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1. HOSPITAL EXPENSE—WHERE PERSON IS SHOT AND WOUNDED BY POLICE OFFICER IN COURSE OF ATTEMPTED ARREST—PERSON IN ACT OF COMMITTING A FELONY—PLACED IN PRIVATE HOSPITAL IN CITY—IF HE BE INDIGENT, EXPENSE OF HOSPITAL, SURGICAL AND MEDICAL CARE IS UNDER SECTIONS 3476 AND 3480 G. C., PRIMARY OBLIGATION OF CITY, SUBJECT TO NOTICE, SECTION 3480 G. C.

2. IF PERSON HAS LEGAL SETTLEMENT IN SOME OTHER CITY OR TOWNSHIP OF STATE, CITY FURNISHING HOSPITAL SERVICE HAS RIGHT TO REIMBURSEMENT FOR EXPENSE FROM CITY OR TOWNSHIP OF SUCH LEGAL SETTLEMENT—SECTIONS 3480-1 TO 3484-2 G. C.

3. IF PERSON HAS NO LEGAL SETTLEMENT IN CITY FURNISHING HOSPITAL SERVICE, OR ELSEWHERE IN STATE, EXPENSE SHOULD BE PAID BY COUNTY IN WHICH SERVICE IS ADMINISTERED.

SYLLABUS:

1. Where a person who is in the act of committing a felony is shot and wounded by a police officer in the course of an attempted arrest, and is placed in a private hospital in said city, the expense of his hospital, surgical and medical care if he be indigent, is, under Sections 3476 and 3480, General Code, the primary obligation of such city, subject to the provision of said Section 3480 as to notice.

2. If such person has a legal settlement in some other city or township of the state the city so furnishing such service has the right under the provisions of Sections 3480-1 to 3484-2, General Code, to reimbursement for such expense from the city or township of such legal settlement.

3. 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.

Columbus, Ohio, July 23, 1945

Hon. Joel S. Rhinefort, Prosecuting Attorney
Toledo, Ohio

Dear Sir:

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

> "Mercy Hospital, of Toledo, Ohio, has presented a bill for hospital service for one Burtin Nettleton, who, while in the commission of an offense on April 4, 1944 was shot by one of the officers of the city of Toledo. The city officer was in the performance of his duty when the act was committed. Thereafter on July 28th, Mr. Nettleton died by reason of the wound that he received while in the commission of the offense.
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> Nettleton was taken to the hospital, unbeknown to Lucas County, and placed therein for hospital services by reason of said wounds so received. The hospital bill, which includes medical services and medicine, accumulated in the sum of $871.40. The city and county both refuse to pay the bill.
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> Nettleton was indicted by the grand jury of Lucas County on June 19, 1944, but the county never took possession of the prisoner, and he was kept under guard at the hospital by the city during the period in which he remained there prior to his death. The charge on which he was indicted was burglary and larceny.
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> I would appreciate very much an opinion from your office as soon as convenient as to the liability of the county for said hospital bill."

It may safely be assumed that the arrest or attempted arrest of the burglar in question was made without a warrant. This was of course within the provision of Section 13432-2 of the General Code, which authorizes anyone to arrest a person without a warrant who he has reasonable cause to believe has committed or is in the act of committing a felony.

Section 13432-3, General Code, provides:

> "When a peace officer has arrested a person without a warrant, he must without unnecessary delay, take the person arrested before a court or magistrate having jurisdiction of the offense, and must make or cause to be made before such court

or magistrate a complaint stating the offense for which the person was arrested."

Since nothing is said in your communication indicating that the police officer made or caused to be made any complaint before a court or magistrate as provided by the section last above quoted, I must assume that no such complaint was made. It is also fair to assume from your letter that the man who was shot was taken directly to the hospital and was not at any time confined in the city prison.

I know of no theory under which the mere act of arrest or attempted arrest by the police officer and the wound inflicted by him could in itself create a liability against the city for the hospital care and surgical treatment. It is true police officers are appointed by the city, but they are recognized by law as being a part of the machinery of the state for the protection of the public from crime and for the apprehension of offenders against the laws of the state. In this particular case the police officer was performing no duty for the city and the fact that the man arrested was subsequently indicted for burglary and larceny shows that the police officer was simply performing his duy to the state in attempting his arrest while he was engaged in the commission of that felony.

It is evident also that since the man was at no time confined in the city prison the provisions of Sections 4125 and 4126 of the General Code, which require the chief of police and the city council to provide for the sustenance of "all persons confined in prison or station houses" could not apply.

Nor do I consider that the failure of the police officer to file a complaint with the magistrate, which would have set in motion the criminal machinery of the state, could in any way involve the city in a civil liability for the maintenance of the prisoner. If the officer did any wrong in failing to file such complaint it was at most nonfeasance on his part for which he alone would be responsible. Furthermore, the filing of such complaint under the circumstances, would probably have had no effect in changing the situation since the wounded man was very presumably in such condition that he could not have been arraigned or actually committed to the county jail. The fact that the city police continued to guard the man while in the hospital even after his indictment, would likewise have no bearing as fixing a liability on the city. Here again the police

officers would simply be performing their duty as guardians of the peace in the protection of the public, pursuant to the duties imposed upon them as state officers.

The city in the organization and maintenance of a police department has always been regarded as performing functions in which it not alone has an interest but in which it represents and acts for the state. In the case of City of Cleveland vs. Payne, 72 O. S., 347, it was held:

> "The police department of a municipal corporation derives its authority from the state; and when such corporation is not expressly or by necessary implication authorized to do so, it can neither enlarge nor restrict the duties of such department or its officers and agents as defined by the general assembly."

In that case the chief of police had made a ruling requiring members of the police force to note and report defects in the streets and sidewalks, and where it was necessary, to place lights so that obstructions could be seen. The court held that in absence of legislative authority conferred upon the city to put such a duty upon members of the police force, notice to a police officer of a defect in the street whereby a person was injured would not impose a liability on the city. The court, at page 353, of the opinion quoted from Section 1692 of the Revised Statutes (similar to Section 3617 of the General Code), outlining the powers of municipalities as follows:

> "29. To organize and maintain a police department."

The court then added:

> "That is the whole of it; simply to *organize* and *maintain* a police department. There is not even a suggestion here of power in a municipality to define the limits of police department duties."
> (Emphasis added.)

The ruling of that case was approved in Columbus vs. Penrod, 73 O. S., 209.

It is true that the above cases were decided prior to the adoption of the home rule provisions of the Constitution. It might be assumed that the relation of a municipality to its police department is different under the provisions of Article XVIII, Section 3 of the Constitution, which undertakes to grant home rule to municipalities. However, our Supreme Court

has made it very clear that it does not consider that the establishment of "home rule" for municipalities has in any perceptible degree emancipated a municipality from legislative control so far as its police department is concerned. On the contrary, it was held in the case of Cincinnati vs. Gamble, 138 O. S., 220:

> "In matters of state-wide concern the state is supreme over its municipalities and may in the exercise of its sovereignty impose duties and responsibilities upon them as arms or agencies of the state.
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> In general, matters relating to police and fire protection are of state-wide concern and under the control of state sovereignty."

The court, by Judge Williams, said at page 228 of the opinion:

> "But the authority of the state is supreme over the municipality and its citizens as to every matter and every relationship not embraced within the field of local self-government. * * *
>
> Although there is a contrariety of opinion on the proposition, the weight of authority apparently supports the view that both fire and police matters are subject to state control even as to charter cities whose powers of local self-government are derived from constitutional provisions.

Again, at page 230, the court says:

> "There is no hesitation in stating that in this jurisdiction police, fire and health protection are within the sovereign power of the state and with respect thereto, municipalities, whether governed by charter or not, are arms or agencies of state sovereignty."

To like effect see State, ex rel, vs. Houston, 138 O. S., 203; State, ex rel. vs. Sherrill, 142 O. S., 574.

By your statement, it appears that the man was wounded on April 4, 1944, was taken to the hospital "unbeknown to Lucas County," was indicted by the grand jury on June 19, 1944; that the county never took possession of the prisoner, and that he died July 28, 1944. Upon that statement, it cannot be said that the prisoner was ever in the custody of the sheriff and certainly was not either actually or constructively in the county jail. If he had been in the custody of the sheriff and in the county jail, there would seem to be no doubt that the county would be responsible for his maintenance, including medical and surgical services rendered him after having attained such custody. It was held in an opin-

ion of the Attorney General found in 1928 Opinions Attorney General, page 1505:

> "It is the duty of the sheriff to furnish, and the county commissioners to provide at the expense of the county, such medical, surgical and other like services as may be necessary to the health of prisoners lawfully confined in the county jail."

In that particular case it appeared that a man for whom a warrant of arrest had been issued was arrested by a member of the city police force in the night season; that the police were taking the man to the county jail pending arraignment before the mayor the next day; that when they were in the act of turning him over to the sheriff he broke away and ran. The police officers, in pursuing him, shot and seriously wounded him. The regularly employed physician to the jail was called and he directed that the man be taken to a hospital. Under those circumstances the Attorney General held that the prisoner was technically in the hands of the sheriff and that the statutes requiring the sheriff to keep and maintain prisoners and to provide for their medical treatment would apply. See Sections 2580, 3157, 3158, 3162 and 3177, General Code.

I have, however, reached the conclusion that the liability for the care of the prisoner in the case you present cannot be determined from the standpoint of custody. He was not at any time in either the city prison or the county jail; he had not been found guilty of any offense and ordered committed, nor had even a probability of his guilt been established by an examination and finding by the magistrate. He was simply in the condition that any other person, citizen or stranger would be if he became seriously ill or suffered an accident or was wounded. Such person in any event would be picked up presumably by an ambulance and hurried to a hospital. Certainly the police officer, if he were directly responsible for taking the man to the hospital, could not bind the city by whom he was appointed to a liability for the care and treatment of the man.

It does not appear whether the prisoner had any means of his own out of which his hospital bill could have been paid. From the fact that you inquire as to the responsibility of the city and county, I must assume that he was an indigent. The question then arises as to who becomes responsible for his sustenance and necessary medical care. This manifestly must

be answered on the basis of the statutes prescribing the responsibility for the care of indigents. Section 3476, General Code, provides as follows:

> "Subject to the conditions, provisions and limitations herein, the trustees of each township or the proper officers of each city therein, respectively, shall afford at the expense of such township or municipal corporation public support or relief to all persons therein who are in condition requiring it. It is the intent of this act that townships and cities shall furnish relief in their homes to all persons needing temporary or partial relief who are residents of the state, county and township 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. When a city is located within one or more townships, such temporary relief shall be given only by the proper municipal officers, and in such cases the jurisdiction of the township trustees shall be limited to persons who reside outside of such a city."

This section 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. It is evident, therefore, that if the man here in question had a legal settlement in the city of Toledo, the responsibility for his relief would fall upon the city. If he had a legal settlement in some other city in the county such responsibility would fall upon that city. If his legal settlement was in some township in the county then the responsibility would be upon the county local relief area.

Section 3476 supra, does not specifically mention medical or surgical care as an incident of relief. But Section 3480, General Code, deals specifically with that matter. It provides:

> "When a person in a township or municipal corporation 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 to the township trustees, or proper muni-

cipal officer. If medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately notify such trustees or officer, in writing, that he is attending such person, and thereupon the township or municipal corporation shall be liable for relief and services thereafter rendered such person. If such services consist of hospital care rendered such person, such hospital shall be paid such amount as may be agreed upon by such trustees or proper officers and such hospital or if no such agreement is made, then such hospital shall be paid the established ward rate for such care in such hospital. If such notice be not given within three days after such relief is afforded or services begin, the township or municipal corporation shall be liable only for relief or services rendered after notice has been given. Such trustees or officer, at any time may order the discontinuance of such services, and shall not be liable for services or relief thereafter rendered."

It will be noted that this duty to furnish medical care is not confined to a person who has an established legal settlement in the city or township in question. In an opinion of a former Attorney General found in 1931 Opinions Attorney General, page 1321, it was held:

"1. Where an indigent woman is about to be confined, and is not in the county of her legal settlement, it is the duty of the authorities of the township or municipal corporation where she is found to furnish the services of a physician under section 3480 of the General Code.

2. Where such relief is given, the subdivision furnishing the same may be reimbursed from the county in which such person has a legal settlement in the manner set forth in section 3484-2 of the General Code."

In the opinion it was said:

"In analyzing the above section, together with its related sections, it would appear that it does not take into consideration the question of residence or legal settlement of the person who is ill and in need of a physician or surgeon. At least when emergency cases such as you describe are involved, it is evident that the delay in determining the residence of the patient, or the delay in working out the relative liability of the political subdivision can not be countenanced. Humanity, in such cases, requires relief to be promptly furnished. It will therefore appear that the municipal officers or township trustees are to furnish such relief in the manner provided by section 3480, supra."

Sections 3480-1 to 3484-2, inclusive, of the General Code, make provision for reimbursement to the municipality thus primarily responsible. I do not deem it necessary here to analyze those provisions. They relate, however, only to cases where the legal settlement of the party is fixed in some county of the state. Where his legal settlement cannot be thus established then, under the provisions of Section 3476, the responsibility will fall upon the county. Note the language of that section:

> "Relief to be granted by the county shall be given to those persons who do not have the *necessary residence requirements.*"
> (Emphasis added.)

The "necessary residence requirements" the lack of which would throw the responsibility on the county, will in the light of the statutes to which I have referred and which are in pari materia, be found to be as follows: if the indigent is a resident of the city where the service is furnished as defined in Section 3477, General Code, that is, having obtained a legal settlement therein, then the liability rests definitely and finally upon that city. If his legal settlement is in some other city or township of the state the ultimate responsibility may as already pointed out be passed on to that city or township. 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.

It will be observed that Section 3480 supra, contemplates a written notice to the municipality that a physician is attending an indigent as a condition to fixing liability on the municipality, and it would appear that like notice is required to fix responsibility for hospital expenses.

My immediate predecessor, in an opinion found in 1942 Opinions Attorney General, page 461, had under consideration all the statutes to which I have referred relative to relief and hospitalization, and held:

> "1. Under the provisions of Sections 3476, 3480, 3480-1 and 3484-2, General Code, townships and cities are authorized to arrange for hospital care for indigents found therein whether or not such indigents have a legal settlement within the township or city wherein the services are rendered.
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> 2. In instances where private hospitals render hospital services to indigents having a legal settlement within the township or city wherein the services are rendered, such township or

> city is liable in such amount as the trustees or proper officers deem to be just and reasonable when proper notice has been given in accordance with the terms of Section 3480, General Code."

My conclusion, therefore, in specific answer to your inquiry is that if the person referred to was indigent and left no estate from which his hospital, surgical and medical expenses can be recovered, the primary responsibility is upon the city in which the service was rendered, provided the notice required by Section 3480, General Code, has been given it, with the right to recover such expenses from any other political subdivision of the state in which he was found to have had a legal settlement. In case the man in question did not have a legal settlement in Ohio, or in case his legal settlement could not be ascertained, the ultimate responsibility would be upon the county.

Respectfully,

HUGH S. JENKINS

Attorney General