

20.

DISAPPROVAL, PROPOSED CONTRACT BETWEEN STATE OF OHIO, THROUGH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS, AND RADIO M. & S. COMPANY—DISAPPROVAL PROPOSED CONTRACT WITH HENRY I. DERR—ELECTRICAL WORK AND PLUMBING, BOTANICAL GREENHOUSE FOR VEGETABLE DISEASE INVESTIGATION, OHIO AGRICULTURAL EXPERIMENT STATION, WOOSTER, OHIO.

COLUMBUS, OHIO, January 24, 1927.

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

DEAR SIR:—You have submitted for my approval, a contract between the State of Ohio, acting by the Department of Highways and Public Works, and the Radio M. & S. Company. Also a contract for my approval between the State of Ohio, acting by the Director of Highways and Public Works, and Henry I. Derr.

The first of the foregoing contracts provides for electric work in the Botanical Greenhouse for Vegetable Disease Investigation, Ohio Agricultural Experiment Station, Wooster, as set forth in item No. 6, of the proposal dated October 6, 1926.

The second of the foregoing contracts provides for the plumbing to be installed in the Botanical Greenhouse for Vegetable Disease Investigation, exclusive of heating and ventilating, Ohio Agricultural Experiment Station, Wooster, Ohio, as set forth in item No. 5 of the proposal dated October 6, 1926.

The above contracts are not approved, for the reason that article No. 6 of each of said contracts provides:

“The contractor is to complete the work contemplated under this contract on or before January first, 1927.”

Neither of said contracts was submitted for my approval until January 14th last, and it would be impossible for the contractor in each case to complete the work therein provided by the first day of January, 1927, set forth as a requirement on the part of the contractor in each of said contracts.

Respectfully,
EDWARD C. TURNER,
Attorney General.

21.

INDIGENT SICK AND DISABLED—COUNTY AT LARGE—UNDER SECTIONS 3138-1 AND 3138-2 G. C. HOW FUND FROM TAX LEVY MAY BE LEGALLY APPLIED—NOT LIMITED TO COUNTY OR TOWNSHIP CHARGES.

SYLLABUS:

The fund derived from a tax levy under the provisions of Sections 3138-1 and 3138-2, General Code, may be legally applied to the care of the indigent sick and dis-

abled of the county at large entitled thereto under the law, and the application of said fund is not limited to the care of those who are county or township charges.

COLUMBUS, OHIO, January 25, 1927.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you inquire concerning the construction of Sections 3138-1 and 3138-2 of the General Code, and you inquire in substance as follows:

“May the fund derived from a tax levy under the provisions of Sections 3138-1 and 3138-2, General Code, be legally applied to the care of the indigent sick and disabled of the county at large; or is its application limited to the care of those who are county charges?”

Section 3138-1 reads in part as follows:

“That the board of county commissioners of any county may enter an agreement with one or more corporations or associations organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners shall provide for the payment of the amount agreed upon, * * *. Nothing herein shall authorize the payment of public funds to a sectarian institution.”

Section 3138-2 reads:

“The board of commissioners may annually, at the June session, levy a tax not exceeding two-tenths of one mill upon the taxable property of said county for the purpose of providing such aid and assistance to any such corporation or association; and all taxes so levied and collected under this act shall be applied under the order of said board to the purpose for which the same are so levied and collected.”

It is noted that Section 3138-1 provides generally for “the care of the indigent sick and disabled,” and that there is no limitation upon this general class, excepting “persons afflicted with pulmonary tuberculosis.”

It seems evident that when the legislature was excepting persons afflicted with pulmonary tuberculosis, if they intended to confine Sections 3138-1 and 3138-2 to persons who are county charges they would have so provided. These sections are in division 4 of the General Code relating to county institutions, and are a part of Chapter 4, which is entitled “Hospitals,” and immediately follow the sections providing for the erection and maintaining of county hospitals. It would therefore appear that they were intended to provide for hospital aid and assistance in those counties in which there was no county hospital, or where the facilities of the county hospital were inadequate. The evident plan and intention was to care for the indigent sick and disabled of the county, regardless of whether they were county charges or not.

This department had a similar question in 1917, and in the Opinions of the Attorney General for 1917, at page 1468, volume 2, it was held:

“As to the scope and meaning of the word ‘indigent’: There seems to be

nothing in the statute which would limit the scope of this word to the poor who are wards of the county. In fact the terms of the statute seem to indicate the opposite.

Webster says indigent persons are those 'destitute of property or means of comfortable subsistence; needy, poor.'

It is to such persons that the word refers, in my opinion, and not merely to those who are inmates of the county infirmary or children's home, or who are county or township charges."

You are therefore advised that it is the opinion of this department that the fund derived from a tax levy under the provisions of Sections 3138-1 and 3138-2, General Code, may be legally applied to the care of the indigent sick and disabled of the county at large entitled thereto under the law, and the application of said fund is not limited to the care of those who are county or township charges.

Respectfully,

EDWARD C. TURNER,

Attorney General.

22.

SPECIAL CONSTABLE—UNDER SECTION 3331, PARAGRAPH 4, G. C., POWERS AND AUTHORITY LIMITED TO CASE FOR WHICH APPOINTED—NOT CLOTHED WITH POWERS OF QUALIFIED AND ACTING CONSTABLE—WHEN ENTITLED TO ALLOWANCE IN LIEU OF FEES.

SYLLABUS:

1. *The powers and authority of a special constable appointed in a civil or criminal case by a justice of the peace for a special purpose by virtue of paragraph 4, Section 3331 of the General Code, are limited to the case and for the purpose for which such constable is appointed, and he is not, by such appointment clothed generally with the powers or authority of a regularly elected or appointed, qualified and acting constable.*

2. *A special constable appointed in a civil or criminal case by a justice of the peace for a special purpose, under provisions of Section 3331 of the General Code, may legally receive an allowance in lieu of fees in felonies where the state fails, and in misdemeanors wherein the defendant proves insolvent, as provided by Section 3019 of the General Code, provided the justice making said appointment made a memorandum on his docket of a special appointment in said particular case.*

COLUMBUS, OHIO, January 25, 1927.

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

GENTLEMEN:—I am in receipt of your letter of January 17, 1927, wherein you request my opinion upon the following questions:

"1. When a justice of the peace appoints a special constable for the reasons stated in paragraph 4 of Section 3331, G. C., may such special constable make arrests and file affidavits before a justice of the peace other than the one making the appointment; and may he serve process issued out of the courts of justices of the peace other than the one making the appointment?"