

1058.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
JACKSON AND WAYNE COUNTIES, OHIO.

COLUMBUS, OHIO, March 5, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1059.

SICK POOR—DUTY OF CARING FOR SUCH PERSONS—MUNICIPAL  
HEALTH DISTRICT BOARD NOT EXCLUSIVELY ACCOUNTABLE—  
TOWNSHIP TRUSTEES NOT RELIEVED OF THEIR DUTIES UNDER  
SECTION 3476 G. C. (108 O. L. 272).

*Section 4410 G. C., as amended in 108 O. L., 248, does not impose the duty of caring for the sick poor upon the municipal health district board exclusively, nor does it relieve the township trustees of their duties under section 3476, as amended in 108 O. L., 272.*

COLUMBUS, OHIO, March 6, 1920.

HON. ISAAC C. BAKER, *Prosecuting Attorney, Hamilton, Ohio*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department.

Your first two questions relate to the power of the district health board to elect and employ one of their own members as district health commissioner.

It is believed that this question is practically answered by opinion No. 983, rendered by this department to the prosecuting attorney of Van Wert county, under date of February 3, 1920, a copy of which is herewith enclosed. While that opinion did not relate directly to the office or employment referred to in your inquiry, it is believed that the general rule therein discussed is alike applicable to such office or employment.

With the consideration of those general principles discussed in that opinion, section 4411 G. C., as supplemented in 103 O. L., 436, may be considered. This section remains unaffected by the Hughes and Griswold acts, and provides in part:

“Section 4411-1. The board shall determine the duties and fix the salaries of its employes; but no member of the board of health shall be appointed as health officer or ward physician.”

It is noted that the reference here is to health officer the name of whose position is changed to health commissioner by the later act, but by this section in force it is believed that the term used in section 4411-1, “health officer” must be construed to mean “health commissioner.”

Your third question inquires as to whether or not, by reason of the amendments to the health laws contained in the Hughes and Griswold acts, it is made the exclusive and mandatory duty of the district boards of health to care for the sick poor, thereby relieving the township trustees of that duty, and involves the construction of section 4410, which, in its present form, provides that the board of health “shall care for the sick poor,” and raises a question if the duty of caring for the sick poor is not cast exclusively upon the district board of health, thereby relieving the township trustees from that duty.

This section on its face, and standing alone, by the force of its mandatory provisions, would seem to cast that duty upon the board of health, but in view of other sections relating to the poor and especially to the sick poor, this provision is somewhat ambiguous and resort must be had to the history of this section and its interpretation in connection with these other sections.

Prior to the Hughes law, section 4410 provided in part:

“Each ward or district physician shall care for the sick poor and each person quarantined in his ward or district when such person is unable to pay for medical attendance.”

However, the appointment or employment of ward or district physicians was optional under section 4408 and in this way it was optional with the old board of health whether they should care for the sick poor by appointing such physicians, and the literal effect of it was that when so appointed section 4410 provided that such physician shall care for the sick poor.

In the Hughes and Griswold acts, section 4410 was amended to substitute the words “the board of health” in place of the words “ward or district physician,” and the rest of the section is the same. Section 4408 as it now stands after such amendments, makes no express provision for ward or district physicians, but provides that the municipal health district board “may also appoint physicians, public health nurses and other persons within the classes fixed by the state civil service commission of Ohio.” It will be observed that the mandatory language “shall care for the sick poor,” remains in section 4410. However, there were certain other sections relating to the subject of the sick poor prior to the amendments to the health laws referred to. Sections 3476 et seq., entitled “Poor,” under chapter 1 of division 4, the subject of which is “Charity,” are referred to.

Certain sections of this chapter were amended on the same date that the Hughes act was passed, the Hughes act being found in 108 O. L., p. 236, and the poor law amendments referred to being in 108 O. L., p. 266. Both of these acts were filed in the office of the secretary of state at the same time.

Section 3476 in part provides that:

“Subject to the conditions, provisions and limitations herein, the trustees of each township \* \* \* shall afford at the expense of such township \* \* \* relief to all persons therein who are in condition requiring it.”

Thus far the present section corresponds with the section prior to its amendment. The next sentence in this section, as amended, is:

“It is the intent of this act that townships \* \* \* shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state \* \* \*, as described in sections 3477 and 3479.”

It will not be necessary to quote all of these sections to illustrate the idea that the duty of caring for the poor, sick or otherwise, is placed upon the township by these sections.

Section 3480 may be quoted in part:

“When a person in a township \* \* \* requires public relief or the services of a physician or surgeon, complaint thereof shall be forthwith made by a person having knowledge of the fact \* \* \*. If medical services are required \* \* \* the physician called or attending shall immediately notify such trustees or officer.”

This part of section 3480 shows the legislative intention as being not to take from the township trustees all duties nor from the township as a whole all its obligations toward the sick poor. This section was undisturbed in the amendment in 108 O. L.

Section 3490 provides in part that:

"The trustees \* \* \* may contract with one or more competent physicians to furnish medical relief and medicines necessary for the persons who come under their charge under the poor laws, but no contract shall extend beyond one year."

Neither was this section affected by the last amendment.

It may be pointed out that the sections last quoted are more special in their relation to the poor than those found in the board of health statutes which are not primarily associated or connected with the idea of charity, but more clearly suggest the idea of the police power of the state to prevent the spread of disease.

The effect of the amendment of section 4410, when considered in connection with its history, is that it is to be construed as carrying into effect pretty much the same idea which it expressed previous to its amendment and that the word "shall," in so far as it relates to the board of health, must be construed as meaning "may," as it is believed that this amendment, which may be termed as a casual or incidental amendment to make it conform to the new Hughes and Griswold acts, was not intended to amend or repeal the poor laws amended at the same time by the same general assembly.

From this it would follow that the opinion of this department is that section 4410, as amended in 108 O. L., 248, does not impose the duty of caring for the sick poor upon the municipal health district board exclusively, nor does it relieve the township trustees of their duties under section 3476, as amended in 108 O. L., 272.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1060.

COUNTY AUDITOR—SEMI-ANNUAL APPORTIONMENT OF FUNDS—  
SHALL RETAIN ONE-HALF AMOUNT OF ESTIMATE FOR HEALTH  
PURPOSES APPORTIONED TO EACH TOWNSHIP AND MUNICIPALITY.

*County auditors, when making their semi-annual apportionment of funds, shall retain at each such semi-annual apportionment one-half the amount of the estimate for health purposes apportioned to each township and municipality, as provided in section 1261-40 G. C. (Griswold act) from the general funds due to such township and municipality.*

COLUMBUS, OHIO, March 6, 1920.

HON. W. R. WHITE, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department as follows:

"Is the county auditor compelled, and is it his duty to deduct from the February distribution of taxes, the amount of money assessed against the townships for their share of the expense of the county board of health, under the