

OPINION NO. 96-004**Syllabus:**

In order to establish in another county an outpatient health care facility as a branch of a county hospital that has been leased to a private entity under R.C. 339.09 or R.C. 339.14, the board of county hospital trustees or the hospital commission must comply with the notice and approval requirements of R.C. 339.01(C).

To: R. Alan Corbin, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Betty D. Montgomery, Attorney General, January 22, 1996

I have before me your opinion request concerning the authority of a county hospital to establish a facility in another county. According to information provided by your office, a county hospital in an adjoining county wishes to establish a facility in Brown County. The adjoining county has leased its county hospital to a private entity for operation. You question

whether the adjoining county's hospital, being leased and operated by a private entity, is subject to the procedures set forth in R.C. 339.01(C) prior to establishing the proposed facility in Brown County.

R.C. 339.01(C) states in pertinent part:

(1) *A board of county hospital trustees or a hospital commission may purchase, acquire, lease, appropriate, or construct an outpatient health facility in another county, which may include office space for physicians. The facility shall be a branch of the county hospital and shall be operated pursuant to the law that regulates the operation of the county hospital. A board of county hospital trustees or a hospital commission that proposes to establish such a facility shall give written notice to the board of county commissioners of the county where the facility is to be located.*

(2) Except as provided in division (C)(3) of this section,¹ the board or commission may establish and operate the facility, *unless* the board of county commissioners of the county where the facility is to be located, not later than sixty days after receiving the notice, adopts a resolution denying the trustees or commission the right to establish the facility. (Footnote and emphasis added.)

See generally R.C. 339.01(A)(3) (defining "outpatient health facility"). R.C. 339.01(C) thus authorizes a board of county hospital trustees or a hospital commission to add an outpatient health facility in another county as a branch of the county hospital, but also imposes certain requirements upon such board of trustees or hospital commission concerning notice to, and approval by, the county commissioners of the county in which the branch facility is to be located. In order to determine whether R.C. 339.01(C) applies to the situation you describe, it is first necessary to examine the manner in which a county hospital is established and the methods by which it may be leased for operation by a private entity.

R.C. 339.01(B) authorizes a board of county commissioners to "purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof."² Once the board of county commissioners has determined that it will establish a county hospital, a board of county hospital trustees, unless already established, is appointed. R.C. 339.02(B). R.C. 339.03 imposes certain preliminary duties upon the board of county hospital trustees, *e.g.*, site selection, selection of plans and equipment, and requires the trustees to take title or leasehold interest to the site or sites for the county hospital in the name of the county. Pursuant to R.C. 339.06(A), "[t]he board of county hospital trustees [appointed in accordance with R.C. 339.02] shall, upon completion of construction or leasing and equipping of the county hospital, assume and continue the operation of such hospital." R.C. 339.06(A) also grants to the board of county hospital trustees "the entire management and control of the hospital."

¹ R.C. 339.01(C)(3) contains an exception with respect to counties in which the board of commissioners provides a subsidy for uncompensated care to a board of county hospital trustees or hospital commission. You have not indicated that this is the situation with which you are concerned, and this opinion will not, therefore, address the possible application of R.C. 339.01(C)(3).

² For purposes of R.C. 339.01, the term "hospital facilities" has the meaning given in R.C. 140.01. R.C. 339.01(A).

Rather than operating and managing the county hospital directly, a board of county hospital trustees may decide to lease the county hospital for operation by a private entity under one of several statutory methods, two of which are pertinent to the situation you describe. *See generally* note four, *infra*. The first method is addressed in R.C. 339.09, which states in part:

When the county hospital has been fully completed and sufficiently equipped for occupancy, *in lieu of* [R.C. 339.06-.08],³ the board of county commissioners of any county, on adoption of a resolution under [R.C. 339.091] and approval by the vote of a majority of the electors pursuant to [R.C. 339.092], may, upon such terms as are agreed upon between the board and a constituted and empowered nonsectarian Ohio corporation, organized for charitable purposes and not for profit, a majority of whose members reside in the county, lease for use as a hospital or hospital facilities, the lands, the buildings, and equipment of any hospital owned by said county. (Footnote and emphasis added.)

R.C. 339.09 further provides for the control and management of the hospital to "revert to and become the property of the county to be operated as provided by law" if the nonprofit corporation to which the county hospital is leased fails to faithfully and efficiently administer, maintain, and operate the hospital as a public hospital.

The second method of leasing a county hospital to be operated by a private entity is prescribed by R.C. 339.14, which provides generally for the appointment of a hospital commission in accordance with R.C. 339.14(A). Thereafter, pursuant to R.C. 339.14(B):

The county hospital commission after consultation with participating hospital corporations and agreement as to their respective needs and the needs of the public of the county for hospital service may, with the consent of the board of county commissioners, accept conveyances of real estate and interests in real estate, situated within the county, from any person and may, on adoption of a resolution by the board of county commissioners pursuant to [R.C. 339.091] and approval by the electors pursuant to [R.C. 339.092], enter into an agreement before or after such conveyance with such person or with one or more Ohio corporations organized for charitable hospital purposes or nonprofit corporation organized to provide services to corporations organized for charitable hospital purposes, *to lease to such corporation or corporations upon such terms as may be agreed upon such real estate together with improvements thereof and buildings thereafter constructed thereon and furniture, fixtures, and equipment therein for*

³ R.C. 339.06(A) provides for the appointment of a board of county hospital trustees which "shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient." Also included in R.C. 339.06 are various powers and duties of the board of trustees, *e.g.*, hiring of an administrator, establishment of charges for services and treatment, fixing employees' compensation. R.C. 339.07 prescribes the powers and duties of the county hospital administrator, who is to act in an advisory capacity to the board of county hospital trustees. R.C. 339.08 authorizes the board of county hospital trustees to receive gifts, bequests, and devises in trust for the county hospital and provides that all moneys held in trust by the board are to be kept in a separate fund known as "the hospital trust fund."

*use as a general hospital or a hospital facility, the lease shall be for a period not to exceed fifty years, renewable for a like term and may contain provisions for the sale of such property to the lessee upon the unanimous consent of the board of county commissioners....*⁴ (Footnote and emphasis added.)

R.C. 339.14 further describes in great detail the responsibilities of a county hospital commission, not only with respect to establishing and leasing a county hospital, but also the "continuing jurisdiction" of the hospital commission over the hospital facilities after their being leased. *See e.g.*, R.C. 339.14(D) ("[t]he county hospital commission may take all steps necessary for the acquisition or construction, equipment, enlarging, rebuilding, or other improvement, of hospital facilities"); R.C. 339.14(F) (the hospital commission "shall take title in the name of the county to any land conveyed pursuant to this section, and shall have final approval of all plans and specifications for the erection and equipping of the hospital facilities contemplated in this section"); R.C. 339.14(I) (the county hospital commission "has continuing jurisdiction of the hospital facilities constructed under this section provided that the lessee corporation shall be solely responsible for the administration, maintenance, and operation of the leased facilities including the selection of personnel").

Whether a county hospital is operated in accordance with R.C. 339.06, R.C. 339.09, or R.C. 339.14, the continuing authority of the board of county hospital trustees or a county hospital commission over the hospital facilities is expressly addressed in R.C. 339.01(B), which states in pertinent part: "After a county hospital or hospital facilities have been fully completed and sufficiently equipped for occupancy, *any subsequent improvements, enlargements, or rebuilding of any such facility* shall be made by the board of county hospital trustees or a hospital commission appointed pursuant to [R.C. 339.14]." (Emphasis added.) Pursuant to R.C. 140.01(E), the term "hospital facilities" includes "buildings, structures and other improvements, additions thereto and extensions thereof,...and real estate and interests in real estate, used or to be used for or in connection with...diagnostic and treatment and out-patient facilities." Accordingly, it is the board of county hospital trustees or the hospital commission that is responsible for the establishment of an outpatient facility of a county hospital, whether or not the hospital is leased by a private entity for operation. *See also* R.C. 339.01(C)(1) (an outpatient health facility established in another county is a branch of the county hospital).

Because a board of county hospital trustees and a county hospital commission are creatures of statute, their powers and duties are prescribed by statute. *See* 1995 Op. Att'y Gen. No. 95-025; 1990 Op. Att'y Gen. No. 90-041. Concerning a county hospital's establishment of an outpatient facility in another county, R.C. 339.01(C) prescribes a specific procedure with which a board of county hospital trustees or a hospital commission must comply. Under the facts presented by your request, the board of county hospital trustees or the hospital commission must, therefore, give notice to the board of county commissioners of the county in which the outpatient facility is to be located and allow the board of county commissioners sixty days to respond. *See Akron Transportation Co. v. Glander*, 155 Ohio St. 471, 480, 99 N.E.2d 493, 497 (1951) ("when a statute directs a thing may be done by a specified means or in a particular

⁴ R.C. 339.14(B) also discusses the authority to lease a county hospital in accordance with R.C. Chapter 140, which provides for the acquisition or use of hospital facilities by more than one hospital agency. According to information provided by your office, however, your question does not concern a hospital facility that is subject to R.C. Chapter 140. This opinion will not, therefore, discuss the operation of R.C. Chapter 140.

manner it may not be done by other means or in a different manner").

Based on the foregoing, it is my opinion, and you are hereby advised that, in order to establish in another county an outpatient health care facility as a branch of a county hospital that has been leased to a private entity under R.C. 339.09 or R.C. 339.14, the board of county hospital trustees or the hospital commission must comply with the notice and approval requirements of R.C. 339.01(C).