

2964.

INDIGENT—COUNTY NOT LIABLE FOR MEDICAL ATTENTION AND HOSPITALIZATION OF INDIGENT ORDERED TO PRIVATE HOSPITAL BY CITY SAFETY DIRECTOR WHEN—TUBERCULOSIS.

SYLLABUS:

Where a county is a member of a district tuberculosis hospital, and an indigent person is ordered into a private hospital for an operation by the safety director of a city and after the operation it is learned for the first time that said person is afflicted with tuberculosis, the county is not liable for the medical attention and hospitalization of such person while confined at such private hospital. However, should such indigent tubercular person be removed to the district tuberculosis hospital provided for by such county, from that period of time on the county would be liable for the tubercular hospitalization.

COLUMBUS, OHIO, July 27, 1934.

HON. LEO M. WINGET, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—I am in receipt of your communicatoim which reads as follows:

“At your earliest convenience I would appreciate your opinion on the following questions, to-wit:

First: When an indigent person is ordered into a private hospital for an operation by the Safety Director of the city, and upon operating on said person it is learned for the first time that said person is afflicted with tuberculosis which has affected the abdominal tract, is the county liable for the medical attention and hospitalization of such person while confined at said hospital; neither the county health commissioner nor the county commissioners being consulted or having notice of said fact until statements from the doctor and the hospital were presented to the commissioners for payment?

Second: Shelby County is a member of the Lima District Tuberculosis Hospital. If your holding should be that the county should pay for the medical attention and hospitalization of such person while so confined in said private hospital, what rating should govern the amount that the county should pay; the hospital rate or the established rate at Lima District Tuberculosis Hospital?

Third: Should such person be removed to Lima District Tuberculosis Hospital from said private hospital as soon as he could be moved with safety?”

Section 3143, General Code, provides as follows:

“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."

It was held in my Opinion No. 2531, rendered April 19, 1934, in an interpretation of the above quoted section, as disclosed by the first branch of the syllabus:

"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." (Italics the writer's).

Section 3148, General Code, provides in part:

"The commissioners of any two or more counties not to exceed ten, may, and upon the favorable vote of the electors thereof in the manner hereinafter provided shall form themselves into a joint board for the purpose of establishing and maintaining a district hospital, provided there is no municipal tuberculosis hospital therein for care and treatment of persons suffering from tuberculosis. * * *"

Shelby County is a member of the Lima District Tuberculosis Hospital and has in the past provided for the care of its tubercular residents in such institution by authority of section 3148, General Code. In cases in which the liability of the county has been involved, the indigent tubercular residents of the county were known to be tubercular by the county officials before the expense of providing care was created, and such expense was incurred at the instance of the county health department.

In the present factual situation, Shelby County has already provided facilities for the care and treatment of the tubercular residents of the county at the Lima District Tuberculosis Hospital. In the instant case, the hospital

expense at a private institution was created by order of the safety director of a city within the county and the county commissioners made no request or contract for the services, nor did they or any county official have any knowledge of the situation until after the hospital expenses were incurred.

Section 3143, General Code, limits the power to contract for the care of tubercular patients to the county commissioners, and I am unable to find any statutory authority whatsoever for holding the county commissioners liable for the expense of tubercular care at a private hospital when such expense was incurred at the request of a non-county official or department without the knowledge or acquiescence of the county commissioners as to the incurring of such expense for hospital treatment.

Therefore, without passing upon the question of the extent of the municipal corporation's liability in the instant case, inasmuch as the county in question has already provided for the care and treatment of its indigent tubercular residents at the Lima District Tuberculosis Hospital as provided in section 3148, General Code, and inasmuch as the case was not brought to the attention of the county commissioners nor any county official until the bill for such services was presented to them, and the county in no way contracted or assumed the obligation to pay the private hospital or physician's fees involved in the case, I am of the opinion that the county is not liable for the hospital expenses incurred.

Due to my answer to your first inquiry, it becomes unnecessary to answer your second question.

I come now to your third inquiry which reads as follows:

"Should such person be removed to Lima District Tuberculosis Hospital from said private hospital as soon as he could be moved with safety?"

My answer to this question is that if an indigent resident of the county is found to be tubercular and being cared for in a private hospital, if the county officials were notified in accordance with section 3144, General Code, which provides for the removal of a tubercular patient, giving the power of such removal to the State Board of Health, and section 3145, General Code, which designates the county medical superintendent as the investigating authority in determining whether a particular applicant should be admitted to the tuberculosis facilities provided for by the county, and a determination was made that such person was an indigent tubercular resident of the county, then after the removal to the district tuberculosis hospital the county commissioners would be liable for the expense of the tubercular care at the district tuberculosis hospital.

Respectfully,
JOHN W. BRICKER,
Attorney General.