

3678.

NOXIOUS WEEDS—TOWNSHIP TRUSTEES MUST DESTROY WHERE
OWNER FAILS OR REFUSES—TOWNSHIP TRUSTEES NOT LIABLE
FOR DAMAGE TO CROPS WHILE CARRYING OUT SUCH DUTY.

SYLLABUS:

No compensation may be paid by township trustees to the owner of land for damages which are necessarily done to his crops in the eradication of noxious weeds, pursuant to the duty imposed upon said trustees by statute.

COLUMBUS, OHIO, October 21, 1931.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads:

“Under Section 7150, General Code, and following sections, township trustees are authorized to cut weeds on private grounds and the procedure is provided therefor.

“Complaint has been filed, as provided, and Canadian Thistles are growing in great abundance practically all over an eighty (80) acre farm; in fact they are growing so thick in the oats crop on the farm that for the destruction of these thistles it will be necessary to cut the crop of oats with the weeds before the oats is matured, or at least it will necessitate the destruction of the greater portion of the oats crop.

“I would like to have your opinion as to the following question. What degree of care must township trustees exercise in performing their duty under the above stated facts, and what if any liability can be attached because of destruction of said crops if in the judgment of the trustees, the destruction is necessary to the performance of their duties.”

Section 7150, General Code, reads as follows:

“Upon written information that Canada or Russian thistles, wild parsnip, wild carrot, oxeye daisy, or wild mustard are growing on lands in a township, and are about to spread or mature seeds, the trustees of the township shall cause a written notice to be served upon the owner, lessee, agent or tenant having charge of such land notifying him that said noxious weeds are growing on such lands and that they must be cut and destroyed within five days after the service of such notice.”

Section 7152, General Code, reads as follows:

“If the owner, lessee, agent, or tenant having charge of the lands mentioned in section seveny-one hundred and fifty, fails to comply with such notice, the township trustees shall cause said noxious weeds to be cut and destroyed and may employ the necessary labor to carry out the provisions of this section. All expenses incurred shall, when approved by the township trustees, be paid out of any money in the treasury of the township not otherwise appropriated.”

Section 7153, General Code, reads :

“The township trustees shall make a written return to the board of commissioners of their county of their action under the next three preceding sections with a statement of the charges for their services, the amount paid for the performing of such labor and the fees of the officers who made the service of the notice and return and a proper description of the premises. Such amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of the entry and be collected as other taxes and returned to the township with the general fund.”

An investigation of the General Code discloses no penalty imposed upon township trustees for negligence in performing their duty in regard to the cutting of weeds on private lands; it is also to be noted that no provision is made for compensation to be paid the owner of land upon which Canadian or Russian thistles, wild parsnip, wild carrot, oxeye daisy, or wild mustard are growing, for the incidental destruction of the crop in which such noxious weeds are located, when such weeds are cut or otherwise destroyed.

This latter section is without doubt an exercise of the police power of the state. It is a well known principle of constitutional law that while generally the protection of the community will be adequately effected by the regulation of the exercise of property rights, without the actual confiscation or destruction of property, however, when the confiscation or destruction of tangible property is reasonably necessary for the protection of the community, the taking is a legitimate exercise of the police power and there is due process. See *Burdick's Law of American Constitution*, page 561.

It, therefore, follows that no compensation may be paid by the township trustees to the owner of land for damages which are necessarily done to his crops in the eradication of noxious weeds, while such trustees are engaged in the performance of their statutory duties.

As to your inquiry concerning the degree of care which township trustees must exercise in fulfilling their duty, I am not unmindful of the fact that Sections 3298-17 and 13421-5, General Code, provide as follows:

3298-17. “Each board of township trustees shall be liable, in its official capacity for damages received by any person, firm or corporation, by reason of the negligence or carelessness of said board of trustees in the discharge of its official duties.”

13421-5. “If any county highway superintendent or township trustee or township highway superintendent, wilfully neglects, fails or refuses to perform the duties of his office, he shall be fined not more than one hundred dollars, nor less than ten dollars, and said conviction shall operate as a removal from office.”

It should be noted, however, that these sections are part of an act entitled “An Act to Provide a System of Highway Laws for the State of Ohio” (106 Ohio Laws, 574), being sections 237 and 282 of such act. This being so, I have no doubt that such sections apply only to the act of which they are a part, and, therefore, would have no application to the statutes here under consideration.

It is well known that as a general rule of law no liability is imposed upon public officials for damages resulting from the performance of duties imposed

upon them by statute, when such officials act in a reasonable and conscientious manner in the carrying out of such duties. And, since the possible personal liability of township trustees for the negligent performance of their duties in carrying out the provisions of the above sections relating to the destruction of noxious weeds is not a matter of public concern, I express no opinion thereon.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3679.

OHIO STATE SANATORIUM—COST OF CLOTHING FOR PATIENTS
CHARGEABLE TO COUNTY OF RESIDENCE—COST OF EQUIP-
MENT FOR INMATES NOT CHARGEABLE TO COUNTY AS AN
INCIDENTAL EXPENSE.

SYLLABUS:

1. *Clothing for patients at the Ohio State Sanatorium who are unable to provide themselves therewith shall be furnished by the steward or financial officer of such institution and the cost thereof charged against the county from which the person came.*
2. *Cost of equipment needed for the care of an inmate of the Ohio State Sanatorium cannot be charged to the county from which the patient came as an "incidental expense" of such patient under section 1816, General Code.*

COLUMBUS, OHIO, October 21, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your recent request for my opinion which reads as follows:

“Section 2068 G. C. of the laws governing the Ohio State Sanatorium reads as follows:

Who entitled to admission; payment for support. Any citizen of this state suffering from pulmonary tuberculosis in the incipient or early stage and any citizen of this state under twelve years of age who has tuberculosis in any of its forms or who is predisposed thereto, as determined by the superintendent, may be admitted to the sanatorium upon payment in advance of a sum to be fixed by the superintendent, said sum to be not less than five dollars nor more than twenty-five dollars each week, according to the financial condition and ability to pay of the person applying for admittance or any other person legally liable for care and support of said applicant. Said sum, so fixed, shall fully cover all expenses for medical treatment, medicine, nursing, board, lodging and laundry. The superintendent shall make such investigation as is necessary to determine such financial condition and ability to pay, and may at any time increase or decrease the amount within the limits herein prescribed upon the approval of the department of public welfare. Payment for the support of patients in the sanatorium shall be made in accordance with the provisions of sections 1815-13, 1815-14 and 1815-15 of the General Code.”