

the court or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and that the public good does not demand or require that he shall be immediately sentenced, such court or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such court or magistrate shall determine."

Sec. 6212-17. "Except as herein provided, any person who violates the provisions of this act (G. C. Sec. 6212-13 to 6212-20), * * * for a third and each subsequent offense, he shall be fined not less than five hundred dollars nor more than two thousand dollars and be imprisoned in the state penitentiary not less than one year nor more than five years. * * * *No fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof.*" (Italics the writer's.)

Your attention is directed to the case of *Madjorous vs. State of Ohio*, 113 O. S. 427, the syllabus of which reads:

"The prohibition against remission of fines and suspension of sentence provided in Section 6212-17, General Code, is a valid exercise of legislative power, and does not invalidate the operative provisions of that section."

Answering your first question specifically it is my opinion that a Court of Common Pleas, by the terms of Sections 6212-17 and 13706, General Code, upon the conviction of an accused of a crime or offense under Sections 6212-13 to 6212-20, General Code, is without authority to remit a fine or part thereof or suspend a sentence or part thereof imposed under Section 6212-17, General Code.

Section 6212-17, supra, is plain and unambiguous in providing that "for a third and each subsequent offense, he (the accused) shall be fined not less than five hundred nor more than two thousand dollars and be imprisoned in the state penitentiary not less than one year nor more than five years." In other words, for a third and each subsequent offense the penalty provided is a fine plus imprisonment.

Answering your second question specifically it is my opinion that by the terms of Section 6212-17, General Code, upon conviction of an accused of a third, or of a subsequent offense under Sections 6212-13 to 6212-20, General Code, a Court of Common Pleas must impose a fine and imprisonment as provided in said Section 6212-17, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1519.

INDIGENT PERSON—RESIDENT OF CITY—PAYMENT FOR SURGICAL OPERATION DISCUSSED.

SYLLABUS:

1. *When an indigent person has a legal settlement and residence in a city of this state, the county commissioners of the county in which such city is located are not authorized to contract for a necessary surgical operation on such person, or pay for the*

same out of county funds, unless the operation is performed on such person as an inmate of the county infirmary, as provided for in Section 2546.

2. When an indigent person has a legal settlement and residence in a city of the state, the proper authorities of such city are authorized to contract for a necessary surgical operation on such person and to pay for the same out of city funds; and within the limitations prescribed in Section 3480, General Code, they are required to do so.

COLUMBUS, OHIO, January 4, 1928.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you in which my opinion is asked on certain questions therein set forth. Your communication is as follows:

“Would greatly appreciate your advising us whether or not the following statement of facts brings the case under the ruling given by the Attorney General in 1920 on page 1177 that permanent partial outside relief to indigent persons should be afforded by the township or city rather than by the county under Section 3476 of the General Code.

A widow, Mrs. B, a legal resident of Ravenna, Portage County, Ohio, who is receiving a mother’s pension from the county and occasional temporary aid on grocery bills from the city, but who works every day to support herself and family of four children, is threatened with appendicitis and immediate operation is necessary. The county hospital board does not choose to pay for the operation. The city solicitor advises that the city is not liable, and it is my opinion under Section 3476 that the relief should come from the city rather than the county. A letter ruling on this statement of facts will be greatly appreciated.”

Section 3476, General Code, referred to in your communication, reads as follows:

“Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township or city as described in Sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city.”

The person referred to in your communication has a legal settlement or residence in Ravenna, Portage County, Ohio, and it does not appear that she is permanently disabled or that she is a pauper, as those terms are used in Section 3476, General Code, above quoted. So far as this section is concerned, the only question with respect to the authority of the county commissioners to furnish for said named person the required relief mentioned in your communication is whether this person is one

whose peculiar condition is such that she cannot be satisfactorily cared for except at the county infirmary or under county control. I do not understand that there is any thought of sending this woman to the infirmary, but that the question here presented is with respect to the authority of the county commissioners to contract for and pay the expenses of a surgical operation for her, as a matter of relief, outside of the county infirmary. In the consideration of this question we must note the provisions of Section 2546, General Code, which were enacted as a part of the same act with those of Section 3476, General Code, above referred to. (108 O. L. Part 1, 266.) Said Section 2546, General Code, reads as follows :

“The county commissioners may contract with one or more competent physicians to furnish medical relief and medicines necessary for the inmates of the infirmary, but no contract shall extend beyond one year. Medical statistics shall be kept by said physician, who shall report same to the county commissioners quarterly showing the nature and extent of the services rendered, to whom, and the character of the disease treated. The commissioners may discharge any such physician for proper cause. No medical relief for persons in their homes shall be furnished by the county, except for persons who are not residents of the state or county for one year, or residents of a township or city for three months, and except under provisions of Section 2544.”

It will be seen from the provisions of this section that the county commissioners are authorized to furnish medical relief to persons in their homes, that is, outside of the county infirmary, only where such persons do not have the residential qualifications therein mentioned, or as provided for in Section 2544, General Code, which has reference only to the admission of persons to the county infirmary. A surgical operation would, in my opinion, be medical relief within the meaning of this section, but inasmuch as the person referred to in your communication does not come within the category of persons to whom medical relief may be afforded by the county commissioners, they cannot, in my opinion, contract for the services of a surgeon to make this operation or pay the expenses thereof.

You state in your communication that Mrs. B. is a legal resident of the city of Ravenna and I assume that she is such within the meaning of Sections 3477 and 3479, General Code, which define the legal settlement required of indigent persons in order that they may obtain at the hands of the trustees of the township or the proper officers of any city therein the relief authorized by said Section 3476, General Code. It will be noted that this section provides generally that the trustees of each township or the proper officers of each city therein shall afford, at the expense of such township or municipal corporation, public support or relief to all persons therein who are in condition requiring it; and that it is the declared intent of the act, of which Section 3476, General Code, is a part, that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief, who are residents of the state, county or township or city, as is prescribed in Sections 3477 and 3479, General Code.

Touching the authority and duty of the city to furnish the relief here required, Section 3480, General Code, provides as follows :

“When a person in a township or municipal corporation requires public relief, or the services of a physician or surgeon, complaint thereof shall be forthwith made by a person having knowledge of the fact to the township trustees, or proper municipal officer. If medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately

notify such trustees or officer in writing, that he is attending such person, and thereupon the township or municipal corporation shall be liable for relief and services thereafter rendered such person, in such amount as such trustees or proper officers determine to be just and reasonable. If such notice be not given within three days after such relief is afforded or services begin, the township or municipal corporation shall be liable only for relief or services rendered after notice has been given. Such trustees or officer, at any time may order the discontinuance of such services, and shall not be liable for services or relief thereafter rendered."

The provisions of said Sections 3476 and 3480, General Code, in my opinion afford ample power to the authorities of the city of Ravenna to provide for an operation to be performed on Mrs. B. of the kind here required and to pay for the same out of city funds, and, within the limitations prescribed in said Section 3480, General Code, require them to do so.

In holding that the county commissioners have no authority to contract for this operation or to pay for the same out of county funds, I do not, of course, desire to question the authority of the trustees of the county hospital to admit this person as a charity patient and to pay for this operation out of its maintenance fund.

Section 3137, General Code, making provision generally for the power and authority of the trustees of a county hospital, provides, among other things, that "such trustees may determine whether patients presented at the hospital for treatment are subjects for charity, and shall fix the compensation to be paid by patients other than those unable to assist themselves."

Section 3133, General Code, provides, among other things, for an annual levy by the county commissioners of an amount sufficient to properly maintain and conduct said hospital.

In an opinion of this department under date of June 30, 1921, Opinions of the Attorney General, 1921, p. 582, it was held:

"Where, pursuant to Section 3137, G. C., (108 O. L., Part 1, p. 258), the trustees of a county hospital find and determine that patients presented to said hospital for treatment are 'subjects for charity,' said trustees are without authority to present to the county commissioners bills for the treatment of such patients, and the county commissioners are without authority to pay said bills from county funds. Said bills should be paid by the hospital trustees from the maintenance fund provided for said hospital by Section 3133, G. C."

In this connection, however, I do not understand from your communication that any question is made with respect to the authority of the trustees of the county hospital to admit this person and provide and pay for the operation out of the hospital maintenance fund, but that said trustees refuse to do so.

Respectfully,
EDWARD C. TURNER,
Attorney General.