

3618.

POOR RELIEF—FUNDS OF GENERAL LEVY AND THOSE EXCEEDING FIFTEEN MILL LIMITATION MAY BE USED FOR—DUTY OF MUNICIPALITY AND TOWNSHIP TO AID INDIGENT RESIDENTS—COUNTY MAY AID NEEDY NON-RESIDENTS—TAX LEVY UNDER PRINGLE ROBERTS BILL NOT LIMITED TO NON-RESIDENTS.

SYLLABUS:

1. *Funds derived from the general levy, as described in section 5625-5, of the General Code, and funds derived for poor relief from a levy outside the fifteen mill limitation, as authorized by a vote of the people, under section 5625-15, of the General Code, may legally be expended for the relief of the poor.*

2. *Under section 3476, General Code, it is the duty of cities and townships to furnish temporary and partial relief to indigent residents of the city or township.*

3. *The county may furnish "outdoor relief" to persons who are entitled to admission to a county home, but can not be received therein, and to needy non-residents.*

4. *The proceeds of tax levies for poor relief and the proceeds of a bond issue under House Bill No. 102, (Pringle-Roberts Bill) as enacted by the 89th General Assembly, may be expended by the county for hospitalization of the poor as authorized under section 3138-1, of the General Code, and such relief is not limited to non-residents.*

5. *The proceeds of said bond issue may be used to furnish outside relief to indigent persons who are entitled to admission to the county home, but for some reason can not be cared for therein.*

COLUMBUS, OHIO, September 30, 1931.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

"The City of Cleveland and its immediate suburbs have a population approximating 1,200,000. The City of Cleveland itself, is one of the great industrial centers of the country, and the unemployment situation prevalent throughout the entire country is felt much more keenly in the cities where the people normally employed in the industries reside. Common with other industrial cities, the homes of many of the owners of these industrial establishments are outside of the City, with the result that taxation confined to property within the limits of the City of Cleveland, levied for the purpose of poor relief, places an undue burden on the property within the City and does not reach the property without the City of Cleveland belonging largely to those who are benefited by the industries in which the laborers normally find employment, but who are now in want for lack of such employment.

Very little relief can be obtained from the suburban municipalities adjacent to the City of Cleveland, for the reason that their bond issuing power is small, and, moreover, the proceeds of such bonds must necessarily be expended for poor relief within their own limits, where there

is but little need, and no part of it could be spent within the limits of the City of Cleveland, where the need is great. While their resident taxpayers recognize their obligations to meet the unemployment crisis in this metropolitan industrial area, they must necessarily look to the county government rather than to the suburban municipalities as the agency through which such contribution to poor relief should be made.

The tax duplicate of Cuyahoga County is so much greater than the duplicate of the City of Cleveland, that a small county levy for the relief of the poor would produce a sum sufficient to care for the situation, and would be more equitably distributed than would be the case were the City of Cleveland to carry the load alone.

Under the provisions of Amended House Bill No. 102, known as the 'Pringle-Roberts Bill', the City of Cleveland has heretofore issued \$500,000.00 in bonds, and on Monday, August 24, 1931, will probably pass an ordinance authorizing an additional bond issued of \$300,000.00 for emergency poor relief, under said House Bill No. 102.

Under the debt limitations the City of Cleveland has now exhausted its bond issuing power. The officials of the Community Fund of Cleveland have reported that their estimate for necessary relief during the last five months of 1931 is \$1,400,000.00, towards which there is now available, including the last issue of city bonds, only \$310,000.00. When the City of Cleveland receives from the county treasurer all of its share of the collected taxes for the last half of 1930, the bond issuing power of the City of Cleveland may be increased so as to permit the issuing of an additional \$200,000.00 in emergency poor relief bonds, but that is the maximum amount that can in any event be issued by the City of Cleveland for that purpose.

Your attention is invited to Section 3476 of the General Code of Ohio, the first half of which relates to the relief which is to be furnished by townships and municipalities. In the middle of this section appears the following sentence: '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 that they cannot be satisfactorily cared for except at the county infirmary or under county control.*' (Italics, ours.)

1a. Your opinion is requested as to whether under the existing conditions, described in the forepart of this letter, the Board of Commissioners of Cuyahoga County may lawfully expend money received from taxes levied on the taxable property of the County of Cuyahoga either by general or special levy for the purpose of affording relief to the poor in said county.

1b. If your answer to the foregoing is in the affirmative, please advise whether such funds may be used for the support of indigent persons who are entitled to be admitted to the county home but because of overcrowded conditions can not be admitted; also whether such funds may be expended for the purpose of maintaining a county hospital to which all persons of the county are admitted, irrespective of residence.

2. Should your opinion be in the affirmative, to what extent may the Commissioners of Cuyahoga County expend this poor relief money and grant poor relief upon the approval and recommendation of the Cleveland Associated Charities and other affiliated organizations, as is

expressly authorized to be done by township trustees or officers of a city under the provisions of General Code Section 3481?

In this connection it should be noted that the advantage of using the Associated Charities is that all of the expenses of the visitors, investigators and distributors are paid for by private subscription, and the whole amount of money which is expended upon the approval and recommendation of this organization by the municipality, or county, would be used solely for the relief of the poor, without any overhead expense whatsoever chargeable to such public money.

3. Your opinion is also requested as to whether or not funds derived from the sale of bonds issued by a county for emergency poor relief, under the provisions of said House Bill No. 102, may be used for poor relief in addition to 'the furnishing of temporary support and medical relief to non-residents.'

Amended House Bill No. 102 (Pringle-Roberts Bill), in sub-section 'd' of Section 1, does not specifically mention General Code Section 3138-1. This section authorizes county commissioners to enter into an agreement with 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, either in one payment, or installments, or so much from year to year, as the parties stipulate.'

Your opinion is solicited as to whether the proceeds of bonds issued by county commissioners, under said House Bill No. 102, may lawfully be used for the purposes mentioned in Section 3138-1, and in this connection your attention is particularly invited to the last clause in sub-section 'd' of Section 1 of the Pringle-Roberts Act, which reads as follows: 'in the case of any sub-division, said term ("poor relief") shall mean the maintenance of a hospital belonging to the subdivision or the making of payments by the subdivision to hospitals otherwise owned, for the care of the indigent, sick or disabled of the subdivision, as authorized by law.'

In considering the first question propounded, it will be noted that section 5625-5, of the General Code, which sets forth the purpose and intent of the general levy for current expenses, among other things expressly provides in the case of counties, that the funds derived from such levy may be expended "for the relief and support of the poor." Also, it will be noted that section 5625-15, General Code, authorizes a county to levy outside of the fifteen mill limitation by a vote of the people among other things, for "current expenses of the sub-division" It will therefore appear that the general levy or a special levy made for current expenses may properly be expended for poor relief. It follows, therefore, that your first question mainly presents the problem as to what, under the law, the county may do with reference to granting outside relief. Section 3476, of the General Code, reads:

"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 (G. C. §3476 et seq.) 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 can not 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."

In analyzing the provisions of the above section, it is clear that in its enactment the Legislature intended that under ordinary circumstances cities should furnish relief in their homes to all persons needing temporary or partial relief, who are residents of the city, and that the township should furnish similar relief to the residents of the township. However, the relief that may be granted by the county, in view of the language used in said section, is not so definitely set forth. It is clear that those who are non-residents are properly county charges. It is equally clear that those who are permanently disabled and those who are ordinarily committed to county infirmaries are charges of the county. However, the rest of the language used with reference to county responsibility is general, and it is difficult to prescribe the exact boundaries included within its terms. For instance, the term "pauper" has various constructions. Ordinarily, the term signifies one who receives relief at public expense. See Webster's New International Dictionary. The term "pauper" has been defined in Bouvier's Law Dictionary as "one so poor that he must be supported at public expense." However, in *Lander Co. v. Humbolt Co.*, 21 Nev. 415, 32 Pac. 849, it was held that a laboring man who had always been able to make a living until his last sickness and who had never asked or received charity was not a pauper although without money or property with which to pay the expense of his sickness. In the case of *Beach v. Trustees*, 2nd Dec. Rep. 221, 2 W. L. M., 95, it was held that one who has sufficient credit to supply his necessities, although he has no property, is not entitled to relief as a pauper, but one who could not so supply his necessities even though he had property elsewhere was entitled to relief as a pauper.

Undoubtedly, the legislature, in view of the language used, intended in some degree, to distinguish persons requiring temporary or partial relief from those whom it refers to as paupers. However, as hereinbefore indicated, the line of demarcation is difficult to draw, in view of the language used. Therefore, it could be argued with some plausibility that one who is in need of relief is a pauper and is entitled to relief at county expense. In any event, the language of the section provides that it is a county obligation to provide relief to "such other persons whose peculiar condition is such that they can not be satisfactorily cared for except at the county infirmary or under county control."

So far as has come to my attention, the courts in this state have not interpreted the language above mentioned. Therefore, it is more or less speculative as to what status a person must have in order for it to be said that he can not be cared for except under county control. It is a fact that the Bureau of Inspection

and Supervision of Public Offices has held from an administrative standpoint, that a person suffering from pulmonary tuberculosis who is without means of support, and by reason of the provisions of the statute may not be admitted to a county home, is a person whose peculiar condition is such that he can not be cared for except under county control.

In connection with your first question, it should be kept in mind that in many counties there may be persons who are entitled to be admitted to the infirmary, but because of overcrowded conditions, they can not be cared for therein. Under such circumstances, there certainly is ample implied power on the part of the county to provide some means of assistance to such persons outside of the institution. In other words, because a county is not equipped to furnish poor relief in the county home, does not excuse it from doing that which it is possible for it to do, to wit, to make arrangements to maintain persons or assist persons outside of the institution when they are entitled to be supported within the institution.

It is believed that the foregoing disposes of the first branch of your inquiry, with the exception of the reference to hospitalization which will be later considered herein.

Coming to your second question, it is believed pertinent to consider the provisions of Section 3481, General Code, which reads:

“When complaint is made to the township trustees or to the proper officers of the municipal corporation that a person therein requires public relief or support, one or more of such officers, or some other duly authorized person, shall visit the person needing relief, forthwith, to ascertain his name, age, sex, color, nativity, length of residence in the county, previous habits and present condition and in what township and county in this state he is legally settled. The information so ascertained shall be transmitted to the township clerk, or proper officer of the municipal corporation, and recorded on the proper records. No relief or support shall be given to a person without such visitation or investigation, except that within counties, where there is maintained a public charity organization, or other benevolent association, which investigates and keeps a record of facts relating to persons who receive or apply for relief, the infirmary superintendents, township trustees or officers of a city shall accept such investigation and information and may grant relief upon the approval and recommendation of such organization. Every reasonable effort shall be made by the township trustees and municipal officers to secure aid from relatives and interested organizations before granting relief from public funds.”

In analyzing the section last above quoted it would appear that it is made to apply to the township trustees or to a municipality. However, the latter part of the section expressly mentions “the infirmary superintendents, township trustees or officers of a city” as being authorized to accept the investigation of charitable organizations therein referred to. Therefore, there is in the language used a suggestion that this section contemplates the superintendent of the county infirmary as being authorized to accept the investigation of such organization. While I am inclined to doubt whether the section taken as a whole, intended to include cases other than where relief was being furnished by municipalities or townships as above stated, the language used is susceptible of another construction. In any event, it is evident that any expenditure made by the county commissioners would have to be in the nature of bills presented and allowed by them under the provis-

ions of Section 2460, of the General Code. It follows, of course, that in making such allowance as to the merits of the claim, the county commissioners would be justified in taking into consideration the recommendation of such organizations as the board felt were worthy of consideration. In other words, the county commissioners must conclude that said claims are meritorious, which of course would include evidence sufficient to satisfy the commissioners that the relief was furnished and the person who received it was entitled thereto. While of course the expenditure of such funds must be upon the warrant of the county auditor and upon the allowance of the county commissioners, and the funds could in no wise be transferred to another organization, as hereinbefore indicated, there is nothing to prevent the county commissioners from adopting the recommendation of such an association as they deem responsible. In the final analysis, the county commissioners must of course be responsible for their act in making said allowance.

Coming to your third inquiry, without undertaking to discuss in detail the provisions of amended House Bill No. 102, (Pringle-Roberts Bill) it may be stated that the last clause in sub-section D of Section 1 clearly indicates that the term "poor relief" as used in the section, shall mean the maintenance of a hospital building of the subdivision or the making of payments by the subdivision to hospitals otherwise owned for the care of the indigent sick or disabled. Undoubtedly, said section has reference in so far as counties are concerned, to section 3138-1, of the General Code, which authorizes the board of county commissioners to enter into an agreement with one or more corporations or associations organized for charitable purposes other than a sectarian institution, for the care of the indigent sick and disabled.

In my opinion No. 2852, issued under date of January 22, 1931, it was held as disclosed by the syllabus, that:

"County commissioners, by reason of the express authority under section 3138-1 of the General Code, may contract for hospital service for the care of the indigent poor of the county and in making such provision are not limited to those who are inmates of the county infirmaries, but such relief may be granted also, in the discretion of the commissioners, to those having legal settlements in townships or municipalities who are not permanent county charges."

In the body of said opinion, it was pointed out that my predecessor had reached the same conclusion in two opinions found in Opinions of the Attorney General for 1927, pages 30 and 386, respectively.

It therefore would clearly appear that the proceeds of bond issues by the county commissioners under the Pringle-Roberts Bill, may lawfully be used for the purposes mentioned in section 3138-1, General Code, irrespective of whether or not the person to whom the relief is furnished is a resident of the county. It further would seem to be clear that the proceeds of a general or special levy for poor relief could be expended for such purpose.

In view of the foregoing, it is my opinion that:

First, funds derived from the general levy as described in section 5625-5, of the General Code, and funds derived as authorized by a vote of the people under section 5625-15, of the General Code, may legally be expended for the relief of the poor.

Second, under section 3476, General Code, it is the duty of cities and townships to furnish temporary and partial relief to indigent residents of the city or township.

Third, the county may furnish "outdoor relief" to persons who are entitled to admission to a county home, but can not be received therein and to needy non-residents.

Fourth, the proceeds of tax levies for poor relief and the proceeds of a bond issue under House Bill No. 102, (Pringle-Roberts Bill) as enacted by the 89th General Assembly may be expended by the county for hospitalization of the poor as authorized under section 3138-1, of the General Code, and such relief is not limited to non-residents.

Fifth, the proceeds of said bond issue may be used to furnish outside relief to indigent persons who are entitled to admission to the county home, but for some reason can not be cared for therein.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3619.

CANDIDATE—BOARD OF EDUCATION—NOMINATING PETITION, NOT SPECIFYING TERM SOUGHT, INVALID AND NAME MAY NOT APPEAR ON BALLOT.

COLUMBUS, OHIO, September 30, 1931.

SYLLABUS:

When there are to be elected persons for membership on a board of education for both a long term and short term, nominating petitions for candidates for said offices should show the length of time for which the persons are so nominated, and when the petitions fail to state the term for which the persons are nominated such petitions are insufficient and the names of such candidates can not lawfully be printed on the ballot.

COLUMBUS, OHIO, September 30, 1931.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"The Board of Elections of Muskingum County has asked me for a ruling as to whether or not they are required to prepare ballots for election of members to the Board of Education of what is known as East Hopewell Rural School District.

The facts are, that about a year and one-half or two years ago the county board of education created a new school district comprising a comparatively large area taking in part of Muskingum and Licking counties, and called it the Hopewell-Licking Rural School District. About two months ago the county board of education of Muskingum county again took action and divided said Hopewell-Licking Rural school district by cutting off over half of the eastern part of said district and named it the East Hopewell Rural School District. The remaining portion of the district retained the old name and the local board remained the