district to another school district in the same county school district, under the provisions of section 4692 G. C., title to school property situated in such transferred territory vests in the board of education to which such territory is transferred, upon the completion of such transfer.

2. Where a board of education receives title to school property located in territory which has been transferred by the county board of education under the provisions of section 4692 G. C., such property may thereafter be sold by the board of education of the school district to which such territory was transferred, but such real or personal property to be sold must be offered in the manner provided in section 4756 G. C.

3. Where a county board of education transfers territory from one school district to another school district in the county school district, under the provisions of section 4692 G. C., warranty deeds to real estate used for school purposes and belonging to the board of education from which such territory was transferred, need not be given to the board of education accepting such territory or school property, as title to real estate automatically passes upon the completion of the transfer.

Respectfully,
JOHN G. PRICE,
Attorney-General.

940.

HOSPITAL—PRIVATELY OWNED AND OPERATED NOT FOR PROFIT —RECEIVES CHARITY PATIENTS—ENTITLED TO FREE WATER FROM MUNICIPALITY.

A privately owned hospital that charges some of its patients who are able to pay, but also receives charity patients, and is not operated for profit, is entitled under sections 3963 and 14769 to free water from the municipality.

COLUMBUS, OHIO, January 15, 1920.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent request for the opinion of this department, as follows:

> "Under date of December 5, 1919, this department submitted to you for written opinion a number of questions relating to free water under sections 3963 and 14769 G. C.
>
> May we ask you, please, in considering the questions involved, that we may also have answer to the following:
>
> Under sections mentioned, is a privately owned hospital in a municipality that charges patients who are able to pay but receives some charity patients who are not able to pay, entitled to free water?
>
> Is a hospital of this nature that receives pay from the city for the city poor received at such hospital, entitled to free water?"

Your attention is directed to the discussion of sections 3963 and 14769, in the opinion rendered on your request of December 5, 1919, referred to in your letter. Because of this recent expression of the views of this department in that opinion,

it is not deemed necessary to repeat the discussion of those sections and they are therefore made a part of this opinion by reference.

Your first question is whether a privately owned hospital that charges patients who are able to pay but receives some charitable patients who are not able to pay, are entitled to free water under these sections. Your letter does not state whether the hospital in question is one conducted for profit or not for profit. In fact the question is stated generally and must be answered as such, so that it may not be applied to specific cases where the facts may be different.

It must be noted that under this section the ownership of the institution is immaterial and that, as stated by Judge Nichols, in the case of Rose Institute vs. Myers, 92 O. S., 262:

> "It is the use of the property which renders it exempt or non-exempt," (See also case of O'Brien vs. Hospital Association, 96 O. S., 1).

A decisive factor in the determination of this question is absent in your statement of facts, viz., whether or not the institution is in fact conducted for profit. The fact that some of the patients are pay patients and some are charity patients would not of itself fully determine the character of the institution, as it might be possible for the institution to receive some pay patients, which would make it possible to carry out or promote its main purpose of caring for the charity patients.

This was considered by the attorney-general in an opinion found in Vol. 1 of the Opinions of the Attorney-General for 1918, page 800, in which, on page 808, he said:

> "As I see it, therefore, the director of public service is not entitled to make any charge whatsoever for water furnished to hospitals which are in point of fact charitable institutions, by which I mean, whether they make a charge to those who are able to pay or not, *they are not operated for profit.*"

So that on this line of reasoning, sanctioned by the supreme court in the case above referred to, the question is the use and purpose of the institution, and its charitable character under this section may be said to be determined whether it is operated for profit or not for profit.

Without attempting to announce a rule applicable to any and all cases, your question may be answered in this way; that a privately owned hospital that charges some of its patients who are able to pay, but also receives charity patients, and is not operated for profit, is entitled under sections 3963 and 14769 to free water from the municipality.

Your second question is answered by the same considerations expressed in the discussion of the first question, and it is believed that the conclusion announced therein is applicable to and decisive of the second question, so that its separate consideration is deemed unnecessary.

Respectfully,
JOHN G. PRICE,
Attorney-General.