

74.

COUNTY COMMISSIONERS—MAY PAY SECTARIAN INSTITUTION
FOR EMERGENCY SERVICES RENDERED TO PROPER COUN-
TY CHARGE.

SYLLABUS:

County commissioners may pay a sectarian institution for necessary services, rendered in an emergency, to an indigent person who is a proper county charge.

COLUMBUS, OHIO, January 27, 1933.

HON. JOHN M. HARDING, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Your predecessor in office recently requested of this office an opinion upon the following question:

“May the County Commissioners legally pay a sectarian institution for necessary services rendered in an emergency case where the person is a proper subject for public relief, wherein said county has otherwise provided for the care of the indigent sick under G. C. Section 3138-1, the emergency of the situation making it impracticable to convey said injured person to the hospital under contract?”

Section 3138-1 of the General Code reads as follows:

“That the board of county commissioners of any county may enter an agreement with one or more 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. Nothing herein shall authorize the payment of public funds to a sectarian institution. County commissioners shall have authority to employ the necessary and properly qualified employes to assist them in carrying out all responsibilities devolving upon them by reason of any agreement, or agreements, entered into in accordance with the provisions of this section.”

The inhibition therein contained applies only to payments under contracts as authorized in this section and would not, in my opinion, preclude the payment of funds to a sectarian institution for occasional necessary emergency services. This conclusion is in accord with that reached in Opinions of the Attorney General for the year 1928, at page 2078, where it is said:

"Section 3138-1, General Code, to which you refer in your inquiry, has reference only to the making of contracts with sectarian institutions by county commissioners and is not applicable to situations wherein temporary relief is granted in emergency cases."

Accordingly, I am of the opinion that county commissioners may pay a sectarian institution for necessary services, rendered in an emergency, to an indigent person who is a proper county charge.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

75.

BOARD OF EDUCATION—COUNTY BOARD TAKING OVER DUTIES
 OF LOCAL BOARD OF EDUCATION—FUNDS MUST BE APPROPRIATED BY COUNTY COMMISSIONERS BEFORE PAID FROM
 COUNTY GENERAL FUND.

SYLLABUS:

1. *The duty of a county board of education to take over and perform the duties imposed by law upon a local district board of education within the county school district, upon the failure of the local board to perform them in accordance with law, in compliance with section 7610-1, General Code, is not in anywise dependent upon whether or not the local board had complied with the terms of section 5625-33, General Code, in the making of contracts or with the so-called minimum salary law in the employment of teachers, or whether it had been extravagant in the administration of the schools under its control and for that reason had become short of funds.*

2. *It becomes the duty of a county board of education, by virtue of section 7610-1, General Code, to take over and perform the duties devolving under the law on a board of education of a school district within the county school district with respect to the schools of such district, when the local board fails to perform those duties and acts for the maintenance of its schools which the law requires and authorizes to be performed, and the county board is satisfied of such failure.*

3. *Before any funds may be paid from the general fund of the county upon vouchers signed by the president of the board of education of the county school district upon authorization of the said county board in pursuance of its duties under section 7610-1, General Code, said funds must first be appropriated for that purpose by the commissioners of the county.*

COLUMBUS, OHIO, January 27, 1933.

HON. FREDERIC V. CUFF, *Prosecuting Attorney, Napoleon, Ohio.*

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

"A district school board in this county has certified its resolution to the County Board of Education that it has not sufficient funds to keep