

"Fifty per centum of all taxes collected under the provisions of this chapter shall be paid by the county auditor, monthly, to the commissioner of motor vehicles who shall pay the same into the state treasury to the credit of the 'state maintenance and repair fund.'"

Section 5537, General Code, provides that the state's share of the funds derived from the gasoline excise tax under authority of section 5527 "shall be apportioned to and expended by the department of highways of the state of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways of this state."

It has been held in the case of *State, ex rel., vs. Columbus*, 21 O. A. 1, and in several opinions of the Attorney General commencing with the one in Vol. I, page 154, of the Opinions of the Attorney General for 1927, that the money derived from the gasoline excise tax may be used in the purchase of necessary road equipment to be used exclusively toward the maintenance and repair of roads, and the same reasoning would apply in case of the leasing of equipment. The state's share of the additional gasoline and excise tax levied by virtue of section 5541-1, General Code, can be used only for the purpose of constructing, widening and reconstructing highways and of paying the state's share of grade crossing eliminations, and therefore cannot be used by the highway department to purchase or lease equipment for maintenance purposes.

I am therefore of the opinion that the rental cost of equipment necessary for the maintenance of state highways, which is leased by the director, may be paid for out of funds derived by the state highway department from the registration of motor vehicles and from the gasoline excise tax levied by virtue of section 5527, General Code.

The provisions of sections 1226-1 and 1226-2, General Code, requiring competitive bidding apply to the exchange and purchase of equipment and since, as hereinbefore pointed out the term "purchase" does not include the term "lease", these provisions cannot apply where the director leases equipment.

I am therefore of the view that the director in leasing equipment to be used for road maintenance is not required to comply with sections 1226-1 and 1226-2, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4678.

INDIGENT PERSON—PERMANENTLY DISABLED THROUGH TUBERCULOSIS—COUNTY MAY RENDER RELIEF IN HOME.

SYLLABUS:

A county may, under proper circumstances, afford relief in the home to a person permanently disabled through tuberculosis.

COLUMBUS, OHIO, October 10, 1932.

HON. SCOTT GRAVES, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

"Will you kindly render your opinion upon the following question.

Have the County Commissioners authority to contribute toward the relief of an indigent person, sixteen years of age, who is suffering with tuberculosis? The parents are also in indigent circumstances.

The County Commissioners would like to contribute a certain amount each month to the parents for the care of said child."

There are certain cases of persons requiring permanent and total relief in which it is the duty of the county commissioners to furnish outside relief by virtue of the provisions of section 3475, General Code. These cases are limited to persons who cannot be satisfactorily cared for at the county infirmary. In my Opinion No. 4590, rendered to the prosecuting attorney of Vinton County, Sept. 3, 1932, I held that it is the duty of the county commissioners to furnish outside relief to an indigent epileptic who could not obtain admission to the State Hospital for Epileptics and who by virtue of section 2541, General Code, could not be received at the county infirmary.

While section 3139, General Code, provides that no person suffering from pulmonary tuberculosis can be kept at a county infirmary, sections 3140 to 3153-7, General Code, exclusive, make complete provisions for the care of persons having tuberculosis.

Section 3148-1, General Code, provides for the construction of a county tuberculosis hospital in counties having more than fifty thousand population as shown by the last federal census, and further provides that any municipality within said county 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. Section 3141, General Code, provides for the maintenance of such county hospitals. Section 3148, General Code, provides that two or more counties not to exceed ten may join 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.

Section 3141-1, General Code, reads in part as follows:

"In any county which has joined in the erection of a district tuberculosis hospital and in which such hospital has not capacity to afford suitable accommodation for all cases of tuberculosis that should be admitted to such institution, and where the trustees of such district tuberculosis hospital or the joint board of county commissioners fail or refuse to provide additional accommodation in such hospital, the county commissioners may, with the consent of the state department of health, erect and maintain a county tuberculosis hospital."

Section 3143, General Code, provides that county commissioners may contract with the board of trustees of a district hospital, the county commissioners of a county maintaining a county hospital or with the proper officer of a municipal hospital for the care and treatment of residents of the county who are suffering from tuberculosis. That section also authorizes county commissioners to contract for such care and treatment with an association or corporation incorporated under the laws of Ohio for the exclusive purpose of caring for and treating persons suffering from tuberculosis, subject to the approval of the state board of health.

Section 3144, General Code, reads in part as follows:

"The state board of health upon a proper presentation of facts, shall also have authority to order removed to a municipal, county or district hospital for tuberculosis, any person suffering from tuberculosis, when in the opinion of the state or a local board of health, such person is a menace to the public and cannot receive suitable care or treatment at home, provided, however, that such person shall have the right to remove from the state."

A review of these statutes indicates that, generally speaking, the legislature has determined that the treatment of tuberculosis may best be accomplished in an institution and, accordingly, has made elaborate provisions for institutional care. There is a clear inference, however, in the language of section 3144, supra, that a person may under proper circumstances receive suitable care and treatment at home, in which event, the only authority to remove him therefrom is where his continuance in the home constitutes a menace to the public health. In other words, there is recognition of the fact that home treatment may, when properly safeguarded, be best for the individual case. It would seem that any person suffering from tuberculosis may properly be treated as permanently disabled and, in view of the express language of section 3139 of the Code to which reference has heretofore been made, no person suffering from tuberculosis can be kept at the county infirmary.

Accordingly, the indigent person whom you describe would come within the definition of those to whom the county may afford relief, for section 3476, General Code, defines this class as comprising 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." The precise character of the relief rests with the county officials after proper investigation and, under proper circumstances, it may consist of contributions to the parents for the care of the child where those parents are unable to afford to the child proper care without relief.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that the county may, under proper circumstances, afford relief in the home to a person permanently disabled through tuberculosis.

Respectfully,

GILBERT BETTMAN,
Attorney General.