

includes the power of village councils to fix the compensation of the street commissioner, and the provision that the compensation so fixed shall not be increased or diminished during the term of office, consequently likewise applies. The ordinance proposed in your second question does not provide for any rate of compensation. It merely provides that the rate shall be on an hourly basis. The effect of such an ordinance, if the same were valid, would be to reserve to the council the power to increase or diminish any rate originally established at the discretion of council throughout the term for which the street commissioner was appointed. Such an ordinance is so clearly in violation of the provisions of Section 4219, General Code, as to require no further discussion.

In specific answer to your two questions, it is my opinion that:

1. That part of a village ordinance, fixing the salary of the village clerk, which provides that it will allow additional undesignated sums for "extra services in connection with street improvements, etc.," not therein specified, is insufficient to authorize additional compensation without further action of council more definitely specifying the services to be performed and fixing the compensation therefor.

2. The council of a village may not provide by ordinance that the compensation to be paid the street commissioner shall be such sum per hour, as council may from time to time fix for services rendered.

Respectfully,
EDWARD C. TURNER,
Attorney General.

3077.

INDIGENT PERSONS—AUTHORITY OF TOWNSHIPS AND MUNICIPALITIES TO EXTEND RELIEF—MEDICAL AND SURGICAL RELIEF INCLUDES USE OF HOSPITAL FOR OPERATION.

SYLLABUS:

1. *The terms "medical services" and "medical attendance" as used in Section 3480, General Code, providing for the furnishing of such to the indigent poor by townships and municipal corporations, include surgical services.*

2. *Where circumstances are such that a municipality is authorized by law to extend public relief to an indigent poor person, the municipality may lawfully pay for a necessary surgical operation required by such person.*

3. *Where circumstances are such that a municipality is authorized by law to extend public relief to an indigent poor person, the municipality may lawfully pay the necessary charges for the use of a hospital needed by such person, whether or not the municipality had previously contracted with said hospital for its use for the inhabitants of the municipality.*

COLUMBUS, OHIO, December 29, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion in answer to the following questions:

"Question 1. When an indigent person is in need of an operation, is a city liable for the fees of the surgeon who performs such operation?"

Question 2. In the absence of an agreement with a hospital for the care of an indigent person, is a city liable for hospital charges when an indigent person is received into such hospital to be operated on?

Question 3. In the absence of an agreement with a hospital, may a city legally pay the claim of the hospital for services rendered in the care of an indigent person?"

Sections 3476, 3480, 4021 and 4022, General Code, read in part as follows :

Sec. 3476. "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." * * *

Sec. 3480. "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." * * *

Sec. 4021. "The council of each municipality, annually, may levy and collect a tax not to exceed one mill on each dollar of the taxable property of the municipality and pay the amount to a private corporation or association which maintains and furnishes a free public hospital for the benefit of the inhabitants of the municipality, or not free except to such inhabitants of the municipality as in the opinion of a majority of the trustees of such hospital are unable to pay. Such payment shall be as and for compensation for the use and maintenance of such hospital." * * *

Sec. 4022. "Such council may agree with a corporation organized for charitable purposes and not for profit, for the erection and management of a hospital suitably located for the treatment of the sick and disabled of such municipality, or for an addition to such hospital, and for a permanent interest therein to such extent and upon such terms and conditions as may be agreed upon between them," * * *

By the plain terms of Section 3480, supra, it is provided that complaint shall be made by a person having knowledge of the facts, when a person in a township or municipal corporation requires public relief, or the services of a *physician or surgeon*. It then provides how *medical services* shall be provided for such person when no *physician or surgeon* is regularly employed to furnish *medical services* to such poor.

The question raised by your first inquiry is whether the terms "medical services" and "medical attendance," as used in Section 3480, General Code, include the services of a surgeon.

The language of Section 3480, General Code, clearly contemplates that a physician or surgeon may be employed by contract to render *medical services* to such poor, and clearly states that complaint shall be made when an indigent person needs the services of a physician or surgeon. The implication is clear that the terms "medical services" and "medical attendance" include the services of a surgeon as well as those of a physician. At any rate, such is the only reasonable construction to be given to the terms of the statute upon consideration of the purposes of the law and the language used in the statute.

In an opinion of a former Attorney General, reported in the Annual Report of the Attorney General for 1912, at page 1384, it is held:

"The term 'medical relief' as employed in Sections 3480, 3490 and 3546 of the General Code, providing for the furnishing of such to the poor by township and county authorities, includes 'surgical relief.'"

And, in a recent opinion rendered by this office, and reported in Opinions of the Attorney General for 1927, page 694, where the terms of Section 2068, General Code, providing for the payment of expenses for medical treatment, medicine, nursing, board, lodging and laundry of patients in the Ohio State Sanatorium were under consideration, it was held:

"The term 'medical attendance' as used in Section 2068, General Code, includes such surgical operations as may be necessary."

The Supreme Court of Ohio has construed the act providing for a medical board with authority to regulate the practice of medicine and all arts of healing to include even Christian Science treatment, where admittedly no medicine, as the term is technically understood, is administered. *State of Ohio vs. Marble*, 72 O. S. 21.

In the case of *Wetherall vs. Marion County*, 28 Iowa, 22, it was held:

"The term 'duties of a physician' as used in a contract between the plaintiff as a physician and the board of supervisors of the county of M. for the performance by him of professional services for the paupers of said county at the poorhouse therein was held to include in its general and ordinary acceptance the usual cases of surgery as well as the administration of medicine."

We must conclude that, both upon principle and by force of precedent, it is clear that where circumstances are such that a municipality would be liable for the fees of a physician for services rendered to an indigent person, it would, under the same circumstances, be liable for the fees of a surgeon.

The liability of a municipality for the relief of the needy poor is nowhere made dependent upon a contract that the municipality may have with a hospital where the relief is extended. The liability of the municipality is fixed by the terms of Sections 3476, et seq., of the General Code.

Subject to the conditions, provisions and limitations of these aforesaid sections of the General Code, the proper officers of the corporation are enjoined to afford, at the expense of the municipality, public support or relief to all persons therein who are in a condition requiring it. If circumstances are such that public support and relief consist, in part, of the services afforded by a hospital and such relief is extended by the hospital, the hospital charges are as much a proper item of public relief as are other charges for such relief.

Sections 4021 and 4022, General Code, authorize a municipal corporation to contract with hospitals for their services in the extension of relief to the indigent poor to whom the law requires a municipality to extend relief, but in no wise limits or qualifies the provisions of Sections 3476, et seq.

I am, therefore, of the opinion, in specific answer to your questions, that :

First: Where circumstances are such that a municipality is enjoined by law to extend public relief to an indigent person, such relief properly includes the fees of a surgeon who has performed a necessary surgical operation.

Second: Where circumstances are such that a city is required by law to extend public relief to an indigent person and the needs of such person require the services afforded by a hospital, the municipality may lawfully pay the hospital charges, whether the municipality had previously contracted with such hospital or not.

Third: The answer to your second question renders an answer to the third question unnecessary.

Respectfully,

EDWARD C. TURNER,

Attorney General.

3078.

DELINQUENT REAL ESTATE TAXES—REDEMPTION BY OWNER
AFTER CERTIFICATION AND BEFORE FORECLOSURE—CONDI-
TIONS NOTED.

SYLLABUS:

When real estate has been certified as delinquent and the owner thereof desires to redeem said real estate before foreclosure, and tenders to the county treasurer on or before December 20th (or on or before January 20th if the time in which to pay taxes has been extended to that date by the county commissioners), the amount due on the back years, with costs and penalties, plus the first one-half of the then current year the treasurer should accept said amount and may not demand that the full amount of the current year's taxes be paid on said date.

COLUMBUS, OHIO, December 29, 1928.

HON. CHARLES P. TAFT, 2ND, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication which reads as follows:

“Will you please give us your opinion as to the proper procedure in the following situation:

When real estate has been certified as Delinquent and the owner thereof desires to redeem this real estate before foreclosure and tenders to the County Treasurer on or before December 20th (or on or before January 20th if the time in which to pay taxes has been extended to that date by the County Commissioners) the amount due on the back years with costs and penalties, plus the first half of the then current year, should the Treasurer accept this amount, or must he demand that the full amount of the current year's taxes be paid before accepting same?”