

3021

1. HOSPITAL CARE OF TRANSIENT INDIGENTS—WHO DO NOT MEET LEGAL SETTLEMENT REQUIREMENTS—COUNTY, A POLITICAL SUBDIVISION OF STATE, RESPONSIBLE FOR HOSPITAL CARE—SECTION 3476 ET SEQ., G. C.
2. COUNTY COMMISSIONERS, BOARD OF—RESPONSIBLE FOR HOSPITAL CARE OF INDIGENTS WITHIN COUNTY, NOT RESIDENTS OF OHIO—COUNTY RELIEF AUTHORITY.

SYLLABUS:

1. A county, as a political subdivision of the state, is responsible for the hospital care of transient indigents who do not meet the legal settlement requirements of Section 3476 et seq., General Code.

2. The board of county commissioners, as distinguished from the county relief authority, is responsible for the hospital care of indigents within their county, not residents of Ohio, who do not meet the legal settlement requirements as provided in Section 3476 et seq., General Code.

Columbus, Ohio, April 9, 1948

Hon. William G. Wickens, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

I am in receipt of your communication requesting my opinion, which reads:

“We are having difficulty in our county with reference to the hospitalization of indigent transients. There has been a great influx of migrant workers, being largely recruited by The X Company, to work in its mills here. There are many hundreds of such transients newly arrived in this county who do not have a legal settlement here.

“Many of these transients require hospitalization and we have had many cases of migrant workers who have been in our county only a few hours or a few days when requiring hospitalization.

“The Lorain County Welfare Department refuses to bear the burden of such hospitalization, and the county commissioners do likewise, because the County Welfare Director asserts that he has received instructions from the Department of Public Welfare of the State of Ohio that the burden of hospitalizing such transients for the first period of ninety days is upon the local relief area wherein they may be found.

“On the other hand, the City of Lorain and the Lorain City Relief Area refuse to assume the burden of such hospitalization because of the mandate of Section 3476, General Code which provides in part that ‘Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements.’ Furthermore Section 3391-2(8), General Code provides in part that ‘Except as modified by the provisions of this act, Section 3476 and other sections of the General Code of like purport shall remain in full force and effect, and nothing in this act shall be construed as altering, amending or repealing the provisions of Section 3476 of the General Code relative to the obligation of the county to provide or grant relief to those persons who do not have the necessary residence requirements.’

“Consequently, things here are at an impasse with all public authorities here refusing to assume the burden of hospitalizing indigent transients. And the hospital authorities are accordingly greatly concerned. Last Saturday night the hospital authorities refused to accept an indigent transient in need of hospitalization and had him sent to the city jail, because of the refusal of all authorities here to assume the cost of his care.

“It appears to this office that under the provisions of Sections 3476 and 3391-2(8), General Code it is the obligation of the county to provide and grant relief, including hospitalization to persons who do not have the necessary residence requirements.

“However, county authorities here desire your opinion and hence I respectfully request the same together with your opinion as to whether the relief referred to in Section 3476 is to be furnished by the county through its Board of County Commissioners or through its County Welfare Department. The welfare director feels that any care referred to in Section 3476 is the obligation of the Board of County Commissioners as distinguished from the county relief area which has been absorbed into the County Welfare Department.”

The questions which you ask in your request appear to be: (1) Is the county, as a political subdivision, the responsible authority for the hospital care of indigents who do not meet the necessary residence requirements set out in Section 3476 et seq., General Code? (2) If the county as a

political subdivision is responsible for hospital care of indigents, is this the responsibility of the county commissioners or the county local relief area?

I presume by your statement "indigent transients" that you have reference to persons who have no means with which they can care for themselves.

It is first to be noted that the 97th General Assembly made "hospital care" for a period of three months per year per individual a part of "poor relief," as provided for in Section 3391 et seq., General Code (122 O.L. 178). This provision was enacted to become effective September 30, 1947. The definition of "hospital care," as found in Section 3391, General Code, is:

** * * 'Hospital care' means the customary accommodations, facilities, medicines and supplies furnished by a hospital at public expense, for a period not to exceed three months in any calendar year for one individual."

It is to be noted that by this inclusion many judicial decisions and opinions of the Attorney General are not now applicable to "hospital care." The problem becomes, as a result of this recent enactment of the 97th General Assembly, broader and includes the provisions of "poor relief" rather than simply being limited to "hospital care." There is no common law responsibility for a state to furnish poor relief. This responsibility is purely statutory and its definition rests entirely upon statutory interpretation. 41 Am. Jur. 707, states:

"There is no obligation at common law upon the state or any of its instrumentalities of government to furnish relief to the poor; accordingly, such obligation, if any, must rest upon statute. And statutes have been enacted universally throughout the Union charging the public, through some designated instrumentality of government, with the duty of supporting the poor who are unable to support themselves. * * * *Thus, to what extent, under what circumstances, at what place, and by what agencies poor persons shall be relieved at the expense of the public are all purely legislative questions, and the courts cannot go further than the legislative will has been expressed.*"

(Emphasis added.)

This rule of law is also stated in 31 O. Jur. 43, Sec. 2, and was recently reaffirmed by the Supreme Court of the State of Ohio. In *State ex rel*

Ranz vs. City of Youngstown, 140 O.S. 477, the first branch of the syllabus states:

“There is no common-law obligation on the part of any public authority to grant poor relief.”

In 1939 Opinions of the Attorney General, Vol. II, Opinion No. 1121, it is stated at page 1639:

“The question of legal settlement, for purposes of poor relief, is purely a matter of statute. In considering the proper interpretation of a statute, we are not permitted to consider the policy of such legislation. Such considerations are solely for the legislative branch of the government.”

This opinion goes on to state that we must have strict compliance with the “legal settlement” requirements found in the poor relief provisions of the General Code. At page 1641 of this opinion it is stated:

“I am therefore of the opinion that we must look to the provisions of Section 3477 and 3479, General Code, to determine the residence requirements of applicants for poor relief.”

I cite these statements with approval. I am not willing to apply this broad interpretation to all statutory construction, but as to “legal settlement” I am in agreement. It is not possible to extend or change these requirements of the General Code with reference to the problem you present in your inquiry.

In order to ascertain the responsibility of the county, as a political subdivision, it is necessary to analyze the pertinent provisions of the General Code. It is generally to be noted that the “poor relief” sections of the General Code, Section 3391 et seq., were passed many years after the original provisions for relief found in Section 3476 et seq., General Code. It is now clear by the provisions of the General Code and the interpretations placed on these different provisions that these two sections are to be read in *pari materia*. Section 3391-2 (8), General Code, reads:

“Except as modified by the provisions of this act, section 3476 and other sections of the General Code of like purport shall remain in full force and effect and nothing in this act shall be construed as altering, amending, or repealing the provisions of section 3476 of the General Code, *relative to the obligation of the county to provide or grant relief to those persons who do not have the necessary residence requirements* and to those who are

permanently disabled or have become paupers and to such other persons whose peculiar condition is such that they cannot be satisfactorily cared for except at the county infirmary or under county control."

(Emphasis added.)

This section of the General Code requires that Section 3391 et seq., General Code, and Section 3476 et seq., General Code, be read in pari materia. It is further to be noted that by express mandate of the General Assembly, four classes of indigents remain the responsibility of the county as a political subdivision, reference specifically being made to the provisions of Section 3476, et seq., General Code. These four classes are: "persons who do not have the necessary residence requirements"; "those who are permanently disabled"; "paupers"; and "to such other persons whose peculiar condition is such they can not be satisfactorily cared for except at the county infirmary or under county control." The class about which you inquire is the first one named in this specific mandate. Thus, not only by general provision but by specific provision responsibility for indigents who do not have the necessary residence requirements remains in the county, as provided for in Section 3476 et seq., General Code.

The pertinent portion of Section 3476, General Code, is:

"* * * It is the *intent of this act* (General Code sec. 3476 et seq.) *that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of state, county and townships or city as described in Sections 3477 and 3479. Relief to be granted by the county shall be given to those persons who do not have the necessary residence requirements, and to those who are permanently disabled or have become paupers and to such other persons whose peculiar condition is such they cannot be satisfactorily cared for except at the county infirmary or under county control.*"

(Emphasis added.)

It is to be noted that this section has the same distinctions as are found in Section 3391-2 (8), General Code. A clear and distinct separation is made for the class or group of indigents who do not have the necessary residence requirements. Again, the legislative mandate places responsibility for this group in both of these sections of the General Code directly and unequivocally in the county. It has been found that this responsibility of the county would extend into a city or municipality which has been

made a separate local relief area under the provisions of Section 3391-1, General Code. In the case of *Ranz v. Youngstown*, 140 O.S. 477, Judge Turner states at page 484 :

“From the foregoing (reference being made to numerous cases cited in the opinion), it will be seen that there is no inherent reason why the county, which embraces all municipalities and townships within its limits, may not be made the unit for poor relief at the sole expense of the county and either with or without state aid.”

If authority can be found by statutory law to fix the responsibility of the county for a certain class, following this opinion of Judge Turner's, this responsibility would extend into the cities and municipalities located within the county.

Your attention is directed to the provisions of Section 3476, General Code, *supra*, which states the intent of Section 3476 et seq., General Code. This section states that cities and townships are responsible for residents and that counties are responsible for nonresidents. I have stated in an opinion rendered June 7, 1946, substantially this same conclusion (Opinions of Attorney General for 1946, p. 395, Opinion No. 996), which opinion states at page 401 :

“Section 3476 has been in effect for a great number of years (108 O.L., Pt. I, p. 266), and it has long been the understanding that it and related sections were broad enough to impose liability and establish the duty upon cities and townships to furnish relief to *all residents* of the state, county and township or city who needed temporary relief and *to all such residents* who permanently needed partial relief; *and to impose the duty upon the county to furnish relief to persons who do not have the necessary residence requirements prescribed by Sections 3477 and 3479, General Code*, to persons who have become paupers and to other persons whose peculiar condition is such that they can not be satisfactorily cared for except at the county infirmary or under county control.” (The opinion then cites several opinions of my predecessors in support of this conclusion.)

(Emphasis added.)

There are numerous opinions of my predecessors which state this conclusion as to the responsibility of the county for relief of nonresidents. Opinion No. 1121, 1939 Opinions of Attorney General Vol. II, p. 1638, states in the syllabus :

“If a person has entered the State of Ohio from another state but has not resided in any one county of this State for a period of twelve months or more, without receiving poor relief, and of such term has not resided in a city in such county for a period of three months, such person, by reason of the provisions of Sections 3477 and 3479, General Code, is not entitled to receive poor relief from a city poor relief authority under the authority of House Bill No. 675 (Sections 3391, 3391-1 to 3391-13, General Code).”

Section 3480, General Code, provides that a city or township may contract for medical or hospital care for “a person in such township or city.” It is to be noted that this section is found in the same general division of the General Code as Section 3476, General Code. The intent expressed in Section 3476, General Code, *supra*, would apply to this section. The general provision that the person has to be a resident before obtaining aid from a city or municipality would apply to Section 3480, General Code. A city or municipality cannot be forced to furnish hospital care to nonresident indigents.

The interpretation of the statutory provisions, dealing with the duty of the different subsidiaries of the state government to provide for poor relief under these two different divisions of the General Code, has presented many problems to my predecessors. In order to adequately deal with your question, we must consider these opinions. A question similar to the question presented by you was dealt with by me in 1945 Opinions of Attorney General, No. 361, page 420. This opinion concerned fixing the responsibility for the care of an indigent. A man was injured by a policeman while in the act of committing a felony and subsequently died as the result of said injury. It was found that the responsibility for his care would have to be determined under the poor relief provisions of the General Code, as he had not been taken into custody. The third branch of the syllabus of this opinion states:

“If such person does not have a legal settlement in the city furnishing such service, or elsewhere in the state, such expense should be paid by the county in which such service is rendered.”

At page 426 of this opinion it is stated:

“This section 3476, General Code, was affected by the law governing the administration of poor relief passed by the legislature in 1939 (118 O.L. 710), but only to the extent of eliminating the

trustees of the township from responsibility for direct relief. The township becomes a part of the county local relief area which includes all the area of the county except the cities. *Between the city and the county relief authority there is preserved the same responsibility as contained in Section 3476, General Code. * * ** (Emphasis added.)

At page 428 of the opinion it states :

“* * * Failing any legal settlement in the state it seems clearly to follow that he lacks the ‘necessary residence requirements’ which the law contemplates and that the liability is imposed directly on the county.”

In 1940 Opinions of the Attorney General, Vol. I, No. 2394, at page 573, it is stated :

“* * * As I have above stated, by reason of the provisions of Section 3391-1 and 3391-2, General Code, the county now has the duty of furnishing poor relief ‘to all persons therein in need of such poor relief’ unless they have a legal settlement within a city located within the county. Section 3391-2, General Code, prescribes the rules for determining whether a person shall be granted poor relief. * * *”

(Emphasis added.)

This opinion goes on to state that the responsibility for the different classes of indigents as expressly stated in Section 3391-2(8) and Section 3476, General Code, has been placed in the county. This opinion primarily deals with the responsibility of the county commissioners for indigents placed in a county home. The general provisions for the aforesaid four classes are applicable, for the most part, to all four classes, but there are some special statutory provisions for county homes which would not be applicable to the instant opinion, and therefore will not be further considered.

“Paupers” and “permanently disabled persons” were dealt with in 1944 Opinions of Attorney General, page 480, No. 7090. The question in this opinion concerned the Cleveland Municipal Infirmary. This opinion held that the city of Cleveland was a volunteer and a charge on the county for the care of such indigents could not be claimed. At page 485 of this opinion it is stated :

“A study of the earlier legislation upon which Section 3476 supra and other provisions of the present poor relief laws are

based will disclose that as early at least as 1876, the legislature had enacted provisions which undertook a distribution of the relief burden somewhat similar to the present provisions (73 O.L. 233). However, the obligation imposed upon the county was not so clearly defined as at present. Section 3476 above quoted was based upon Section 11 et seq. of that earlier enactment which related only to relief to be given by the township or city. It was amended in 1919 to its present reading, adding as new matter all that portion beginning with the words, 'It is the intent of this act,' etc. *This, it appears to me, amounted to an implied prohibition against the use of public money of a municipality or township in the performance of a function which is expressly imposed by law upon the county, particularly in view of proposition laid down by the court in the case of State ex rel. Ranz v. Youngstown, supra, that the authority for levying taxes or expending public funds by local authorities for public relief must be found in general laws enacted by the General Assembly.*"

(Emphasis added.)

My predecessor states that in his opinion the municipality or city could not even care for persons or expend public moneys for the care in the aforesaid four classes stated in Section 3391-2(8) and 3476, General Code. It is clear that even if the city or municipality could care for one of the four classes, there is certainly no authority to make the city assume this obligation. As the question is not included in your request as to whether or not the city has the right to care for the aforesaid four classes of indigents, responsibility for which is placed on the county, I will refrain from commenting on this question. At page 488 of this same opinion my predecessor states :

"If it should be argued that in the matter under consideration the provisions of the statute imposing an absolute obligation on the county for the care of its poor should be considered as equivalent to a contract, I would call attention to the fact that while this obligation may be preemptory, yet it is an obligation imposed for the benefit of the poor and can not *raise an implied liability to one who volunteers to furnish relief.* * * *"

The next portion of this paragraph is not applicable, as it deals with other sections of the General Code dealing explicitly with county homes. The opinion states further, at page 488 :

"Since it is evident from the authorities above referred to that a private individual or corporation could not impose a liability on the county by voluntarily performing a service or fur-

nishing supplies to the county, I see no reason to hold that a municipality would have any better right. Accordingly, it is my opinion that the city of Cleveland, in so far as it has taken care of the poor who were properly county charges and has done so without any contract, cannot recover from the county for the services thus rendered."

"It is accordingly my opinion :

"1. Relief of the poor is a state function and authority for levying taxes or expending public funds therefor by local authorities must be found in general laws enacted by the General Assembly.

"2. A municipal corporation is without authority to provide relief for those persons for whom the county is by the provisions of Section 3476, General Code made responsible. * * *

"4. In the absence of such contract, a city which assumes the care of the poor for whom the county is by law responsible, has no recourse against such county for the expense incurred in so doing."

I cite the foregoing solely for the purpose of showing that by no means could the responsibility for nonresident indigents be placed on the city, municipality or the local relief area in said cities and municipalities.

The county as a political subdivision is responsible for the care of nonresident indigents. This leads us to your next inquiry as to whether the aforesaid responsibility is a responsibility of the board of county commissioners, as distinguished from the county relief area.

Section 339I, General Code, in part provides :

" 'Local relief authority' means the board or officer required by law or charter to administer or carry on poor relief in a local relief area.

" 'Local relief area' means the taxing district within and for which poor relief funds are expended."

Section 339I-1, General Code, in part provides :

"Commencing on the first day of July, 1939, the territory in each county outside the corporate limits of cities therein shall be a local relief area hereinafter referred to as the 'county local relief area,' the local relief authority for which shall be the board of county commissioners of the county; * * *"

Section 3391-1, General Code, goes on to provide in the last paragraph of said section :

“If the county local relief area is not coextensive with the county, it shall constitute a special taxing unit on the taxable property within which the county commissioners of the county shall have authority to levy a tax for poor relief and to the electors within which the county commissioners shall have authority to submit the question of a special levy outside of the ten mill limitations for such purpose in the manner provided by sections 5625-15 to 5625-18, both inclusive of the General Code. The county treasurer shall be the treasurer of such county local relief area and all expenditures from the treasury of such county local relief area shall be governed by the appropriate provisions of law relative to the expenditure of moneys in the county treasury and by the provisions of this act.”

Section 3391-2, General Code, provides in part :

“Local relief authorities shall administer poor relief in accordance with the following powers and duties :

“1. *In each local relief area, subject to the provisions of law, poor relief shall be furnished by the local relief authority to all persons therein in need of such poor relief. * * **”

(Emphasis added.)

This section goes on to state the classes and individuals who shall not receive poor relief. There is no express provision which states that non-resident indigents shall *not* have the benefit of the “poor relief law.” The classes of individuals not eligible for poor relief are enumerated as those persons who can work and will not; persons not citizens of the United States; and those persons who have left the State of Ohio.

Section 3391-2, General Code, further provides in part :

“The moneys received by a county under any law other than this act providing for the distribution of state funds to counties for poor relief shall be paid into the county treasury to the credit of the proper funds therein; *but in counties containing two or more local relief areas, or part or parts thereof, the proportional share of the county relief area as determined by the provisions of this act shall be paid into the treasury of the county, and the proportional shares of the cities shall be distributed and paid by the county treasurer on the order of the county auditor to the treasurer of each city entitled thereto.* Such distribution shall be made in proportion to the obligations incurred for poor relief in the

respective local relief areas, and part or parts thereof in the county, during the calendar month next preceding the receipt of such moneys.

“Nothing herein shall be construed to repeal any law authorizing the county commissioners to issue bonds for poor relief purposes; but the proceeds of any such bonds shall, in a county containing two or more local relief areas, or part or parts thereof, be distributed between such local relief areas in proportion to the obligations incurred for poor relief in such respective poor relief areas, and part or parts thereof, during the calendar month next preceding the adoption of the resolution providing for the issuance of such bonds. A like apportionment shall be made whenever, and as of the date when a contract whereby a city surrenders its power to levy taxes for poor relief shall expire, unless such contract shall have been renewed or extended.”

(Emphasis added.)

Section 3391-1, General Code, provides that the city and county may enter into a contract for the purposes of carrying out poor relief obligations. This provision does not affect the problem presented by you in your request. It is a maxim of Ohio law so clear that authority need not be cited that the legislative intent shall be found within the language of the act passed by the General Assembly. While it is true that there is no express provision which precludes nonresident indigents from receiving the benefits of the “poor relief law” (Section 3391, et seq., General Code), the legislature, as expressed in the above quoted sections of the aforesaid “poor relief law,” has unequivocally and clearly shown that it was intended that nonresident indigents were not to receive the benefits of this “poor relief law.”

It is also to be considered that under the provisions of this aforesaid “poor relief law,” if it were found to be applicable to nonresident indigents, the burden of care of such nonresident indigents would fall entirely upon the county local relief area. As the above quoted provision states, the only source of taxation to supply funds for the county local relief area is the area outside the cities or municipalities, which are local relief areas within themselves. This would work a hardship on the county in that the funds to support all nonresident indigents within cities would have to come from the area outside the cities. For this reason it is certain that the General Assembly did not intend to make the care of nonresidents a responsibility of the county relief area. This conclusion is certain even with the provisions of Section 3391-11, General Code, which provide for

matching funds equal to fifty percent of the total amount of expenditures. It can readily be seen that in times of economic stress there would be large numbers of individuals, principally located within the cities, who were nonresident indigents, who would have to be provided poor relief. The responsibility for poor relief for nonresident indigents would extend not only to hospitalization but to all other forms of poor relief, as set out in Section 3391 of the "poor relief law." This would work undue hardship on the sparsely populated areas of the county outside the city local relief areas. This conclusion is further substantiated by the fact that if the care of nonresident indigents is found to be included in the provisions of Section 3476 et seq., General Code, it is a county responsibility, not just a responsibility of the local relief area outside the cities and municipalities. This in my opinion is the intent clearly expressed in the provisions of the "poor relief law."

Opinions Attorney General for 1944, p. 608, No. 7203, in the first branch of the syllabus provides:

"When a minor child which does not have a legal settlement in the county becomes in need of poor relief at public expense, it is the primary duty of the county, as distinguished from the county relief authority, to furnish such relief, the cost of which may be recovered in the manner prescribed by Sections 3482, 3483, 3484, 3484-1 and 3484-2, General Code."

(Emphasis added.)

While the syllabus of this opinion could be limited to the situation where the indigent would have legal settlement within the state of Ohio, but in another local relief area, the general principle as cited in my opinion is applicable to your inquiry.

Opinions of Attorney General for 1942, p. 623, Opinion No. 5410, states at page 626, following a quotation of Section 3391-2(8) of the General Code, as follows:

"In other words, it would appear that where support or maintenance is afforded by counties under authority of Section 3476 of the General Code, it is not to be included within the 'poor relief' provided for in such House Bill No. 675, whether for the purpose of state matching of expenditures, as provided in Section 3391-11 of the General Code, or otherwise. Such types of relief are to be furnished under Section 3476 of the General Code and not by the act of which Section 3391-2 of the General Code is a part. Expenditures for such purpose are not for obligations 'in-

curred for poor relief in the respective local relief areas,' which consist of the city areas and county area outside of cities. They are made irrespective of the area from which recipient is taken or at which found. It would thus seem that under the terms of such House Bill No. 675, such expenditures could hardly be considered as 'poor relief' as used therein."

(Emphasis added.)

My predecessor then goes on to state that the allocation of state funds cannot be made for the support of the aforesaid four groups under the provisions of subparagraph 9 of Section 3391-2, General Code. I am in entire agreement with this conclusion and cite it with approval. Therefore, it is my opinion, and you are advised :

1. A county, as a political subdivision of the state, is responsible for the hospital care of transient indigents who do not meet the legal settlement requirements of Section 3476 et seq., General Code.

2. The board of county commissioners, as distinguished from the county relief authority, is responsible for the hospital care of indigents within their county, not residents of Ohio, who do not meet the legal settlement requirements as provided in Section 3476 et seq., General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.