relieve townships and municipalities of any obligation to extend relief to or support persons coming within the four classes above described for whom it is the duty of the county to provide. To relieve the townships and municipalities of caring for these classes of poor when alive and then to require the townships and municipalities to pay the burial expenses of such persons would bring about a situation somewhat absurd, and if Section 3495, supra, be held to include inmates of the county infirmary, a construction creating this very situation would be adopted.

Moreover, it will be observed that Section 3495, supra, requires the body to be buried at the expense of the township or corporation in which the indigent person had a legal residence at the time of his death. All or a large part of the inmates of a County Home may and often do have a legal residence in the township in which the County Home is situated. Certainly it was not intended that the township in which a County Home was located would be required to bury all the inmates of the home. And it is equally certain that it cannot be said that the legislature has not made provision for the burial of county charges because such authority is not expressly contained in any section of the Code. Such authority is plainly inferable from the various sections relating to the County Home, including Section 2544, supra, which directs the superintendent of the home to "receive and provide" for indigent poor in proper cases. For these reasons it is my opinion that it is the duty of the proper county officers to bury at county expense the body of an indigent per-

son who had become a county charge.

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The purpose of authorizing the creation and maintenance of tuberculosis hospitals is manifest. It was recognized that not only could not a person suffering from this dread disease be adequately cared for in the County Home, but that one so afflicted could not be provided for in the home without endangering the lives and health of all other inmates. Provision was therefore made for what in reality is a County Home for the care of a particular class of unfortunates, the real differences being that those admitted to the hospital are doubly afflicted. I see no reason whatever in so far as the burial expenses of county charges are concerned why a distinction should be made between those charges cared for in a County Tuberculosis Hospital or a District Tuberculosis Hospital or the County Home.

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I agree with the conclusion that the county is responsible for the funeral expenses where the deceased was, at time of death, being cared for in the county home or some similar institution. Where the indigent has been so cared for, but has been released prior to death, R.C. 5113.15 requires that the burial expense be borne by the township or municipality where the deceased had his legal residence. Opinion No. 2920, Opinions of the Attorney General for 1962; Opinion No. 4814, Opinions of the Attorney General for 1932; and Opinion No. 1714, Opinions of the Attorney General for 1920.

In specific answer to your question it is my opinion, and you are so advised, that, where an indigent was, at the time of his death, being cared for at county expense in a county home or any similar institution, the county is responsible for the burial expenses. (Opinion No. 562, Opinions of the Attorney General for 1927, approved and followed; Opinion No. 70-138, Opinions of the Attorney General for 1970, questioned.)