

1981

HOSPITALIZATION AND MEDICAL TREATMENT OF PRISONER ON PAROLE FROM PENAL INSTITUTION OF STATE—NEITHER STATE DEPARTMENT OF HEALTH NOR STATE DEPARTMENT OF WELFARE LIABLE.

SYLLABUS:

Neither the State Department of Health nor the State Department of Welfare is liable for hospitalization and medical treatment of a prisoner on parole from a penal institution of this state.

Columbus, Ohio, June 19, 1947

Hon. Milton J. Andrews, Prosecuting Attorney, Lawrence County
Ironton, Ohio

Dear Sir:

I have your request for my opinion, which reads as follows:

“I have been asked to secure an opinion from you as to whether or not the Department of health for the State of Ohio is liable for hospitalization and medical treatment of an individual who contacted pulmonary tuberculosis while a prisoner at Mansfield and who was paroled from said institution February 28, 1947.

This individual was in the hospital at the reformatory fifteen months before being paroled and the county commissioners of this county feel that this man is still a charge of the Department of Public Welfare since he is still under their jurisdiction.

This man is now a patient in our Lawrence County General Hospital, but it will be necessary for him to have one or more operations if he is to live and these will be expensive.

Due to this man's condition, I would appreciate an early opinion from you in regard to this matter.

I herewith enclose letter of Dr. A. J. Payne, Lawrence County Health Commissioner, which is self explanatory, concerning this man.”

The treatment of tuberculosis patients is covered in Sections 3139 to 3139-22, inclusive, General Code. The payment of cost of care and

treatment of patients is provided for in Sections 3139-10 and 3139-18, General Code.

The pertinent part of Section 3139-10, General Code, is as follows:

“The board of trustees may require from any applicant admitted from the county or counties maintaining the hospital, payment not exceeding the actual cost of care and treatment, including the cost of transportation, if any. If, after investigation, it shall be found that any such applicant or patient or any person legally responsible for his support is unable to pay the full cost of his care and treatment in the district hospital, the board of trustees shall determine the amount, if any, said applicant, or patient or any such person legally responsible for his support, shall pay. The difference between such amount, if any, and the actual cost of care and treatment shall be paid by the county in which such applicant or patient has a legal residence. The amount so determined shall be paid on the order of the county commissioners.”

The pertinent part of Section 3139-18, General Code, is as follows:

“The county commissioners of such county may also contract for the care and treatment of residents of the county suffering from tuberculosis with a general hospital properly equipped both as to personnel and facilities for the care and treatment of the tuberculous, or with a person, firm, association or corporation operating a hospital exclusively for the care and treatment of the tuberculous; but no contract shall be made unless such general hospital or private hospital has been inspected and approved by the state department of health.”

However, your request relates to the liability of the state department of health to pay for the care and treatment of a tubercular patient who is on parole from a penal institution of this state.

As a general rule, governmental agencies and public officers have only such powers and duties as are expressly given them by statute, and such as are necessarily implied from those granted.

The state department of health was created by Section 1232, General Code, which is as follows:

“There is hereby created a state department of health, which shall exercise all the powers and perform all the duties now conferred and imposed by law upon the state board of health and all such powers, duties, procedure and penalties for violation of

its sanitary regulations shall be construed to have been transferred to the state department of health by this act (General Code, Sections 1232 to 1236-5). The state department of health shall exercise such further powers and perform such other duties as are herein conferred. The state department of health shall consist of a commissioner of health and a public health council."

The duties of the state director of health are set forth in Section 1233, General Code, which is as follows :

"The director of health shall perform all executive duties now required by law of the state board of health and the secretary of the state board of health, and such other duties as are incident to his position as chief executive officer. He shall administer the laws relating to health and sanitation and the regulations of the state department of health. He shall prepare sanitary and public health regulations for consideration by the public health council and shall submit to said council recommendations for new legislation. The director of health shall sit at meetings of the public health council but shall have no vote."

The general powers and duties of the state board of health are enumerated in Section 1237, General Code, which is as follows :

"The state board of health shall have supervision of all matters relating to the preservation of the life and health of the people and have supreme authority in matters of quarantine, which it may declare and enforce when none exists, and modify, relax or abolish, when it has been established. It may make special or standing orders or regulations for preventing the spread of contagious or infectious diseases, for governing the receipt and conveyance of remains of deceased persons, and for such other sanitary matters as it deems best to control by a general rule. It may make and enforce orders in local matters when emergency exists, or when the local board of health has neglected or refused to act with sufficient promptness or efficiency, or when such board has not been established as provided by law. In such cases the necessary expense incurred shall be paid by the city, village or township for which the services are rendered."

From the above sections and applying the rule given above, it can readily be seen that there is no authority given to the state board of health to pay for the care and treatment of the patient referred to in your letter. Indeed, there is a specific prohibition against spending public moneys in providing medical or nursing attendance or service, which is found in Section 1237-4, General Code, which is as follows :

“Nothing in this act (G.C. secs. 1237-1 to 1237-4) shall be construed as authorizing, or permitting, the expenditure of any public moneys to provide medical or nursing attendance or service.”

The duty and power to render medical services to prisoners while confined in penal institutions is necessarily implied from the provisions of Section 154-57, General Code, and Section 1835, General Code. The pertinent part of Section 1835 is as follows:

“* * * The department of public welfare shall have full power to maintain, operate, manage and govern all state institutions * * * for the custody, control, training and rehabilitation of persons convicted of crime and sentenced to penal or reformatory institutions; * * *”

While it is true that under the provisions of Section 154-60b, General Code, the state department of welfare has “the control and supervision of prisoners at large” on parole from penal institutions, no authority is given by the statutes to that department to bear the costs of medical or nursing care or service when such prisoners are not confined in said penal institutions.

In view of the above, it is my opinion, and you are advised, that neither the state department of health nor the state department of welfare is liable for hospitalization and medical treatment of a prisoner on parole from a penal institution of this state.

Respectfully,

HUGH S. JENKINS,
Attorney General