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1. TUBERCULOSIS HOSPITAL—COST OF MAINTENANCE OF PATIENT—BORNE BY COUNTY OF RESIDENCE—SECTIONS 3139 ET SEQ., 3391-13 G. C.
2. OHIO TUBERCULOSIS HOSPITAL—PATIENT ADMITTED ONLY WITH CONSENT OF COMMISSIONERS OF COUNTY OF PATIENT'S RESIDENCE.

SYLLABUS:

1. Under the provisions of Sections 3139 et seq. and 3391-13, General Code, the cost of maintenance of a patient in a tuberculosis hospital is to be borne by the county of his residence.
2. A patient may be admitted to the Ohio Tuberculosis Hospital only with the consent and approval of the commissioners of the county of the patient's residence, and when so admitted, the cost of his maintenance is to be borne by said county.

Columbus, Ohio, November 9, 1951

Hon. Ralph J. Bartlett, Prosecuting Attorney
Franklin County, Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"We are in receipt of the following inquiry from the Board of County Commissioners which we are referring to you for your attention:

"We have been advised by the Medical Director of Benjamin Franklin Hospital (Franklin County Tuberculosis Hospital) that a patient was accepted at the Ohio Tuberculosis Hospital who moved to Columbus in June of this year from Delaware County and that the Delaware County Commissioners had refused to accept financial responsibility on the basis of the Attorney General's Opinion No. 3226 given in June, 1948.

"Under Section 3391-13 of the General Code, which became effective in September, 1949, hospitalization was placed under poor relief.

"In view of this section, would the requirements for residence under the poor relief law be necessary for a patient placed in any hospital and later diagnosed as a tuberculosis patient? Would these residence requirements apply when

the patient is placed in the State Tuberculosis Hospital, or are tuberculosis patients exempt from this residence requirement, whether originally or later diagnosed to be suffering from tuberculosis?

'Inasmuch as Franklin County has its own tuberculosis hospital, could a patient be accepted in the State Hospital for Tuberculosis and charged to this county without prior authority or ratification from the Board of County Commissioners?

'We have had a communication from the Health Department of Delaware City and County * * * and gather from their communications that the patient in immediate question has hospital insurance which will take care of her for a short time. But the hospital cannot accept the money. It has to be paid into the State and from there allocated to the county which is responsible to the hospital on the grounds of residence of the patient.

'We are getting quite a few requests from patients, as well as their doctors, that they be placed in the new State Hospital in preference to Benjamin Franklin Hospital. It involves a higher cost to the county and we would like to have this question settled as soon as possible.

'The question of residence which has been raised on the Attorney General's opinion which was prior to the enactment of G. C. 3391-13 is also of immediate importance both because of the case which raised it and our reciprocal agreements with other county hospitals.' "

You have referred to the opinion of my predecessor, No. 3226, Opinions of the Attorney General for 1948, p. 259. In that opinion it was held:

"Where an indigent person is in the State of Ohio and has the intention of remaining in Ohio, or meets the requirements for residence, the county commissioners of the county where such person resides can legally pay for hospitalization in a district tuberculosis hospital."

That opinion reviews somewhat extensively the provisions of the law as it then stood, relative to the responsibility for the cost of the care of one afflicted with tuberculosis *in a tuberculosis hospital*. Reference is there made to a number of earlier opinions holding that *tuberculosis* hospitalization is not part of poor relief and does not fall within the provisions of the statute relating thereto. That opinion quoted from an

earlier opinion, No. 2928, Opinions of the Attorney General for 1940, page 957, in which a very plausible reason was suggested for that difference. It was there said:

“The legislature being cognizant of the fact that tuberculosis is a disease which will spread unless properly controlled, that if not properly treated will likely prove fatal to the patient, and that many people in this state so afflicted were not receiving proper care and treatment, enacted legislation to control this problem.”

The right to poor relief, generally, and the responsibility therefor are based upon a legal settlement, which was defined by Section 3477, General Code, and since the repeal of that section, in 1949, by Section 3391-16, General Code. Under the provisions of the latter section legal settlement is defined as follows:

“Except as otherwise provided by law, legal settlement shall be acquired by residing in one county for a period of one year without receiving poor relief or relief from a private agency which maintains records of relief given.”

It is well recognized that legal settlement and residence are not in any way identical, as residence is largely a matter of intention. As defined in the 1940 Opinion, above referred to:

“The term ‘residence’ as the same appears in the above section should be construed to mean the place where a person has his true, fixed, permanent home and principal establishment, and to which place whenever he is absent, he has an intention of returning, as distinguished from temporary residence which a person intends to leave when the purpose for which he has taken up his abode ceases.”

Laws relating to tuberculosis hospitals, underwent radical revision by an Act of the Legislature which became effective September 5, 1941. The sections in question are 3139 to 3139-24, inclusive, General Code. Section 3139-1 et seq. of the General Code, provides for the establishment of district tuberculosis hospitals, to be maintained by two or more contiguous counties. Section 3139-2, provides as follows:

“The district hospital for tuberculosis shall be devoted to the care and treatment of those persons afflicted with tuberculosis who are residents of the district and who are in need of hospital care and treatment, provided that if facilities are available and not used by such residents, trustees of such hospital may contract

for the care of patients from counties not included in the district.”
(Emphasis added.)

Section 3139-18, General Code, provides in part:

“* * * the county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper officer of a municipal tuberculosis hospital, for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of such county or district hospital, or into the proper fund of the municipality caring for such patients, the amount provided for in the contract. They shall also pay for the transportation of patients and attendants. * * *”

The same section further provides:

“The county commissioners of such county may also contract for the care and treatment of *residents of the county* suffering from tuberculosis with a general hospital properly equipped both as to personnel and facilities for the care and treatment of the tuberculous.”
(Emphasis added.)

Section 3139-11, General Code, provides that the county commissioners of any county having more than 50,000 population may establish a county hospital for treatment of tuberculosis. Section 3139-12, General Code, authorizes a county which has established such hospital, to appropriate annually the sum necessary for its maintenance.

It appears very clearly from these statutes that the “county of residence” of a person who requires treatment in a tuberculosis hospital is liable for the cost of his care and treatment, unless as suggested in your communication, the amendment of Section 3391-13, General Code, effective October 20, 1949, changes the character of such treatment and places it under the statutes providing for “poor relief.”

In your letter you refer to the fact that the amendment of Section 3391, General Code, places “hospitalization” under poor relief. Section 3391-13, as amended, reads as follows:

“Poor relief means food, clothing, shelter, the services of a physician or surgeon, dental care, hospitalization, and other commodities and services necessary for the maintenance of health and decency. Poor relief may be given in cash or by order or both and shall be inalienable whether by way of assignment, charge, or

otherwise, and exempt from attachment, garnishment or other like process. Local relief authorities shall not disburse funds through any private organization. Poor relief may be given to persons living in their own homes or other suitable quarters, *but not to persons living in a county home, city infirmary, jail, or tuberculosis sanitorium* or to children who are not living with their parents, guardians or other persons standing in place of parents."

(Emphasis added.)

A careful examination of this section shows that while hospitalization generally, is classed as proof relief, the legislature plainly intended to exclude from such definition the cost of care of a patient in a tuberculosis sanitarium or hospital. It appears to me that it was clearly the intention to leave *hospitalization of tubercular patients* where it had been, and to leave the requirement for such care dependent upon residence and not upon the acquisition of a legal settlement. That conclusion is reinforced by an opinion of my immediate predecessor, No. 2328, Opinions of the Attorney General for 1950, page 671, where it was held:

"Persons suffering from tuberculosis and in need of care and medical treatment, but not in need of hospital care and treatment, and not living in a tuberculosis sanitarium or hospital, are entitled to poor relief providing they have acquired legal settlement in one of the counties of the district."

That opinion points out the distinction between a tubercular patient who may be treated in his home and who is a proper subject of poor relief, and one who must be treated in a hospital, who is excluded from the provisions of poor relief.

It will be noted that by the term of Section 3139-23, General Code, the county of residence of a tubercular patient who is hospitalized, receives a subsidy from the state. This strengthens the conclusion that such county is liable for the care of such patient. Said Section 3139-23 reads in part, as follows:

"On and after July 1, 1947, the state shall pay to the board of trustees, or the board of county commissioners serving as a board of trustees, of any county, district, or municipal tuberculosis hospital approved by the Ohio department of health the sum of two dollars and fifty cents (\$2.50) per day for each patient hospitalized for the treatment of tuberculosis in such hospital by any county for whose care and treatment *the county was legally obligated to pay*. One dollar and twenty-five cents (\$1.25) of such sum received by such trustees, or county com-

missioners serving as a board of trustees, shall be expended only for the care and treatment of tuberculosis, or the operation, maintenance or improvement of such tuberculosis hospital. The remaining one dollar and twenty-five cents (\$1.25) of such sum shall be retained by the said trustees, or board of county commissioners serving as a board of trustees, *for the use and credit of the county in which the patient has legal residence to be applied as part of the per diem cost of the hospitalization of such patient.* (Emphasis added.)

Accordingly, it is my opinion that the responsibility for the care of a patient in a tuberculosis hospital falls upon the county of his residence.

I come now to your question as to the responsibility of a county for the maintenance of a resident patient in the Ohio Tuberculosis Hospital. Provisions relative to admission to such hospital and payment of expense are found in Sections 1236-22 through 1236-26, General Code. Section 1236-25 provides in part:

"* * * Application for admission to said hospital shall be made to the director of health. Such application shall be subject to the recommendations of the health commissioner of the health district in which the applicant lives and the medical superintendent of the approved district, county, or municipal tuberculosis hospital, if any, for the area in which the applicant lives, and the application for admission to said hospital, however, *shall be approved by the county commissioners of the county in which the applicant lives.*" (Emphasis added.)

Section 1236-26, General Code, provides in part:

"The charge for care and treatment of patients admitted to said tuberculosis hospital herein provided for shall be borne *by the county in which such patient lives.* Such charge shall be at the per diem rate as determined by the director of health. * * *" (Emphasis added.)

Accordingly, it appears clearly that a patient can be admitted to the Ohio Tuberculosis Hospital only with the consent and approval of the county commissioners of the county of his residence, and that when so admitted such county will be liable for the cost of his maintenance.

In specific answer to the questions submitted, it is my opinion:

1. Under the provisions of Sections 3139 et seq. and 3391-13, General Code, the cost of maintenance of a patient in a tuberculosis hospital is to be borne by the county of his residence.

2. A patient may be admitted to the Ohio Tuberculosis Hospital only with the consent and approval of the commissioners of the county of the patient's residence, and when so admitted, the cost of his maintenance is to be borne by said county.

Respectfully,

C. WILLIAM O'NEILL

Attorney General.