

2464

TUBERCULAR PATIENTS WHO RECEIVE TREATMENT OUTSIDE STATE OF OHIO—STATE FUNDS MAY NOT BE USED TO PAY STATE'S SHARE FOR THEIR SUPPORT—SECTION 3139-23 G. C.

SYLLABUS:

State funds provided in Section 3139-23, General Code, may not be used to pay the State of Ohio's share for the support of tubercular patients receiving treatment outside the State of Ohio.

Columbus, Ohio, December 5, 1947

Hon. Joseph T. Ferguson, Auditor of State
Columbus, Ohio

Dear Sir:

I am in receipt of your request for my opinion, which reads as follows:

“Reference is made to the provisions of H. B. 114, recently enacted by the 97th General Assembly, providing for the distribution of state funds for the purpose of proper hospital care for persons suffering from tuberculosis.

This office is in receipt of a certification from the county commissioners of a county in this state in which they make a claim for reimbursement from the state for the care of a legal resident of their county, who was committed to a sanitarium in New Mexico for the treatment of tuberculosis.

A question has arisen as to whether or not the Auditor of State may disburse funds, under the provisions of the foregoing act, to a county in respect to a legal resident of such county who has been committed by a county to an institution outside the boundaries of this state.

Paragraph two of the above act provides as follows:

‘Any county in the state of Ohio not having a county or municipal tuberculosis hospital or belonging to a district tuberculosis hospital, may commit a patient to any other hospital or tuberculosis wing thereof and shall receive one dollar and twenty-five cents (\$1.25) per day for each patient hospitalized.’

In the case at bar, the foregoing county did not have a county or municipal tuberculosis hospital, or did not belong to a district tuberculosis hospital, and therefore, the patient was committed to a hospital outside the bounds of the county.

Does the language of the above paragraph authorize the commitment of a patient to a hospital located outside the State of Ohio?"

My attention is directed by you in your request to Sections 3139-23 and 3139-24, General Code, these sections being the codification of House Bill 114 of the 97th General Assembly, which became effective September 15, 1947. Section 3139-23 reads:

"On and after July 1, 1947, the state shall pay to the board of trustees, or the board of county commissioners, serving as a board of trustees, of any county, district, or municipal tuberculosis hospital approved by the Ohio department of health the sum of two dollars and fifty cents (\$2.50) per day for each patient hospitalized for the treatment of tuberculosis in such hospital by any county for whose care and treatment the county was legally obligated to pay. One dollar and twenty-five cents (\$1.25) of such sum received by such trustees, or county commissioners serving as a board of trustees, shall be expended only for the care and treatment of tuberculosis, or the operation, maintenance or improvement of such tuberculosis hospital. The remaining one dollar and twenty-five cents (\$1.25) of such sum shall be retained by the said trustees, or board of county commissioners serving as a board of trustees, for the use and credit of the county in which the patient has legal residence to be applied as part of the per diem cost of the hospitalization of such patient.

Any county in the state of Ohio not having a county or municipal tuberculosis hospital or belonging to a district tuberculosis hospital, may commit a patient to any other hospital or tuberculosis wing thereof and shall receive one dollar and twenty-five cents (\$1.25) per day for each patient hospitalized.

The board of trustees of each such county, municipal or district hospital, or the board of county commissioners serving as a board of trustees, or the board of county commissioners of any county that does not have a county or municipal tuberculosis hospital or belong to a district tuberculosis hospital, shall, not later than the 15th day of each month, certify to the auditor of state on forms provided by the auditor of state, the number of persons hospitalized during the preceding month for the care and treatment of tuberculosis, the number of days each such person was a patient, the name of such patient and the county of legal residence. Upon receipt of such certification, the auditor of

state shall draw warrants in the amount found to be due on the treasurer of state payable out of the general revenue fund in favor of the trustees of such county, municipal or district hospital, or the board of county commissioners serving as a board of trustees, or the board of county commissioners of the county of residence of such patient where such county does not have a county or municipal tuberculosis hospital or belong to a district tuberculosis hospital."

It is first to be noted that there is no express provision in this section allowing payment for tubercular treatment in any hospital outside the state of Ohio. If there is any authority for such payment, there must be either an express provision or at least some clear indication that the General Assembly intended this act to provide payment for tubercular patients outside of the state. The pertinent part of paragraph two of Section 3139-23, General Code, providing "may commit a patient to any other hospital or tuberculosis wing thereof," is not adequate to show that the intent of the General Assembly was to extend this aid to hospitalization outside of the state of Ohio. The first paragraph of Section 3139-23, General Code, states in part: "any county, district, or municipal tuberculosis hospital approved by the Ohio department of health." This provision clearly refers to treatment within the State of Ohio. The whole section must be read together. If one portion of the section is singled out and expanded without reference to the intent of the whole section, the clear provision of the entire section will be destroyed.

Secondly, it is to be noted that the legislative intent for the passage of Section 3139-23, General Code, by its own terms was clearly for the purpose of providing payment to the county by the state of a share of the expense for the care and treatment of tubercular patients. The intent of the General Assembly can be ascertained by noting the other provisions of the General Code for the care of tubercular patients.

Section 3139-2, General Code, provides:

"The district hospital for tuberculosis shall be devoted to the care and treatment of those persons afflicted with tuberculosis who are residents of the district and who are in need of hospital care and treatment, provided that if facilities are available and not used by such residents, trustees of such hospital may contract for the care of patients from counties not included in the district."

The pertinent portion of Section 3139-18, General Code, provides :

“Where a county has not provided a county hospital for tuberculosis or has not joined in a tuberculosis hospital district, or where a county tuberculosis hospital is not sufficiently large to provide proper care for all patients who should be hospitalized, the county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper officer of a municipal tuberculosis hospital, for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis.”

These sections make provision for the county commissioners to contract with any county or district tuberculosis hospital in the state of Ohio for the care of their patients. The reference made here to these hospitals clearly is to hospitals within the State of Ohio. These sections were effective September 5, 1941, and were in effect when this present bill was passed. Sections 3139 through 3139-22, entitled “Tuberculosis Hospitals and Clinics” is one act, viz., House Bill 59 of the 94th General Assembly (119 O. L. 721). It is also to be noted that Sections 3139-23 and 3139-24, General Code, are additions to this then existing provision of the General Code. It is certain that the 97th General Assembly had reference to the other provisions of this division of the General Code when House Bill 114 was under consideration. Through this entire division of the General Code there is no provision for payment of money for the support of tubercular patients outside the State of Ohio. The references are always either expressly or impliedly to the county, municipal or district tuberculosis hospitals within the State of Ohio.

Your attention is directed to the opinion of my predecessor in 1929, Opinions of the Attorney General, Vol. III, page 1780, No. 1198, the second branch of the syllabus which reads :

“County commissioners have no authority to contribute to the expense of maintaining a tubercular resident of the county in a hospital outside the state, irrespective of whether such person is indigent or otherwise.”

Section 3143, General Code, was the section which provided for the care of tubercular patients at the time this opinion was rendered. It is to be noted that this and other pertinent sections were repealed by the same bill, viz., House Bill 59, 94th General Assembly (119 O. L. p. 721), which enacted Sections 3139 through 3139-22 of the General Code.

Section 3143, General Code, provided for the counties to contract for the care of their tubercular patients in other county, district or municipal tuberculosis hospitals. The provisions of this repealed section are very similar in fact and more similar in intent to Section 3139-23 with reference to caring for tubercular patients. The only substantial change made when Section 3143 was repealed, and Sections 3139 through 3139-22 were enacted, was to make provision for the State of Ohio to supervise tuberculosis hospitals and clinics. Section 3139-23, General Code, simply intended to provide that the state share in the cost of this program. There is nothing in the repealed section, nor in the new sections, which would show that the legislature intended to extend this program so that it might include payment for treatment outside the State of Ohio. The legislative intent certainly was not to change the existing provisions unless it expressly so stated. I cite with approval from my predecessor's opinion, *supra*, at page 1783:

“It further appears that the whole act contemplates the furnishing of treatment in some hospital or other institution in the state. While in many instances it may be advisable to take the person afflicted from the state, in order to have a change of climate, inasmuch as funds may not be drawn from the public treasury except in pursuance of express provisions of law, and the law has not as yet authorized the sending of a patient from the state at the expense of the county treasury, I am constrained to hold that the same may not be done.”

The fundamental problem was the same under Section 3143 as it is under Section 3139-23, General Code, this being whether aid can be extended to hospitals outside the State of Ohio. Thus the law is equally applicable to both sections.

Therefore, it is my opinion, and you are advised, that state funds provided in Section 3139-23, General Code, may not be used to pay the State of Ohio's share for the support of tubercular patients receiving treatment outside the State of Ohio.

Respectfully,

HUGH S. JENKINS,
Attorney General.