

one mile thereof according to benefits. That is to say, by the terms of Section 3298-5 above quoted; the trustees may by unanimous vote lawfully act without petition and assess all of the costs against any one of the groups of property owners enumerated. Likewise, where a petition is filed such action may be taken by other than a unanimous vote under the provisions of Section 3298-2 above quoted, provided that an apportionment of the cost and expense is made in accordance with the terms set out in the petition for the improvement. You will note also that this latter section makes the viewing of the road mandatory where a petition is filed.

It is fairly clear that the filing of the petition referred to in Section 3298-2, General Code, is merely a jurisdictional fact, which in the first instance requires the trustees to view the road, and if they deem the improvement necessary, it may be approved without a unanimous vote. The terms of that section specifically provide that the petitioners may request that the cost be apportioned in any of the methods provided in Section 3298-15 of the General Code. This latter section does not anywhere authorize the assessment of any portion of the cost against anything less than all of the real estate within the classes mentioned, namely, that abutting upon the improvement, that within one-half mile of the improvement, or that within one mile thereof.

You, of course, will note that any assessment made under the provisions of Section 3298-13 of the General Code, must be levied according to the benefits. Such an assessment is subject to the ordinary rule that no assessment may be made in excess of the benefits conferred.

Answering your question specifically therefore, I am of the opinion that upon the petition of at least fifty-one per cent of the owners of lands and lots who are to be especially taxed for a proposed improvement, the township trustees of the township may under the provisions of Sections 3298-2, et seq., of the General Code, determine that such improvement shall be made and assess the cost thereof in the manner petitioned for, provided that it be in any of the methods enumerated in Section 3298-13 of the General Code. It is not necessary to secure the written agreement of other property owners to be assessed under said plan who have not petitioned for the improvement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

509.

COUNTY HOME—AUTHORITY TO DETERMINE ELIGIBILITY FOR
ADMISSION IS VESTED EXCLUSIVELY IN SUPERINTENDENT OF
HOME.

SYLLABUS:

1. *The provisions of Section 4093, and related sections of the General Code, relate only to the infirmaries of a municipal corporation, and have no application to the county home.*

2. *While under the provisions of Section 2544, General Code, the trustees of a township or the proper officers of a corporation, may make application to have indigent persons admitted to the county home, the power and authority to determine*

the eligibility of such persons for admission is vested exclusively by said section in the superintendent of the home.

COLUMBUS, OHIO, May 19, 1927.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

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

“Will you kindly give me your opinion as to the rights of the parties involved in the following dispute between the City of Kent and the County Commissioners of Portage County.

One Alice M. Randall, colored, age 33, formerly of Birmingham, Alabama, wife of George Randall, now a fugitive from justice on a liquor charge, has been receiving help from the City of Kent in caring for herself and five small children for a period of several weeks.

The City of Kent now comes to the Superintendent of the Portage County Infirmary seeking admission to the Infirmary under Section 2544 and 3481 of the General Code, for the mother and five children.

The County Commissioners hold that this case is governed by Section 4094 of the General Code requiring the municipality to furnish temporary or partial relief in view of the fact that the husband's and father's absence is probably only temporary and the mother being able and willing to work if given some assistance to provide for care of the children during her absence at work.

Am enclosing application above referred to for your information and trust it will be returned with your opinion covering this case.

Section 4093 seems to give the Director of Public Safety power to prescribe the removal of the poor when necessary to the Infirmary, but we are not certain whether this authority is sufficient to over-rule the will of the County Commissioners in the matter.

Thanking you in advance for a ruling that will settle this dispute, we remain,”.

Section 4093 of the General Code reads as follows:

“Council shall provide by ordinance for the appointment by the director of public safety of such number of persons as is deemed necessary, not to exceed one in each ward, to act as overseers of the poor. The director shall prescribe their duties as to the care of the poor, and their removal, when necessary, to the infirmary, but such persons shall receive no compensation for their services.”

Section 4094 reads as follows:

“Upon complaint being made or information given to such director, that a person residing in the city requires public assistance or support, the director shall inquire into the condition and necessities of such person, and if satisfied that relief ought to be granted at public expense, and that the person requires temporary or partial relief only, and that for any cause it would not be prudent to remove him to the city infirmary, the director may afford relief, at the expense of the city, without such removal. The director of public safety has the same power of removing paupers settled in some other county in this state which, by law, is conferred on county infirmary directors.”

It will be noted that these sections relate to infirmaries in municipalities and are not applicable to county infirmaries or the county homes.

Section 2544 provides as follows:

"In any county having an infirmary, when the trustees of a township or the proper officers of a corporation, after making the inquiry provided by law, are of the opinion that the person complained of is entitled to admission to the county infirmary, they shall forthwith transmit a statement of the facts to the superintendent of the infirmary, and if it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith or as soon as his physical condition will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the township trustees."

It is noted that in this section it is provided that, if the superintendent of the infirmary is satisfied that such person should become a county charge he shall account such person as a county charge and shall receive and provide for him in such institution forthwith, or as soon as his physical condition will so permit.

Section 3481 reads as follows:

"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."

It is noted that under the provisions of this section the superintendent of the county home *may* grant relief. It seems evident that the superintendent of the county home may approve or reject applications made for admission to the county home. While the director of public safety may have authority to make application to the county home, yet the authority remains in the superintendent of the county home to reject said applications.

It is therefore my opinion that, if the superintendent of the county home in this case has held that the applicant in question herein is not eligible to the county home and that it is the duty of the director of public safety of the City of Kent

to render aid necessary to said mother and her children, the action of the superintendent in so far as the admission of the mother to the county home is concerned would be controlling in this matter unless there is an abuse of discretion.

In this connection your attention is called to Section 3476 of the General Code providing for relief by township trustees and municipal officers. In an opinion of this department construing the sections (Opinions, Attorney General, 1920, Vol. II page 1177) it was held that:

“Permanent, partial, outside relief to indigent persons should be afforded by the township or city, rather than by the county, unless the applicants for such relief are persons ‘whose peculiar condition is such they cannot be satisfactorily cared for except under county control.’”

In this opinion Section 2544 of the General Code, was also considered, the opinion reading as follows:

“As the law now stands, townships and cities are required to furnish relief in two classes of cases: (1) To all persons needing *temporary* relief who are residents of the state, county and township under Sections 3477 and 3479, G. C., (2) To all persons needing *partial* relief who are residents of the state, county and township under Sections 3477 and 3479. The word ‘temporary’ has reference to duration of time and is the antithesis of ‘permanent’ while ‘partial’ refers to the amount or quantity of relief, and is the antithesis of ‘complete.’ In other words, it is the intent of Section 3476, G. C., that (a) persons possessing residence qualifications who need relief for a little while, and (b) persons possessing residence qualifications who need a little relief *continually*, are to be furnished that relief by the townships and cities, rather than by the county.

The county, on the other hand, is required by Section 3476, G. C., to furnish relief in four classes of cases:

(1) To persons not having the residence requirements laid down by Sections 3477 and 3479, G. C. As to such persons, it is immaterial whether the relief needed is temporary or permanent relief, partial or complete. Section 3482, G. C., it will be noticed, provides for the removal of such a person by the county infirmary superintendent, when it has been ascertained that he has a legal settlement in some other county of the state.

(2) To persons who are *permanently disabled*. In connection with the phrase ‘permanently disabled’ it may well be noted that since, as to persons having the necessary residence requirements, the township or city is required to furnish *partial* relief (which as has been explained, includes the giving of a little relief all the time), the disability referred to in the phrase ‘permanently disabled’ is permanent *total* disability, rather than permanent *partial* disability.

(3) To persons who have become paupers. In using the word ‘paupers’, it is believed that the legislature had in mind a condition of *permanent*, rather than *temporary* pauperism; In other words, a condition that was beyond the ‘temporary or partial relief’ which Section 3476, G. C., authorizes the township or city to afford. Unless such a distinction be made, the result is a situation of concurrent jurisdiction between the poor relief agencies as to all ‘paupers,’ which is not thought to have been the legislative intention.

(4) To such other persons whose *peculiar condition* is such they cannot be satisfactorily cared for except at the county infirmary or under

county control. The presence of these last words 'or under county control' following immediately, as they do, the words 'at the county infirmary' clearly means that *outside* as well as *inside* relief for those in a 'peculiar condition,' is authorized.

The provision in question is quite evidently intended to be in the nature of an exception to the policy of poor relief established by the prior provisions of Section 3476, G. C. For one thing, the first words of the provision are 'to such *other* persons,' indicating that the prior classification was not to control what was to follow. Again, the persons referred to are persons in a 'peculiar' condition—that is, a condition of such nature as to require relief different from that which the township or city is able to give.

We shall not here attempt to enumerate all the circumstances which might make proper an admission to the county infirmary of persons in a 'peculiar condition' or which might entitle such persons to outside relief. Mention might, however, be made of persons affected with a contagious or infectious disease of such character as to warrant the attention of the county authorities, who might possibly be better equipped to render the necessary relief than the township or city authorities."

Specifically answering your question, I am of the opinion that:

1. The provisions of Section 4093, and related sections of the General Code, relate only to the infirmaries of a municipal corporation, and have no application to the county home.

2. While under the provisions of Section 2544, General Code, the trustees of a township or the proper officers of a corporation, may make application to have indigent persons admitted to the county home, the power and authority to determine the eligibility of such persons for admission is vested exclusively by said section in the superintendent of the home.

For a similar holding see Opinion No. 923, to be found at page 54, Vol. I, Opinions of Attorney General for 1918.

Respectfully,
EDWARD C. TURNER,
Attorney General.

510.

BOARD OF DEPUTY STATE SUPERVISORS AND INSPECTORS OF ELECTIONS OF CUYAHOGA COUNTY—NOT AUTHORIZED TO RECEIVE OR RETAIN A PETITION FOR AN AMENDMENT TO THE CLEVELAND CHAPTER.

SYLLABUS:

Where, through error, a petition for an amendment to the charter of the City of Cleveland has been filed with the Board of Deputy State Supervisors and Inspectors of Elections of Cuyahoga County, such action is without legal effect and the board is not authorized either to receive the petition or retain it upon demand for its return by those originally filing it.