

Upon the death of the party it would be necessary for the legislature of the state to determine whether or not it would accept such devise and if it did so it would be bound to use the gift for the sole purpose provided in said will. The legislature could not at this time agree to accept the provisions of a will to become effective in the future, for the reason that the gift would not be complete until the death of the party devising the same and one legislature has no authority to bind another.

Without further information from the testatrix as to the terms and conditions she wishes to incorporate in her will, no attempt is made to draft a clause devising the interest in question to the state.

Respectfully,
EDWARD C. TURNER,
Attorney General.

789.

BOARD OF HEALTH—DUTIES IN CASES OF QUARANTINE—EXPENSE
OF "NECESSARIES."

SYLLABUS:

1. *In all cases of quarantine it is the duty of the board of health to determine what food, fuel and other necessaries of life, including medical attendance, medicine and nurse, are needed by the persons quarantined, and furnish the same to such persons, if it is necessary to do so.*

2. *The expense so incurred by the board of health shall be paid by the parties so quarantined, if they are able to do so, and if not then by the municipality or township in which such persons are quarantined.*

3. *A municipality or township is not authorized to pay for such necessities when they are purchased by the persons so quarantined without the authority or consent of the board of health.*

4. *If a board of health finds that quarantined persons are unable to pay for services rendered by the attending physician after the board of health had been notified of a contagious disease and had thereafter quarantined the house and furnished a nurse for the care of the patient but failed to furnish medical service, or make inquiry relative to the necessity thereof, it is the duty of the president and clerk of such board by virtue of Section 4436 of the General Code to approve a reasonable amount for the services of the physician who cared for such patient, and the same should be paid by the municipality or township wherein such persons were so quarantined.*

COLUMBUS, OHIO, July 27, 1927.

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

GENTLEMEN:—Permit me to acknowledge receipt of your request for my opinion as follows:

"Section 4436 of the General Code reads:

'When a house or other place is quarantined on account of contagious diseases, the board of health having jurisdiction shall provide for all persons confined in such house or place, food, fuel and all other necessaries of life,

including medical attendance, medicine and nurses when necessary. The expenses so incurred, except those for disinfection, quarantine or other measures strictly for the protection of the public health, when properly certified by the president and clerk of the board of health or health officer where there is no board of health, shall be paid by the person or persons quarantined, when able to make such payment, and when not, by the municipality or township in which quarantined.'

In many municipalities, quarantined persons are permitted to have supplies delivered of their own selection, the bills for which are subsequently presented to the board of health for payment out of the municipal treasury in those instances where such persons are indigent.

Question 1: Under the terms of the above statute, could the board of health determine what supplies should be furnished as the necessities of life, and further determine the source from which such supplies should be secured?

Question 2: When the board of health does not supply medical attendance to a quarantined family, not having been notified that such attendance is necessary, would the city be liable for the fees of the physician attending such family, when they are indigent?

Opinions Nos. 460 and 689 to be found in the Opinions of 1923 at pages 355 and 557, respectively, are pertinent."

The former opinions of this department to which you refer construe Section 4436 of the General Code, quoted in your request, but they do not answer the questions which you ask.

In your first question you ask whether the board of health has authority to determine what things shall be furnished as provided in said section, and whether or not it has the authority to determine the source of such supplies.

The language of the statute is quite plain. It provides that whenever a house is quarantined on account of contagious diseases *the board of health shall provide* for all persons confined therein food, fuel, medical attendance, medicine, nurses and all other necessities of life, if it is necessary for such board to do so. It does not provide that the persons confined in such place may procure such things and charge the expense thereof to the board of health, but the plain language is that the board of health shall provide them when it finds the same to be necessary.

Since the duty has been placed upon the board of health to provide such necessities, such power includes the right to determine what such necessities shall be, so long as the board does not abuse its power in connection therewith.

While the section places a mandatory duty upon the board of health in such cases to provide the necessities, it does not require the persons quarantined to accept the same, and if the persons confined in such a place do not wish to accept that which the board of health procures, or permits them to procure, they need not do so, but may procure the same at their own expense, or they may supplement the supplies furnished by the board of health at their individual expense, if possible for them to do so.

The next provision of the section is that the expenses *so incurred*, except those mentioned as measures for the protection of the public health, shall be paid by the person or persons quarantined, if they are financially able to do so. If not, then such expenses must be paid by the municipality or township in which the quarantine was had.

"The expenses so incurred" clearly refers to the expenses of the board of health in supplying the necessities mentioned in the section; it does not apply to expenses incurred by the quarantined persons without any authority from the board of health.

Therefore, answering your first question, it is my opinion that:

(1) In all cases of quarantine it is the duty of the board of health to determine what food, fuel and other necessities of life, including medical attendance, medicine and nurse, are needed by the persons quarantined, and furnish the same to such persons if it is necessary to do so.

(2) The expenses so incurred by the board of health shall be paid by the parties so quarantined, if they are able to do so, and if not, then by the municipality or township in which such persons are quarantined.

(3) A municipality or township is not authorized to pay for such necessities when they are purchased by the person so quarantined without the authority or consent of the board of health.

In your second question you ask whether or not a city is liable for the attending physician's fees in quarantine cases in which the parties are indigent and where the board of health did not know that the services of the attending physician were necessary and did not authorize the same.

Accompanying your request is a statement of facts which it is necessary to consider in answering your question. In this statement I find that your question involves a case of scarlet fever which was reported by Dr. ----, who had been the attending physician of the family, and that the doctor on the same day reported to the health commissioner that a nurse was necessary, and that the board of health made arrangements for and provided such nurse; that at no time was there any request made of the board of health to furnish anything except the services of a nurse. Dr. ---- attended the patient during the quarantine and has now rendered his bill for payment by the public authorities, because the parties are unable to pay the same.

A question very similar to this was passed upon by my predecessor, the opinion being found in Opinions of the Attorney General 1923, Volume I, p. 557. In that case, as in the one before us, the place was quarantined by the board of health. The board made inquiry of the family as to whether or not they were able to pay for a physician and was advised that they were. Thereafter the family physician continued to render services and presented his bill for payment for the reason that the family was indigent, but the physician had not complied with Section 3480 of the General Code by notifying the township trustees. In that opinion it was held that it was the duty of the township trustees to pay said bill under the provisions of Section 4436, supra.

I do not find in the facts before me that the board of health made any effort to determine whether or not medical attendance was needed, or whether it was necessary for it to supply the same. It had notice that there was a case of scarlet fever and proceeded to quarantine the house; said board was also notified that a nurse was necessary to take care of the patient and it provided therefor. It seems to me that this was notice to the board of health that the attendance of a physician was necessary and was sufficient to require the board to make inquiry relative thereto. The attending physician complied with professional ethics by continuing to care for the patient.

As pointed out in the opinion of this department found in Opinions of the Attorney General, 1923, p. 335, the question of whether or not the persons to whom the services are rendered are able to pay, is a question to be determined by the board of health.

Therefore in answer to your second question, it is my opinion that if a board of health finds that quarantined persons are unable to pay for services rendered by the

attending physician after the board of health had been notified of a contagious disease and had thereafter quarantined the house and furnished a nurse for the care of the patient but failed to furnish medical service, or make inquiry relative to the necessity thereof, it is the duty of the president and clerk of such board by virtue of Section 4436 of the General Code to approve a reasonable amount for the services of the physician who cared for such patient, and the same should be paid by the municipality or township wherein such persons were so quarantined.

Respectfully,
EDWARD C. TURNER,
Attorney General.

790.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN
LICKING, MIAMI AND MONROE COUNTIES.

COLUMBUS, OHIO, July 27, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways & Public Works,*
Columbus, Ohio.

791.

GAME REFUGE LEASES—23 APPROVED—2 DISAPPROVED.

COLUMBUS, OHIO, July 27, 1927.

Department of Agriculture, Division of Fish and Game, Columbus, Ohio.

GENTLEMEN:—I have your letter of July 16, 1927, in which you enclose the following Game Refuge Leases, in duplicate, for my approval:

<i>No.</i>	<i>Name</i>	<i>County</i>	<i>Township</i>	<i>Acres</i>
1020	M. J. Boner.....	Licking	Union	11.5
1021	Henry C. Cochran.....	Licking	Union	166.17
1022	Willard J. Stewart.....	Licking	Union	83.85
1023	A. W. Beard.....	Licking	Union	410.
1024	M. J. Boner.....	Licking	Union	156.25
1025	Bernard Harris.....	Licking	Union	63.40
1028	C. T. and Evelyn C. Bundy.....	Belmont	Warren	104.75
1029	W. O. and Carrie B. Chappel.....	Belmont	Warren	134.22
1030	L. P. Bailey and Elizabeth Bailey.....	Belmont	Warren	247.
1031	Ross and Hattie Bailey.....	Belmont	Warren	180.
1032	Allen and Eva L. Bailey.....	Belmont	Warren	158.31
1033	D. C. and Elizabeth S. Bundy.....	Belmont	Warren	32.
1034	Walter J. and Anna T. Edgerton.....	Belmont	Warren	40.5
1035	Wilford T. and Sara B. Hall.....	Belmont	Warren	92.75