

within one year from the date at which this act becomes effective by the director of highways as necessary in any scheme of highway improvement adjacent to said abandoned canal lands."

Assuming that the above described parcel of abandoned canal land was not at the time of the enactment of the act above referred to occupied by state highways and has not since said time been designated by the Director of Highways as lands needed for highway improvement purposes, as authorized and provided for in the above quoted section of this act, it follows that, subject to the approval of the Governor and the Attorney General, you are authorized to sell this property as provided for in Section 13971, General Code. By this section, read in connection with the provisions of Section 464, General Code, it is provided that any land or lands belonging to the State of Ohio near or remote from the line of any canal in this state, that cannot be leased so as to yield six per cent. on the valuation thereof may be sold by the Superintendent of Public Works acting together with the Governor and the Attorney General at private sale, if the appraised value of the property sold is \$500.00 or less.

Upon examination of the transcript of your proceedings relating to the sale of this property, I find that all the conditions of the statutory provisions above referred to authorizing you to sell this property have been complied with; and I am accordingly approving such sale and the transcript of your proceedings relating thereto as is evidenced by my approval endorsed upon the transcript and upon the duplicate copy thereof, which are herewith enclosed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1909.

INDIGENT TRANSIENTS—COUNTY—CITY—INDIVIDUALLY
HAVE POWER AND AUTHORITY TO FURNISH RELIEF
AND HOUSING—MAY NOT JOINTLY CONSTRUCT AND
MAINTAIN BUILDING—COUNTY COMMISSIONERS MAY
LEASE TO MUNICIPALITY PART OF COUNTY BUILD-
ING—POWER OF CITY TO LEASE BUILDING.

SYLLABUS:

1. *A county has power and authority under Sections 3476 and*

2433, *General Code*, to furnish relief to indigent transients not having proper legal settlement qualifications and to construct a suitable building for the housing of same.

2. A city has the power under Section 3476, and paragraph 12 of Section 3939, *General Code*, to furnish temporary relief to indigent transients prior to their classification as relief clients, and to construct a municipal lodging house for the housing of the same.

3. A county and a city may not jointly construct and maintain a proposed building for the housing of indigent transients.

4. Under the provisions of Section 2419-2, *General Code*, the county commissioners may lease to a municipality part of a proposed county building, anticipating and making provision for municipal quarters. *Opinions of the Attorney General for 1929, Vol. II, page 1069, followed and affirmed.*

5. A city may not lease part of a proposed city building to a county for county purposes prior to the actual construction of said municipal building and a determination that such part contemplated to be leased is not needed for municipal purposes. *Opinions of the Attorney General for 1935, Vol. I, page 433, followed and affirmed.*

COLUMBUS OHIO, February 10, 1938.

HON. JOHN W. HOWELL, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date requesting my opinion, which reads as follows:

“Under Section 2433 of the *General Code of Ohio*, have the commissioners of this county the power to contribute towards the construction of a building to be used as sleeping quarters for indigent transient persons passing through this county?

It has been contemplated that this structure is to be a joint enterprise costing approximately \$300, wherein this county and the city of Gallipolis each contribute towards its construction.”

Section 5476, *General Code*, provides the various types of relief to be furnished by the respective subdivisions. It will be noted from a study of this section that townships and cities shall furnish relief in their homes to all persons needing partial or temporary relief who are residents of the state, county and township or city and that the county shall furnish 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. “Legal settlement” is defined under

Sections 3477, et seq., and without further comment, transient indigents passing through your county certainly would be persons without proper legal settlement qualifications that might properly be in need of relief. Under Section 3476, it is my opinion that the county may properly furnish whatever relief is needed to these indigent transients.

The question propounded in your request is whether or not the county may, in conjunction with the city of Gallipolis, construct a building suitable for the housing of these indigent transients. Section 2433, General Code, is a section empowering the county commissioners, in addition to other powers conferred upon them by law, to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, juvenile court building, detention home, public market houses, county children's home and *other necessary buildings*, and sites. I direct your attention to the language "and other necessary buildings" and I am of the opinion that such language confers upon the county commissioners the right to construct and purchase whatever necessary buildings are needed to carry out and fulfill the duties imposed upon the county over which the county commissioners exercise a discretion and power. If the county commissioners in furnishing relief to indigent transients deem it necessary to construct a building to house such transients, it is my opinion that they have ample authority under the above cited sections to construct such a building.

It would properly be the duty of a municipality to furnish relief to a person in need until such a time as an examination would divulge that the relief client could be properly classified as a city relief client or a relief client of the county. In the latter case, the city through its proper officials would certify the facts to the superintendent of the county infirmary who upon investigation would either accept or reject the application. It is therefore apparent that all persons needing relief within the municipality of Gallipolis would be proper relief charges of that municipality until such a time that they were classified and, in the event they were found to be county relief clients, properly certified over to the county. In addition to this power and right to furnish relief, it will be noted under Section 3939, General Code, paragraph 12, that a municipality has the right and power to establish free public baths and *municipal lodging houses*. It is therefore my opinion that the city of Gallipolis would have the right to construct and maintain suitable quarters for the lodging of these indigent transients.

Coming now to the pertinent question raised in your inquiry, namely, as to whether or not the county and the city may jointly construct and maintain such a building, I wish to direct your attention to a former Attorney General's opinion for the year 1929, Vol. II, page 1069, wherein the then Attorney General held that a county and a municipality may not

jointly construct a building to be used for county and municipal puposes. The syllabus of this opinion reads as follows:

“1 A county has no authority to join with a municipality for the purpose of constructing a joint county court house and city building either upon a site jointly acquired or upon land owned by the city or county.

2. In the event it is desired to devote a portion of the county court house to uses and purposes of a municipality, the county commissioners may execute a lease therefor under the provisions of Section 2419-2, General Code.”

This principle is further elaborated upon in the last paragraph appearing on page 1070, which reads as follows:

“The provisions of the Legislature for the acquisition and construction of county buildings by the county commissioners are separate and distinct from those relative to the acquisition and construction of municipal buildings by municipal councils. The authority for the construction of a county court house and the acquisition of a site therefore is expressly conferred upon the county commissioners. No provisions have been made which would directly or indirectly authorize a county to join with a municipality for the acquisition of a site and the construction of a joint county court house and city building. The county court house is the seat of justice of the county and as such belongs to the county and is under the sole control of the county commissioners.”

It is apparent from the above cited opinion and the statutes therein referred to that a city may properly lease from the county a part of certain county buildings to be used for municipal purposes, and this leads us to a considerataion of the question as to whether or not a city may lease to the county a part of the city building. I direct your attention to an opinion of the Attorney General appearing in Opinions of the Attorney General for 1935, Vol. I, page 433. The syllabus reads as follows:

“A city, which is the county seat of the county in which it is situated, and the county commissioners of such county, may not enter into a contract for the leasing of office space for ten years to the said county, in a city office building proposed to be erected by such city.”

The facts upon which this opinion was based show that the city had not as yet constructed such a building, so that the provisions of Section 3698, General Code, would not empower the city to sell or lease part of their buildings not needed for municipal purposes. The first paragraph on page 435 of this opinion reads as follows:

“However, under the facts stated by you in your communication it is proposed that the city contract with the county commissioners before the city begins to erect the building. From the clear wording of the foregoing statutes, it would appear that the power to lease is only conferred upon a municipality with reference to buildings and real estate that are already in existence at the time when the lease is entered into.”

In answer, therefore, to your specific question, I am of the opinion that:

1. The County of Gallia has power and authority under Sections 3476 and 2433, General Code, to furnish relief to indigent transients not having proper legal settlement qualifications and to construct a suitable building for the housing of the same.

2. The City of Gallipolis has the power under Section 3476, and paragraph 12 of Section 3939, General Code, to furnish temporary relief to indigent transients prior to their classification as relief clients, and to construct a municipal lodging house for the housing of the same.

3. A county and a city may not jointly construct and maintain a proposed building for the housing of indigent transients.

4. Under the provisions of Section 2419-2, General Code, the county commissioners may lease to a municipality part of a proposed county building, anticipating and making provision for municipal quarters. Opinions of the Attorney General for 1929, Vol. II, page 1069, followed and affirmed.

5. A city may not lease part of a proposed city building to a county for county purposes prior to the actual construction of said municipal building and a determination that such part contemplated to be leased is not needed for municipal purposes. Opinions of the Attorney General for 1935, Vol. I, page 433, followed and affirmed.

Respectfully,

HERBERT S. DUFFY,

Attorney General.