

Your second question inquires as to whether such salary drawn by the clerk from the county treasury may be recovered from him.

Based on the conclusion reached in answering your first question, it may be stated that such salary was drawn from the county treasury not by authority of law, as provided in section 5 of article X, referred to.

Section 286, as amended in 103 O. L., 507, provides that if your examiner's report "sets forth that any public money has been illegally expended," the prosecuting attorney "shall cause to be instituted, and * * * is hereby authorized and required so to do, civil actions in the proper court * * * for the recovery of the same, and shall prosecute, or cause to be prosecuted, the same to final determination."

It is believed that this section suggests an affirmative answer to your second question.

Respectfully,

. JOHN G. PRICE,
Attorney-General.

942.

MUNICIPAL CORPORATIONS—SECTIONS 3963 AND 14769 G. C. APPLICABLE TO MUNICIPALITIES WHICH DO NOT MAINTAIN MUNICIPAL WATERWORKS BUT BUY WATER FROM ANOTHER MUNICIPALITY OR PRIVATE COMPANY—SECTIONS APPLICABLE TO INSTITUTIONS THAT ADMIT PERSONS WHO ARE NOT RESIDENTS OF SUCH MUNICIPALITIES.

1. *Sections 3963 and 14769 G. C. apply to municipalities which do not maintain a municipal waterworks but buy their water for distribution from another municipality or private company and then make distribution to the inhabitants, charging and collecting therefor.*

2. *Opinion reserved as to second question.*

3. *Third question disposed of by case No. 2839, Camp Wise Association vs. Euclid Village, Cleveland court of appeals.*

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:

"*Question 1.* Do sections 3963 and 14769 G. C. apply to municipalities which do not maintain a municipal waterworks but buy their water for distribution from another municipality or private company and then make distribution to the inhabitants, charging and collecting therefor?

Question 2. Do such sections cover charitable institutions devoted to the relief of the poor, aged, infirm or destitute, or orphan or delinquent children, even though such institutions may be sectarian admitting and containing persons of only one sect or creed?

Question 3. Do such sections apply even though such institutions admit persons who are not or were not residents of such municipalities?"

The correspondence between your examiner and Mr. M., including a copy of the

decision of the Cuyahoga county court of appeals, rendered November 14, 1919, in case No. 2639, was received.

Certain constitutional and statutory provisions are applicable alike to all of your inquiries, and may properly be first considered in their general application.

Section 2 of Article XII of the constitution provides for the exemption from taxation of certain institutions, in this language:

“* * * institutions used exclusively for charitable purposes * * * may, by general laws, be exempted from taxation.”

Pertinent parts of sections 3963 and 14769 further relating to the subject of exemptions, are in this prohibitive form:

Section 3963. “No charge shall be made * * * for supplying water for * * * any hospital, asylum or other charitable institution devoted to the relief of the poor, aged, infirm or destitute persons, or orphan or delinquent children.”

Section 14769. “No charge shall be made * * * for supplying water * * * for any hospital, asylum, or other charitable institution devoted to the relief of the poor, the aged, infirm or destitute persons, or orphan children.”

The rule, of course, is that exemption from taxation statutes are to be strictly construed against exemptions, but this rule may only be invoked when the exemption provision is ambiguous; and another established rule is that statutes must be considered in the light of the purpose and object of their enactment.

If section 3963 were before this department for the first time without having been construed by the courts, its constitutionality might be considered, but in the case of Gallipolis vs. Trustees, 2 O. N. P., 161, its constitutionality has been sustained, and in the Cleveland case, above referred to, the same conclusion is reached at least inferentially.

Your first question is, whether these statutes apply to municipalities which do not own and maintain a municipal waterworks, but buy their water from another municipality or a private company and then distribute it to the inhabitants, charging and collecting therefor.

Sections 3973 and 3974 specifically authorize a municipality to do this. Section 3974, referring to the municipalities so purchasing such water, in the first sentence provides that

“the amount to be paid for such supply shall be raised by such municipality in the manner provided for the payment of the expenses of conducting and managing waterworks constructed wholly by a municipality.”

This indicates that this power is to be exercised on the same basis and is the same kind of a municipal function as if the water was furnished from a plant owned and operated by the municipality.

It is noted in your statement of facts that the municipality not owning the waterworks itself buys the water and in turn sells and distributes the same to its inhabitants, so that it is “supplying water” as stated in sections 3963 and 14769, for these sections in no uncertain terms say that “no charge shall be made” to the institutions therein named, and your first question is answered affirmatively.

Consideration of your second and third questions indicates that they may be reduced to this one question, viz., whether these sections cover charitable institutions devoted to the objects named in section 3963, the beneficiaries of which are

limited to persons of only one sect or creed, including members of that sect or creed who are not residents of that municipality.

The court of appeals decision, a copy of which accompanied your letter, was rendered in the case of *The Camp Wise Association vs. Euclid Village, et al.*, and is impressive as a carefully considered opinion.

Judge Dunlap, speaking for the court, on page 3 of the opinion, states the claim of the defendant village in this language:

"Nevertheless it is claimed on behalf of the defendant that the plaintiff is not the kind of a charitable institution which comes within the meaning of the statute because its charities and benefactions are not for the benefit of Euclid Village and its poor and needy, but that Euclid Village has only been found to be a convenient place for the location of a charity intended primarily for the poor of other places, and that such benefits as Euclid Village and its poor and needy may derive are merely incidental and do not justify the burdening of its citizens with the cost of water necessary for its maintenance."

This is supplemented by the following quoted statement of the court:

"It is only claimed that we should construe the sections quoted to mean not the poor, the aged, the infirm and destitute generally, but the poor, the aged, the infirm and destitute of Euclid Village."

After a careful consideration of the question, the court concluded that the defendant's position was untenable, reasoning that:

"Strong reasons exist, therefore, for the belief that the words which the defendant wishes read into the statute whereby the benefits of the statute would only apply to institutions devoted to the relief of the poor, etc., of the village, were omitted by the legislature by design and not by accident and oversight. The legislature indicated in the latter part of the statute that it knew full well how to limit the obligations of the same. It saw fit to do so in respect to school buildings, but it saw fit not to do so in respect to charitable institutions, and the conclusion is almost irresistible that in keeping with a well defined public policy it intended to exempt charitable institutions without regard to whether the persons benefited thereby came from the place in which the institution was situated."

This section fully covers your third question and it is suggested that the doctrine therein announced, by analogy, applies to the second question as stated in your letter. However, as this seems a general question, the opinion of this department is reserved until the presentation of specific facts in actual cases.

Respectfully,

JOHN G. PRICE,
Attorney-General.