

**OPINION
46-59**

January 16, 1946 (OPINION)

COUNTY COMMISSIONERS

RE: Have Only Powers Granted by Law

This office is in receipt of your letter under date of January 11, 1946, in which you say that an Order of the Catholic Sisters plan on erecting an Old People Home in connection with their hospital; that in order to make the home a success they plan on taking care of all persons who become charges of McHenry County; that at the present time such persons are being cared for at the county poor farm.

You say that this Order of Catholic Sisters has proposed to the board of county commissioners that the county transfer by deed of conveyance the county's title to the county farm and that in return for such transfer the order will enter into an agreement with the county to keep and care for an agreed number of aged poor for a certain number of years; that is to say, the Catholic Sisters will care for such poor people for a given number of years.

You further say that they (the Catholic Sisters) advance the argument that the old people will be better cared for by the Sisters at the proposed home than they are under the existing county farm arrangement, and that they will be cared for at less expense.

We think that it may be conceded, and that generally the public will agree, that a home for the aged, maintained by an Order of Catholic Sisters, would provide more comfort, greater spiritual and material satisfaction, and more considerate care, than can possibly be afforded by the conventional county farm administration. The inmates of such a home would be free from the ancient social stigma or so-called paupers.

But in our opinion, there is a serious question whether or not the county can legally, under our laws and under our state constitution, transfer the county farm to the Order of Catholic Sisters, or to any other charitable or eleemosynary organization, whether maintained under church or secular auspices, under the proposed arrangement outlined in your letter.

The provisions of section 50-0417 of the Revised Code of 1943 are found in section 1504 of the Revised Code of 1895. Section 1504 reads as follows:

"Such asylum or poor farm may be discontinued by such board, and the property real and personal sold, leased or otherwise disposed of or applied in such manner as may be for the best interests of the county."

It will be noted that the provisions of section 1504 of the Revised Code of 1895 and section 50-0417 of the Revised Code of 1943 are substantially identical. The provision of

section 1504 of the revised Code of 1895 is found unchanged in the same section (section 1504) of the Revised Code of 1889, in section 1880 of the Revised Code of 1905, and section 2538 of the compiled laws of 1913.

In 1907, the legislature enacted chapter 67 of the Session Laws of that year. The provisions of sections 11-2701 and 11-2702 of the 1943 Revised Code are substantially the same as the provisions of chapter 67, Laws 1907, except that the 1943 code contains an amendment adopted in 1937, (chapter 123, Laws 1937) which provides for reservation by the county, in case of sale of county owned lands, of mineral and oil rights.

There is, therefore, an apparent conflict between the provisions of sections 11-2701 and 11-2702 and section 50-0417 of the Revised Code in this that under section 11-2701 the board of county commissioners "may dispose of property, either real or personal, which the county has acquired through purchase, forfeiture, or operation of law other than through tax sale proceedings" after giving the notice prescribed in section 11-2702, whereas section 50-0417 provides that "a county asylum for the poor may be discontinued by the board of county commissioners and the real and personal property thereof may be sold, leased, or otherwise disposed of or applied in such manner as may be for the best interests of the county."

The phrase in section 50-0417 "or otherwise disposed of or applied in such a manner as may be for the best interests of the county" implies that if the board of county commissioners deem it for the best interests of the county, the county farm, and the personal property thereon, may be donated or given away. It is our opinion, however, that said language cannot be so construed. It is evident that it was the purpose of the legislature that as a matter of public policy or public welfare the board of county commissioners should be vested with a greater discretion in discontinuing the county poor farm by the sale or lease thereof than the sale of other county property.

It is our opinion that a county poor farm may be sold or leased subject to the requirement that it will be used as a home for the aged poor. But if a county board should decide, as a matter of policy, to dispose of such farm with that understanding, any person and any charitable or eleemosynary organization, whether secular, religious, or fraternal, interested therein, must be given an equal opportunity to lease or buy the property. This means that the county board would have to advertise for bids substantially in conformity with the provisions of section 11-2702 of the Revised Code and sell or lease the property to the best and most responsible bidder.

And if such property should be sold or leased to a religious, eleemosynary, or charitable organization with the understanding that it must be used as a home for aged poor people, it is our opinion that no person could against his will be legally committed thereto. An aged person would have the privilege of voluntarily, and of his own free will, entering such home and not otherwise. If an old person should of any reason of religious or denominational preference object to becoming an inmate of a home

maintained by a religious or charitable organization, the county would have to make other sufficient provision for his care and maintenance.

It is, therefore, our opinion that the board of county commissioners have the legal authority only to enter into a contract with a religious or charitable order whereby such order undertakes and agrees to care for such poor persons who willingly and voluntarily consent to be maintained in such home.

It is further our opinion that if a county poor farm is discontinued and the farm sold without reservation as to its future use, such sale must conform with the provisions of sections 11-2701 and 11-2702 of the Revised Code of 1943.