and said section 1222 is in the chapter relating to state aid improvement. Finally, as was shown in the opinion, copy of which is enclosed, funds arising from levy under section 6926 G. C. may, subject to the conditions and restrictions outlined in that opinion, be used by the county for contribution to a state aid project.

As it is thus found that on the one hand counties may contribute to the maintenance and repair of state roads as defined in sections 1224 and 7464 and have been given authority to levy for funds applicable to that specific purpose, and on the other hand, sections 6956-1 and 6956-1a specifically say that funds arising from levy authorized by the first of these sections are to be used only for the maintenance and repair of *improved county roads,* and since it appears (section 7464) that there is a well-recognized and clearly defined class of "improved county roads" as distinguished from "state roads," the conclusion clearly follows that funds arising from levy under said section 6956-1 are not to be used by the county in co-operation with the state for the maintenance and repair of state roads.

It may be that the particular road repair fund covered by the county auditor's certificate accompanying the final resolutions now being discussed arose from a levy made before section 6956-1 was amended and supplemented as above set forth. However, the earlier form of said section, while not so clear as is the present form when read in connection with section 6956-1a, is nevertheless believed to be of the same purport as is the present form so far as concerns the point now under consideration.

Hence, while the fact that you are proposing to do the maintenance and repair work in question upon the plan of co-operation between state and county does not furnish ground for my withholding approval of the final resolutions first above mentioned, yet on the other hand, the fact that the county proposes to furnish its share of the cost from funds arising from levy under section 6956-1 is objectionable, and for this latter reason alone I am returning the resolutions without my approval as to their form and legality.

I am sending to Hon. C. A. Weldon, prosecuting attorney of Pickaway county, a copy of this opinion and of said opinion No. 959, for his information.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1265.

COUNTY TUBERCULOSIS HOSPITAL—WHERE COUNTY DISPOSES OF ITS INTEREST IN DISTRICT HOSPITAL—WHEN PROCEEDS DERIVED FROM SUCH SALE CAN BE USED TO ERECT AND MAINTAIN COUNTY TUBERCULOSIS HOSPITAL—SECTIONS 3141-1, 3141-2 AND 3148 G. C. CONSTRUED.

Under section 3141-1 *G. C.* (108 *O. L., p.* 230, *Part* 1) *construed with section* 3141-2 (*Amended Senate Bill* 195, 108 *O. L., Part* 2) *and* 3148 (108 *O. L. Part* 1, *p.* 252), *where a county has joined in the erection of a district tuberculosis hospital and in which such hospital there is not suitable accommodations afforded, and where the trustees of such hospital have failed and refused to provide additional accommodations and because of such conditions such county, under sections* 3148 *et seq. has withdrawn from such district tuberculosis hospital and sold its interest therein, such*

county, with the consent of the state board of health, may use the proceeds of such sale to erect and maintain a county tuberculosis hospital.

COLUMBUS, OHIO, May 20, 1920.

HON. WALTER W. BECK, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department relative to the authority of county commissioners in the matter of county tuberculosis hospitals under sections 3139, et seq.

Your question may thus be stated:

> "After a county has disposed of its interest in a district tuberculosis hospital, as provided by law, and after applying a part of the proceeds of the sale of such interest to meet the payment of bonds and interest theretofore issued, for the erection of such district hospital, can the county commissioners use the balance of such proceeds for the establishment of a county tuberculosis hospital?"

Sections 3139 et seq. G. C. relate to county tuberculosis hospitals, while sections 3148 to 3153, inclusive, provide for district tuberculosis hospitals. These sections have been frequently amended in the past few years.

Section 3140 constituted a specific grant of authority to county commissioners in this matter, reading that such "county commissioners may construct a suitable building or buildings * * * to be known as the county hospital for tuberculosis, and the provisions of law requiring the commissioners to submit the question of the policy of building such building to the voters of the county shall not apply thereto."

But in 103 O. L., p. 492, this section was amended and these provisions omitted; the subject matter of the new section related solely to cases where tubercular persons were kept in county infirmaries in violation of section 3139. Section 3141 gave the commissioners power to levy taxes "when in any county funds are not available to carry out these provisions." Under this section, which also authorized the issuance and sale of bonds, in anticipation of such levies, it was provided that such funds "shall not be used for any other purpose."

In section 3148, ample provision was made for the establishment and maintenance of a district tuberculosis hospital. In 103 O. L., 492, 3141 was amended to read:

> "In any county where a county hospital for tuberculosis has been erected, such county hospital * * * may be maintained by the county commissioners."

In 107 O. L., 495, section 3141 was amended again and still appeared to relate to "any county where a county hospital" has been erected, as noted in the former section.

Section 3143 provided in that amendment that instead of joining in the erection of a district hospital, the county commissioners could contract with the trustees of such district hospital for the care and treatment of persons of their county suffering from tuberculosis.

In 108 O. L., 230, section 3141 was supplemented by the enactment of section 3141-1; providing that in any county which has joined in the erection of a district hospital and in which such hospital has not capacity to care for all cases of tuberculosis and where the trustees of such district hospital or the joint board of county commissioners fail or refuse to provide additional accommodations, "the county commissioners may with the consent of the state department of health erect and

maintain a county tuberculosis hospital." For this purpose this section provides that the commissioners may issue bonds and "shall annually levy a tax and set aside the funds necessary for such maintenance."

In the same act, 3153-6 was passed, providing:

> "In such counties as have not constructed a county hospital for tuberculosis, or have not contracted with a municipal tuberculosis hospital, or in such counties as have joined in the construction of a district tuberculosis hospital and in which the joint board of county commissioners of such district shall fail or refuse to maintain tuberculosis dispensaries as herein provided, the county commissioners may establish and maintain one or more tuberculosis dispensaries in the county and may employ physicians, public health nurses and other persons for the operation of such dispensaries or of other means provided for the prevention, care and treatment of cases of tuberculosis and may provide by tax levies or otherwise the necessary funds for their establishment and maintenance."

It is to be observed here that that which the commissioners are authorized to establish and maintain is one or more "tuberculosis dispensaries." Just what distinction the legislature meant to draw between tuberculosis hospitals and dispensaries is not quite clear, as the authority to employ physicians, nurses and other persons for the operation of such dispensaries, or other means provided, would seem broad enough to include the establishment and maintenance of the tuberculosis hospital already provided for in section 3141-1 of the same act.

I think at this time it may be stated that the fair inference from all of these acts is that in cases where the joint district arrangement proves inadequate for the needs of a county, the commissioners are to be empowered and authorized to treat and care for tubercular persons in their own county. It should at the same time, however, also be noted that this intention must be gathered rather by inference than from clear or definite expression.

After the amendments above referrred to, this seems to be the only grant of authority for building the county hospital. At the same session in 108 O. L., 252, section 3148 was amended to provide for the withdrawal of counties from the district hospital organization and for the disposal of such counties' interest in the district hospital by sale to other counties in said district.

Yet another amendment was made in the last general assembly in amended senate bill 195, where section 3141-2 was amended to provide that where funds had been secured for a county hospital under section 3141-1, such funds could legally be used in buying out the interest of other counties desiring to withdraw from the district hospital organization. (108 O. L. Part 2, p. 1054). The continued management and control of such district hospital, after such withdrawals, was also provided for and the powers and duties of the trustees thereof are stated in this section. But no specific provision is made in this or the other sections for the use and expenditure of the proceeds of the sale. The nearest approach to a provision for the application of monies received from sources other than by levy of taxes appears to be section 3142, the marginal text of which is "accounts to be kept." The section provides that an account shall be kept of all monies "received from patients *or from other sources* which shall be applied toward the payment of maintaining a tuberculosis hospital."

After considering the effect of these numerous amendments in the light of the legislature's failure to restate or regrant the authority originally contained in section 3140, this department is of the opinion that the authority of the county commissioners to erect and maintain a county tuberculosis hospital is now controlled

by section 3141-1 and that wherever the accommodations of the district hospital are inadequate, as stated in that section, the county commissioners may, subject to the approval of the state department of health, proceed to erect and maintain a county tuberculosis hospital.

While the provisions of the last amendment in senate bill No. 195, and in fact all of the other amendments, are not definite in conveying express authority to use the proceeds of a sale of an interest in a joint hospital, it is believed that this and the other sections of the act referred to, construed in the light of the apparent purpose of the whole act, would authorize the commissioners to use the balance of the proceeds of the sale of their county's interest in the district hospital for the establishment of a county tuberculosis hospital, where the district hospital, from the joint maintenance of which your county has withdrawn, had not the capacity to care for all cases of tuberculosis, and where the joint board of commissioners had failed or refused to provide additional accommodations therefor, as provided in section 3141-1, in 108 O. L., 230.

Whether or not such conditions existed does not appear from your letter and it is possible that this opinion may not be quite responsive to your situation, but the inference from such withdrawal justifies the hope that the above conclusion will assist in the solution of your question.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1266.

SHERIFF—EXPENSE ACCOUNT—WORDS "SUCH STATEMENT SHALL SHOW THE NUMBER OF THE CASE AND THE COURT IN WHICH THE SERVICE WAS RENDERED AND THE RAILROAD POINT FROM WHICH A LIVERY RIG WAS USED" CONSTRUED IN SECTION 2997 G. C., (108 O. L. 1218).

The last sentence of section 2997 G. C., as amended in 108 O. L., Part II, p. 1218, to the effect that "such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used," is not to be construed as a limitation upon the sheriff's right to receive allowances for expenses incurred in connection with the duties and services enumerated in said section. The intent of said section is merely to require particular information to be given by the sheriff as to cases, courts and railroad points from which livery rigs were used, where the facts surrounding the sheriff's services are such as to make it possible for him to give that kind of information.

COLUMBUS, OHIO, May 22, 1920.

HON. R. A. KERR, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—In a recent letter to this department you say:

> "I desire to call your attention to section 2997 as amended by the legislature and found in house bill No. 294, and particularly to the last sentence, which reads as follows in speaking of the sheriff's statement of expenses:
>
> 'Such statement shall show the number of the case and the court in which the service was rendered and the railroad point from which a livery rig was used.'