

such construction before it had established such a board, and the mayor and clerk of the village under no circumstances would have authority to execute contracts on behalf of the village for such construction.

2. If the contracts involve the expenditure of more than \$500.00, the board of trustees of public affairs in a village has the sole authority to enter into contracts for the construction of municipal waterworks in said village, after such waterworks have been authorized by the council of said village.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1324.

INSANE—AUTHORITY TO TRANSFER FROM OHIO STATE REFORMATORY TO LIMA STATE HOSPITAL.

SYLLABUS:

1. *By the terms of Sections 1841-2, 1841-3 and 1841-4, General Code, authority to transfer insane inmates of the Ohio State Reformatory to the Lima State Hospital is vested in the Department of Public Welfare.*

2. *By the terms of Sections 2216 and 2217, General Code, the Probate Courts of Franklin and Richland Counties also are authorized to order the transfer of insane inmates of the Ohio Penitentiary and the Ohio State Reformatory, respectively, to the Lima State Hospital.*

COLUMBUS, OHIO, December 2, 1927.

Ohio State Reformatory, Mansfield, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

“Your recent ruling that transfers from this Institution to the Ohio Penitentiary are to be made on the recommendations of the Clemency Board and with the written consent of the Governor is very clear but we are at a loss to know just how transfers are to be made from this Institution to the Lima State Hospital. We have at the present time four inmates that our physician here feels are insane and should be transferred to the Hospital for the Criminal Insane. Should these transfers be approved by the Clemency Board with the written consent of the Governor or can they be authorized by the Director of Public Welfare?”

I assume that you refer to Opinion No. 819, dated August 2, 1927, Opinions, Attorney General for 1927. This opinion was reviewed in Opinion No. 1280, dated November 18, 1927, Opinions, Attorney General for 1927, wherein the following language appears:

“Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, is erroneous in so far as the language appearing therein purports to authorize the Ohio Board of Clemency, with the written consent of the Governor, to transfer inmates of the Ohio State Reformatory to the Ohio Penitentiary. The language which should have appeared therein is that such transfers can be made by the *Ohio Board of Administration (now the Director of Public Welfare).*”

In considering the question that you present your attention is directed to Section 154-3, General Code, which provides in part as follows:

"The following administrative departments are created:

* * * * *

The department of public welfare which shall be administered by the director of public welfare, hereby created.

The director of each department shall, subject to the provisions of this chapter, exercise the powers and perform the duties vested by law in such department."

Section 154-57, General Code, provides in part as follows:

"The department of public welfare shall have all powers and perform all duties vested in or imposed upon the Ohio board of administration and the fiscal supervisor-secretary thereof, excepting the power to purchase supplies for the support and maintenance of state institutions provided for in Section 1849 of the General Code, * * *."

Excepting also such powers and duties as are conferred upon the Ohio Board of Clemency by Section 92, General Code, which, so far as pertinent, provides:

"Upon the appointment of the members of the Ohio board of clemency as hereinbefore provided, and their qualification, such board shall supersede and perform all of the duties now conferred by law upon the Ohio board of administration *with relation to the release, parole and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio.*"

The transfer of prisoners, because of insanity, from one state institution to another is not a matter "with relation to the release, parole and probation" of such persons and hence not within the jurisdiction of the Ohio Board of Clemency.

By the provisions of Section 1835, General Code:

"* * * The department of public welfare shall have full power to manage and govern the following institutions:

* * * * *

The Lima State Hospital.
The Ohio State Reformatory."

Section 1985, General Code, provides in part as follows:

"The Lima State Hospital shall be used for the custody, care and special treatment of insane persons of the following classes:

1. Persons who became insane while in the state reformatory or the penitentiary."

The answer to your question is found in the following sections of the General Code, which, in so far as pertinent, provide:

Sec. 1841-2. “* * * Upon resolution duly entered upon the minutes of the board, any person committed to one of such institutions may, for reasons set forth in such resolution, be transferred to any other institution; provided that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution.”

Sec. 1841-3. “The board of administration acting as a commission of lunacy may adjudge any inmate in any institution under its control, * * * to be insane, feeble-minded * * * and may remove such inmate to any one of the state hospitals, or to the institution for feeble-minded * * *”

Sec. 1841-4. “Any minor having been committed to any state institution may be transferred by such ‘the Ohio board of administration’ to any other state institution, whenever it shall appear that such minor by reason of its * * * insanity * * * ought to be in another institution. * * *”

Sec. 2222. “When a convict in the penitentiary or the reformatory becomes insane, the warden of the penitentiary, or the superintendent of the reformatory shall give notice to the physician thereof, who shall forthwith examine the convict. If upon examination, he is of the opinion that the convict is insane, the physician shall so certify to the warden or superintendent. If the Lima State Hospital is not then open to receive such convict, the warden shall forthwith confine the convict in the insane department of the penitentiary. The superintendent shall present to the board of managers of the reformatory the certificate of such physician. In such case the board of managers may order the superintendent to remove the convict to the Columbus State Hospital, and the superintendent of such hospital shall set apart a portion of the hospital wherein such convict shall be confined.”

Answering your question specifically, it is my opinion that the several sections of the General Code above quoted vest authority in the Department of Public Welfare to transfer an insane inmate of the Ohio State Reformatory to the Lima State Hospital. By the terms of Section 154-3, General Code, the Department of Public Welfare shall be administered by the Director of Public Welfare who shall “exercise the powers and perform the duties vested by law in such department.”

Your attention is directed to Sections 2216 and 2217, General Code, which provide as follows:

Sec. 2216. “When the physician of the penitentiary or reformatory reports in writing to the warden or officer in charge thereof, that in his opinion a convict confined therein is insane, such warden or officer shall apply to the probate court of the county in which the institution is located, for an examination to be made of such convict by two physicians of at least three years practice in the state, not connected with the penitentiary or reformatory, and to be designated by the court. If satisfied after a personal examination, that the convict is insane, they shall so certify in the form and manner prescribed for the commitment of insane persons to state hospitals.”

Sec. 2217. “Such warden or officer shall apply to the court for an order transferring the convict to the Lima State Hospital, accompanying his application with the medical certificate of lunacy. If satisfied that the convict is insane, the court shall issue an order of transfer, and the warden or officer shall thereupon cause the convict to be transferred to the Lima State Hospital and delivered to the superintendent thereof with the certificate of lunacy and order of transfer.”

These two sections provide a further method whereby such transfers may be made. As therein provided authority is vested in the Probate Courts of Franklin and Richland Counties to order the transfer of insane inmates of the Ohio Penitentiary and the Ohio State Reformatory, respectively, to the Lima State Hospital.

Respectfully,

EDWARD C. TURNER,
Attorney General.

1325.

COUNTY BUDGET COMMISSION—GENERAL AUTHORITY.

SYLLABUS:

The county budget commission is without legal authority to prescribe that the entire amount other than that for debt charges, derived, within the fifteen mill limitation, from the general levy of a municipality for current expenses shall be applied to the payment of a final judgment against said municipality.

COLUMBUS, OHIO, December 2, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication which reads as follows:

“Under the provisions of Sections 5625-22, et seq., of the General Code, the Village of Bremen filed its 1927 budget with the auditor of Fairfield County, in which it asked to be allowed to raise by taxation in said village for the fiscal year 1928 the sum of \$15,315.13 under the following heads:

Within the 15 mill limitation	
For debt charges.....	\$909 87
For other purposes.....	10,681 26
Outside the 15 mill limitation	
For debt charges.....	3,724 00

Among the items of expense to be paid out of the monies received during the fiscal year was listed in the manner provided for by Section 5625-8 of the General Code a certain judgment existing against said village in favor of one Sarah Turner in the sum of \$6,381.26.

The said auditor submitted said budget to the county budget commission who allowed and approved the same as follows:

Within the 15 mill limitation	
For debt charges.....	\$910 00
For other purposes.....	4,700 00
Outside the 15 mill limitation	
For debt charges.....	3,740 00

Said budget commission, however, attempted to designate the item of \$4,700.00 set forth above so that it might be used by the village for the sole purpose of making a payment on the Turner judgment.