OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable A.E. Hickerson
County Auditor
Montgomery County
Conroe, Texas

Dear Sir: Opinion No. O-2633
Re: Indigents - Paupers - Commissioners' Courts.

Your request for opinion has been received and carefully considered by this department. We quote from your letter as follows:

"Does the Commissioners' Court have authority to spend money on indigents for medical attention and medicines other than those that have been regularly placed on the pauper roll."

Article 2351, Vernon's Annotated Texas Civil Statutes, reads in part as follows:

"Each commissioners court shall:

.....

"11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year."

Article 4438, Vernon's Annotated Texas Civil Statutes, reads as follows:

"If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to."

NO OPINION HEREIN IS TO BE CONSTRUED AS A DEPARTMENTAL OPINION UNLESS APPROVED BY THE ATTORNEY GENERAL OR FIRST ASSISTANT

We quote from 32 Texas Jurisprudence, pages 611 and 612, as follows:

> "In a general sense a person may be said to be a 'pauper' who is very poor, but the term is usually understood in our state to mean a person so indigent as to be dependent on the public for support. The term certainly cannot be applied to a person who has always been able to support himself and those dependent upon him....
>
> "It is made the duty of commissioners' courts to provide for the support of paupers who are residents of the various counties; but this duty does not extend to transient persons who are unable to support themselves. The term 'support', as here used, means more than supplying food, clothing and living quarters; it means all that is necessary to bodily health and comfort, including proper care and treatment during sickness. This, it has been said, 'is a supreme obligation of humanity, independent of any statutory mandate.' Commissioners' courts may contract for medical services to be rendered to paupers,....
>
> "If there is a public hospital in the county, it is the duty of the commissioners' court to provide for sending there the indigent sick; but the court is not required to send such persons to private hospitals or to public hospitals outside the county...."

We quote from the case of Willacy County vs. Valley Baptist Hospital, 29 SW (2nd) 457, as follows:

> "The powers and duties of county commissioners' courts, and the obligations of the counties to paupers, are fixed by statute, and cannot be enlarged upon by unnecessary implication. These powers and duties, in so far as applicable here, are defined in and restricted by the provisions

of Articles 2351 and 4338, Rev. St. 1925. In Article 2351 it is provided that each commissioners' court shall (subdivision 11) 'provide for the support of paupers....residents of their county, who are unable to support themselves,' and (subdivision 12) 'for the burial of paupers.' In Article 4438 it is provided that 'if there is a regularly established public hospital in the county, the commissioners' court shall provide for sending the indigent sick....to such hospital.' In the latter provision the duty and authority of the commissioners' court to send the indigent sick to hospitals is limited to 'public' hospitals within the county, which provision, by necessary implication, excludes any duty or authority to send such persons to private hospitals, or to public hospitals without the county."

The term "indigent" has been defined by the courts on many occasions. We quote the following definitions:

"A person is indigent who is destitute of property or means of comfortable subsistence; one who is needy or poor." Juneau County vs. Wood County, 85 NW 387, 388, 109 Wis. 330.

"Word 'indigent', when used in connection with admissions to county hospitals, includes inhabitant of county who possesses required qualifications of residence, and has insufficient means to pay for his maintenance in private hospital after providing for those who legally claim his support." Goodall vs. Brite, 54 Pac. 2nd 510, 515, 11 Cal. App. 2nd 540.

"To be indigent does not mean that a person must be a pauper, and, within the meaning of the statute relating to the commitment of the insane to the Government Hospital for the insane, an insane person with insufficient estate to pay for his maintenance in the hospital after providing for those who could claim

his support, is indigent." Depree vs. District of Columbia, 45 App. D.C. 54, 59.

Thus it may be seen that all paupers are indigent persons. As to whether or not an indigent person is a pauper will be determined by the degree of his indigency. This is a question of fact for the commissioners' court to determine in their sound discretion. If the commissioners' court determines that an indigent person is a pauper the court would be authorized to aid him as such under Article 2351, Sub. 11, supra. We have been unable to find any statute requiring any particular mode of procedure whereby the commissioners' court determines the question of pauperism nor any statute requiring the making up of a roll of adjudicated paupers of the county.

You are therefore respectfully advised that it is the opinion of this department that if the commissioners' court determines that an indigent is a pauper it may furnish medical aid and medicines to him as such, regardless of whether or not he has been placed upon the pauper roll of the county, inasmuch as there is no statutory requirement for the making up of a county pauper roll. It is the further opinion of this department that the commissioners' court has the authority to aid 'indigent sick', who may or may not be 'paupers', by sending such 'indigent sick' to 'public' hospitals within the county. The question of 'indigency' is also a question of fact to be determined by the commissioners' court.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By Wm. J. Fanning

Wm. J. Fanning
Assistant

APPROVED AUG 23, 1940

Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

WJF:AW

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN