

Therefore, I am of the opinion that:

1. A director of a county agricultural society is not a public officer but is the agent of a private corporation.
2. A county commissioner may become a member of the board of directors of the county agricultural society, and his election thereto does not operate to vacate the office of county commissioner.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2531.

TUBERCULOSIS—PATIENTS ENTITLED TO HOSPITAL CARE AT EXPENSE OF COUNTY WHEN.

SYLLABUS:

1. *By virtue of Section 3143, General Code, tubercular persons who cannot afford hospital expenses are entitled to hospital care at the expense of the county at the hospital facilities provided for by the county commissioners when such persons are residents of the county even though such residents have a legal settlement within a city in the county.*

2. *Section 3148-1, General Code, is permissive and former city hospitals for tuberculosis were permitted to continue as hospitals for the treatment of tuberculosis although it was not made mandatory that they continue as such.*

COLUMBUS, OHIO, April 19, 1934.

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

GENTLEMEN:—I am in receipt of your communication requesting my opinion on the following matters:

“Facts:

1st. Cuyahoga County does not own or maintain a County Tuberculosis Hospital (Section 3140 to 3143 G. C.) nor has the county joined in the establishing and maintaining of a District Tuberculosis Hospital (Section 3148 G. C.).

2nd. The City of Cleveland has erected and maintains a Tuberculosis Sanitarium at Warrensville (in Cuyahoga County), and also cares for tubercular patients at City Hospital.

3rd. Under Section 3143 G. C., the County Commissioners have contracted with the City of Cleveland for the care of tubercular patients on a basis of actual cost.

4th. Section 3148-1 G. C. provides that the Commissioners in certain counties, may purchase or lease equipment and buildings for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis. Said section further provides:

‘Any municipality within said county at present maintaining and operating a hospital for the treatment of tuberculosis may continue to

maintain said hospital, or may lease or sell the same to the county.'

The specific questions raised are:

1st. Does the law mean to provide that a tubercular person is entitled to treatment at the expense of the county?

2nd. Is it the duty of a city which is maintaining a Tubercular Sanitarium, to care for tubercular patients residing within such city providing such persons are not indigents subject to county control?

3rd. In the event that the Commissioners have contracted with a city for the care of tubercular patients at a City Tubercular Hospital, is the county liable for the expense of caring for all patients regardless of how admitted, excepting of course the amount received from patients able to pay a part or all of such expense.

4th. Does the language in Section 3148-1 G. C. which states that a municipality maintaining and operating a tuberculosis hospital 'may continue to maintain said hospital as a municipal hospital' mean that it may operate same as a general hospital or as a tubercular hospital?"

Section 3143 of the General Code provides:

"Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for, the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, *for the care and treatment of the inmates of such infirmary or other residents of the county who are suffering from tuberculosis.* The commissioners of the county in which such patients reside shall pay to the board of trustees of the district hospital or into the proper fund of the county maintaining a hospital for tuberculosis, or into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, and they shall also pay for their transportation.

Provided, that the county commissioners of any county may contract *for the care and treatment of the inmates of the county infirmary or other residents of the county suffering from tuberculosis* with an association or corporation, incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis; but no such contract shall be made until the institution has been inspected and approved by the state board of health, and such approval may be withdrawn and such contracts shall be cancelled if, in the judgment of the state board of health, the institution is not managed in a proper manner. Provided, however, that if such approval is withdrawn, the board of trustees of such institution may have the right of appeal to the governor and attorney general and their decision shall be final." (Italics the writer's.)

You inform me that Cuyahoga County does not have a county tuberculosis hospital as provided for in Section 3148-1, General Code, nor has the county joined in the erection of a district tuberculosis hospital, as provided for by Section 3148 of the General Code. However, a reading of Section 3143, quoted, supra, provides a method whereby the commissioners of a county under such

circumstances may provide for the care of the tubercular by contracting with a municipal or district hospital, and the section further authorizes the commissioners to provide for the care and treatment of the inmates of the county home or other residents with "an association or corporation, incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis," where such institution has been inspected and approved by the State Board of Health. In the particular case, Cuyahoga County has contracted with the City of Cleveland, which maintains a tuberculosis sanitarium at Warrensville and also cares for tubercular patients at the city hospital, for the care of tubercular patients on a basis of actual cost.

By your first question I assume that you wish to know whether every person who is a resident of the county and has contracted tuberculosis, is entitled to treatment at the expense of the county, or whether their inability to pay such hospital bills is the determining factor. I call your attention to an opinion of my predecessor found in Opinions of the Attorney General for 1929, Vol. III. page 1780, which held as disclosed by the first branch of the syllabus:

"The primary purpose of Section 3143 of the General Code is to provide for relief to persons who are inmates of the county infirmary suffering from tuberculosis, or other residents of the county in a similar status. However, the statute gives some discretion to the county commissioners as to what charges are to be made and this discretion will not be disturbed unless their action in a given case amounts to abuse of such discretion. While it is not believed the law contemplates that a person must actually be a pauper before such relief could be granted, if the commissioners would furnish such relief free to one who is fully able to pay, such action undoubtedly would amount to an abuse of discretion."

One of the questions asked in the request for the above cited opinion was whether by virtue of the provisions of Section 3143, General Code, referred to, supra, relief was to be granted by the county commissioners only to indigent persons or whether the county commissioners could grant relief to those who were not indigents. This question was answered on pages 1782 and 1783 in the following manner:

"From the foregoing it will appear to be clear that the purpose of the act is to provide care for patients who are inmates of the county infirmary or residents of the county in need of such care. It would not appear to be contemplated by the act that the county commissioners are to furnish such care and treatment to persons who are in such financial circumstances as to properly furnish such care for themselves. However, it would appear that it is a discretionary matter with the county commissioners and it is believed it is unnecessary that a person should be a pauper before the county commissioners may financially aid them in such treatment. The protection of other residents of the county is involved and it is believed that the commissioners would have some discretion as to furnishing such treatment to persons who could ill afford to make such expenditure, even though their finances may not have been completely depleted. However, the county commissioners may abuse such discretion and in all probability if a person is in such cir-

cumstances that he can properly afford to pay for such treatments, it would be an abuse of discretion on the part of the county commissioners to furnish said service free."

The above opinion was approved in my Opinion No. 1518, rendered September 6, 1933, in which I stated:

"From a reading of section 3145 of the General Code, it also appears to be clear that the purpose of these acts is to provide care for patients who are inmates of the county infirmary or residents of the county in need of such care. It also appears from the acts that the county commissioners are not to furnish such care to persons who are in such financial condition as to be capable of furnishing such care for themselves. See Opinions of the Attorney General, 1929, Vol. III, page 1780, at page 1782."

Your second question, as qualified by my answer to your first inquiry, is whether it is the duty of the city which is maintaining a tuberculosis sanitarium, or the duty of the county commissioners, to care for tubercular patients residents of such city when such patients cannot afford to pay for such hospital expenses. Section 3143, General Code, quoted supra, provides in part:

"Instead of joining in the erection of a district hospital for tuberculosis, as hereinafter provided for, the county commissioners may contract with the board of trustees, as hereinafter provided for, of a district hospital, the county commissioners of a county now maintaining a county hospital for tuberculosis or with the proper officer of a municipality where such hospital has been constructed, for the care and treatment of the inmates of such infirmary *or other residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay * * * into the proper fund of the city receiving such patients, the actual cost incurred in their care and treatment, and other necessities, and they shall also pay for their transportation. * * **" (Italics the writer's.)

It is my opinion from a reading of the above section that it is the duty of the county commissioners to provide for the care of tubercular residents of the county who cannot afford to pay hospital expenses, even though such residents of the county have a legal settlement within a city in the county. In this connection, I also call your attention to my Opinion No. 1518, rendered September 6, 1933, which held as disclosed by the first branch of the syllabus:

"The county commissioners and not the township trustees should render tubercular relief for a person requiring such relief in a sanitarium."

In the course of this opinion, I stated:

"Sections 3139 to 3147, inclusive, General Code, indicate that the care of the tubercular in sanatoriums is to be granted by the *county commissioners*. It is therefore my opinion that the township trustees could not administer such relief."

This opinion is applicable in its reasoning to persons who have their legal settlement within the city when such persons are unable to afford the cost of tuberculosis hospital care and in such case the county commissioners, in my opinion, should pay the hospital expenses, and not the city.

In view of my answer to your second inquiry, I briefly answer your third question by stating that it is my opinion that where the county commissioners have contracted with a city for the care of tubercular patients on the basis of actual cost at the city tuberculosis hospital, the county is liable for the expenses of caring for all tubercular patients having a residence within the county who are unable to afford the expense of such care, even though such persons are not actually paupers and the question of whether or not a patient is able to pay is a question of fact depending upon the particular circumstances in each case. It is not necessary to certify such persons as indigent poor and their ability to pay should be determined by the county commissioners.

Your fourth question concerns an interpretation of Section 3148-1, General Code, which provides in part:

“Any municipality within said county at present maintaining and operating a hospital for the treatment of tuberculosis may continue to maintain said hospital as a municipal hospital, or may lease or sell the same to the county.”

In my opinion, the statute is permissive and former city tuberculosis hospitals were permitted to continue as municipal tuberculosis hospitals, although it is not made mandatory that they should be maintained as hospitals for the treatment of tuberculosis.

Summarizing, it is my opinion that:

1. By virtue of Section 3143, General Code, tubercular persons who cannot afford hospital expenses are entitled to hospital care at the expense of the county at the hospital facilities provided for by the county commissioners when such persons are residents of the county even though such residents have a legal settlement within a city in the county.

2. Section 3148-1, General Code, is permissive and former city hospitals for tuberculosis were permitted to continue as hospitals for the treatment of tuberculosis although it was not made mandatory that they continue as such.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2532.

APPROVAL, NOTES OF RUSH TOWNSHIP RURAL SCHOOL DISTRICT,
TUSCARAWAS COUNTY, OHIO—\$1,964.00.

COLUMBUS, OHIO, April 19, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.