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INSTITUTION, PUBLIC, CRITERIA OF, DISCUSSED—RELIEF—AID FOR THE AGED—CHARITABLE ORGANIZATIONS—PRIVATE CORPORATION ORGANIZED NOT FOR PROFIT—PUBLIC HEALTH FEDERATION—MUNICIPAL CORPORATION—MT. AIRY CENTER REST HOME OF CINCINNATI.

Criteria of a public institution discussed.

Columbus, Ohio, February 9, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion on the question of whether or not an Institution in the City of Cincinnati, known as the Mt. Airy Center Rest Home, and in which a number of recipients of aid for the aged are presently living, is a public institution within the meaning of Section 1359-2 of the General Code.

Accompanying your letter of request is a letter from an assistant city solicitor in Cincinnati and a Report On Conference on the Mt. Airy Sanitarium.

The above question arises by reason of the terms of Section 1359-2, General Code, wherein it is provided:

“No person shall be eligible for aid under this act unless he fulfills the following conditions: * * *

(d) Is not an inmate of any public institution; * * *.”

From the facts contained in the inclosures accompanying your request it appears that the Mt. Airy Center, which consists of many separate units designed for various uses, such as dormitories, dining halls, recreation rooms, etc., was originally constructed on park property belonging to the City of Cincinnati by the Federal Government as a Civilian Conservation Corps camp, and that upon the disbanding of the Civilian Con-

servation Corps the buildings comprising such camp were all turned over to the City of Cincinnati. Upon the acquisition thereof by the City of Cincinnati, such buildings were used by the Department of Welfare of said city to house homeless and transient indigents and have to some extent, been used for such purposes until the present time.

The Public Health Federation of Cincinnati, which is a division of the Community Chest of Cincinnati and Hamilton County, Ohio, a private, non-profit corporation, organized for charitable purposes, recognizing the need for suitable and healthful housing facilities for recipients of aid for the aged made a thorough study of the conditions in the Cincinnati area and concluded that some of the buildings in the Mt. Airy Center would provide well suited quarters to house such recipients. Thereupon the Public Health Federation appointed a special committee, named the Committee On Mt. Airy Center, and authorized it to make the necessary arrangements with the Commissioner of Public Welfare of Cincinnati to set apart three of the dormitories to be used exclusively for the housing and boarding of recipients of old age benefits and other aged persons unable to obtain proper housing elsewhere. Pursuant to such authority, said committee entered into an agreement with the commissioner of Public Welfare in which the following is incorporated :

“In order to care for the aged and indigent of Hamilton County, Ohio, who are not able to properly care for themselves, and who cannot for a temporary period be placed in appropriate institutions, the Department of Public Relief of Cincinnati is hereby relinquishing its control and management of Mt. Airy Center to a Board of Managers, consisting of six persons, which has been appointed by the Public Health Federation of Cincinnati. This plan is not an alternative to the working out of satisfactory permanent plans for the care of the aged and indigent for this Community. The buildings and the equipment constituting the Center will remain the property of the Department of Public Relief and the grounds are owned by the Park Board of the City of Cincinnati.”

Upon payment of the statutory fee prescribed therefor, the Mt. Airy Rest Home has been duly licensed by the Division of Aid for the Aged of the Department of Public Welfare of Ohio in accordance with the provisions of Section 6289-1, et seq., General Code.

The Board of Managers (Committee On Mt. Airy Center), representing the Public Health Federation, charge each person cared for in the three buildings set aside at Mt. Airy Center, the sum of \$35.00 per month.

From the total thus collected the Board directly pays the salaries of four of the total of seven employes at the Center. Said four employes are engaged entirely in caring for the aged persons under consideration. The latter are not called upon or required to do work of any kind or nature. The salaries of the remaining three employees are apportioned in the same manner as indicated for food costs in the next paragraph.

The food for the entire Center is prepared in a central kitchen. The Rest Home residents are served in their own buildings. The cost of the food is apportioned in the ratio of the number of the Rest Home residents to that of the transient and resident homeless relief recipients using other buildings at the Center. Heat, light and other needs are shared on the same basis.

The single question, therefore, is whether, under the above facts, the establishment in question is a public institution.

At the outset it should be pointed out that there is no statutory duty imposed upon any municipality of this state to furnish housing to recipients of aid for the aged. Therefore, I think it may safely be said that the work which is carried on by the Committee On Mt Airy Center is not a municipal function. Nor does the fact that the City of Cincinnati is invested with the legal title to the land upon which such center is erected alter my conclusions with respect thereto.

Municipalities of this state are clothed with ample power under the Constitution to permit the temporary use of unneeded or unused lands and buildings by private charitable organizations. Aside from such constitutional authority, express statutory provisions leave them with power to lease real estate owned by them and not needed for municipal purposes. Therefore, since the proprietorship of the land is no criterion in the instant case, we may at once dismiss from further consideration the fact that the City of Cincinnati owns the land.

In the case of *Toledo Bank v. Bond*, 1 O. S. 622, at page 643, it is stated:

“ * * * Private institutions are those which are created or established by private individuals for their own private purposes.

Public institutions are those which are created and exist by law or public authority. Some public benefits or rights may result from the institutions of private individuals or associations. So also some private or individual rights may arise from public institutions. The only sensible distinction between public and private institutions is to be found in the *authority* by which, and the *purpose* for which, they are created and exist. * * *

Likewise, in *State, ex rel. v. Clausen*, 85 Wash. 260, at page 273, it is declared :

“ * * * A public institution is any organized activity created or established by law or public authority. * * * ”

See also: *Mannington v. Hocking Valley R. Co.*, 183 Fed. 133.

In the case under consideration, the activity was created and its affairs are being administered by a private, non-profit, charitable organization which is a division of a private corporation organized not for profit under the corporation laws of this state. In view of this, I am unable to perceive how it can be said that an establishment so created and operated is created by law or by public authority, or that the organized body itself is an institution created or established by law or public authority. Neither the committee in charge nor its parent body is required to look to any provisions of law for authority to carry out the purposes of its organization.

The institution in question was not established by the Public Health Federation or its designated committee under a power derived from the statutes; no authority was delegated by law to either of said bodies to administer the activities engaged in; to the contrary the home was established and is being operated in accordance with and pursuant to the rights given the parent organization by its corporate franchises. True, it may have jurisdiction in certain matters of a public nature in that it is engaged in certain enterprises, charitable in character, which directly affect the public welfare, but it certainly can not be said that the Public Health Federation or a committee thereof is an agency created and existing for the purpose of performing a duty or exercising a function of the state or municipality.

Therefore, since the authority to maintain the home is not conferred by law, it is scarcely conceivable how the committee can be regarded as

a public authority and the buildings and dormitories under its supervision and control can be characterized as public institutions.

Furthermore, if consideration is given to the purpose of the statute and the reasons underlying the provisions thereof which deny old age benefits to inmates of public institutions, the conclusion that the establishment in question is not a public institution seems irresistible.

It is a fundamental principle that words in a statute should, if at all possible, be given an interpretation which will carry into effect the object or design of the statute. In regard thereto, it is stated in 37 O. J., pages 657 to 661:

“Statutes are to be given a fair and reasonable construction in conformity to their general object, in order to effectuate such object and purpose, and should not be given such an interpretation as would thwart that purpose. If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature’s purpose, or plan, or aim, or end, or motive.”

The manifest intention of the General Assembly was to deny aid to any person who has adequate means of support from other sources. This is plainly perceivable if the statute is read in its entirety. From this it would seem to follow that the purpose of the statute is to provide for the payment of aid to those aged persons who are without any means of support. Therefore, it would certainly appear to be reasonable to say that the term “public institution,” as the same is used in the statute, means only such an institution as is maintained under authority of law and wherein the inmates are housed, fed and clothed without charge if they or those liable for their support are unable to pay.

In the case before us, the inmates pay from the moneys received by them as aid the amount of \$35.00 per month for their housing and board. In this respect they are in no different position than hundreds of other recipients of old age benefits who are living in rest homes profitably maintained and operated by individuals. Manifestly, no one can question the right of persons in such latter homes to receive aid, if otherwise qualified.

In view of this, it is difficult to understand how aged people living in an institution maintained and managed by a group of persons with no profit to themselves and whose only interest is furnishing suitable and healthful living quarters and wholesome food to such aged people should be deprived of the benefits which the law clearly intends them to have, merely because the buildings occupied and the land upon which such buildings are erected are owned by a municipal corporation.

In light of the above and in specific answer to your question, you are advised that, in my opinion, the Mt. Airy Center Rest Home of Cincinnati is not a public institution within the meaning of Section 1359-2 of the General Code and, consequently, persons who are otherwise eligible to receive old age benefits under the provisions of Section 1359-1, et seq., of the General Code are not disqualified from receiving such benefits by reason of their residence in said home.

Respectfully,

HUGH S. JENKINS
Attorney General.