February 29, 2012

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room #112
Courthouse
West Union, Ohio 45693

SYLLABUS: 2012-006

1. A county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 may deliver the unclaimed body of a deceased person to a college or the Board of Embalmers and Funeral Directors in accordance with R.C. 1713.34.

2. In lieu of burying or cremating the unclaimed body of a deceased person pursuant to R.C. 9.15, a board of township trustees may deliver the body to a college or the Board of Embalmers and Funeral Directors in accordance with R.C. 1713.34.

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OPINION NO. 2012-006

The Honorable David Kelley
Adams County Prosecuting Attorney
110 West Main Street, Room #112
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Dear Prosecutor Kelley:

You have requested an opinion about the use of R.C. 1713.34 to dispose of unclaimed bodies of deceased persons.[1] Your questions are as follows:

1. May a county hospital dispose of the unclaimed body of a deceased person in accordance with R.C. 1713.34?

2. May a board of township trustees dispose of the unclaimed body of a deceased person in accordance with R.C. 1713.34 in lieu of burying or cremating the body pursuant to R.C. 9.15?

R.C. 1713.34 authorizes certain public officials to deliver the unclaimed body of a deceased person to a college or the Board of Embalmers and Funeral Directors (Board) for study or dissection:

> Superintendents of city hospitals, *directors or superintendents of city infirmaries, county homes, or other charitable institutions*, directors or superintendents of workhouses, founded and supported in whole or in part at public expense, superintendents or managing officers of state benevolent institutions, boards of township trustees, sheriffs, or coroners, *in possession of bodies not claimed or identified, or which must be buried at the expense of the state, county, or township, before burial, shall notify the professor of anatomy in a college which by its charter is empowered to teach anatomy, or the secretary of the board of embalmers and funeral directors of this state, of the fact that such bodies are being so held*. If after a period of thirty-six hours the body has not been accepted by friends or relatives for burial at their expense, *such superintendent, director, or other officer, on the written*

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[1] For the purpose of this opinion, a body is unclaimed when it is not claimed by any person for private interment or cremation at the person's own expense. *See* R.C. 1713.35; R.C. 1713.40; *see also* R.C. 9.15; R.C. 1713.34.

> *application of such professor, or the secretary of the board of embalmers and funeral directors, shall deliver to such professor or secretary, for the purpose of medical or surgical study or dissection or for the study of embalming, the body of any such person who died in any of such institutions from any disease which is not infectious.*[2] (Emphasis and footnote added.)

The director or superintendent of a charitable institution founded and supported in whole or in part at public expense thus may deliver the unclaimed body of a deceased person to a college or the Board in accordance with R.C. 1713.34.[3] *See generally* R.C. 1713.41 ("[n]o superintendent of a …

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[2] The unclaimed body of a deceased person may not be delivered in accordance with R.C. 1713.34 for the purpose of dissection when the conditions set forth in R.C. 1713.38 exist. *See* R.C. 1713.38 ("[t]he bodies of strangers or travelers, who die in any of the institutions named in [R.C. 1713.34] shall not be delivered for the purpose of dissection unless the stranger or traveler belongs to that class commonly known as tramps. Bodies delivered as provided in such section, shall be used for medical, surgical, and anatomical study only, and within this state").

[3] A question of syntax presented by the composition of the first sentence of R.C. 1713.34 is whether the clause "founded and supported in whole or in part at public expense" modifies the term "charitable institutions." The placement of a comma between the word "workhouses" and the modifying clause demonstrates that the clause was intended to apply not only to "workhouses," but to all the antecedent phrases, including "charitable institutions." *See generally In re Monro*, 282 B.R. 841, 844 (Bankr. N.D. Ohio 2002) ("[u]nder the standard rules of grammar, the effect of a modifying clause on the preceding phrase(s) is generally dependent on the presence or lack of a separating comma. In this respect, the lack of a comma will, in most instances, involve the application of the principle of statutory construction known as the rule of the last antecedent, which, as its name implies, holds that where one phrase of a statute modifies another, the modifying phrase applies only to the phrase immediately preceding it. By comparison, when a comma is placed between the modifying clause and the phrase(s) immediately preceding it, the general rule of statutory construction holds that the qualifying phrase applies not just to the phrase immediately preceding it, but instead to all of the antecedents phrases" (citations omitted)).

Additionally, it is evident from the legislative history of R.C. 1713.34 and the language of R.C. 1713.41 that the General Assembly intended "founded and supported in whole or in part at public expense" to qualify the term "charitable institutions." *See* R.C. 1713.41 (a superintendent of a "charitable institution founded and supported in whole or in part at public expense" must deliver the body of a deceased person when requested to do so under R.C. 1713.34). *Compare* 1943-1944 Ohio Laws 166, 171 (Am. S.B. 56, filed May 15, 1943) (setting forth G.C. 9984 (now R.C. 1713.34), which authorized "[s]uperintendents of city hospitals, directors or superintendents of city or county infirmaries, directors or superintendents of work-houses, directors or superintendents of asylums for the insane, or other charitable institutions founded and supported in whole or in part at public expense" to dispose of the unclaimed body of a deceased person), *with* 1943-1944 Ohio Laws 309, 312 (H.B. 383, filed May 26, 1943) (amending G.C. 9984 (now R.C. 1713.34) to read as follows:

charitable institution founded and supported in whole or in part at public expense … shall fail to deliver a body of a deceased person when applied for, in conformity to law"). The phrase "charitable institution" is not defined for purposes of R.C. 1713.34. In common, ordinary parlance, this phrase means an organization dedicated to a general public purpose or the dispensing of charity. *See Black's Law Dictionary* 266 (9th ed. 2009) ("charitable" means "[d]edicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received … "[i]nvolved in or otherwise relating to charity"); *Black's Law Dictionary* 869 (9th ed. 2009) ("institution" means "[a]n established organization, esp. one of a public character"); *see also Players Theatre of Columbus Found. v. Kinney*, 11 Ohio App. 3d 184, 186, 463 N.E.2d 1304 (Franklin County 1983) ("[a] 'charitable institution' is an organization which is involved, as an instrumentality, in the dispensing of charity"); 1917 Op. Att'y Gen. No. 515, vol. II, p. 1468, at 1472 ("'organized or incorporated for purely charitable purposes' implies that the organizers had in mind the public at large and not themselves. They are desirous of enriching [the] public, and not [themselves] being enriched at the [expense] of the public. They are in the business not for profits they make but for the good they may do their fellow men"). *See generally* R.C. 1.42 (in the absence of a technical or particular meaning, a phrase is to be given its common, ordinary meaning). Hence, for purposes of R.C. 1713.34, the phrase "charitable institution" means an organization dedicated to a general public purpose or the dispensing of charity.

General provisions for the establishment, operation, and funding of a county hospital are set forth in R.C. Chapter 339. *See also* R.C. Chapter 140 (providing additional operational powers to a county hospital established pursuant to R.C. Chapter 339). R.C. 339.01(B) authorizes a board of county commissioners to "purchase, acquire, lease, appropriate, and construct a county hospital." *See* R.C. 339.02(B). *See generally* 1956 Op. Att'y Gen. No. 7100, p. 651 (syllabus) (R.C. Chapter 339 authorizes "for each county only one county hospital").[4] A county hospital is "supported by general fund appropriations, special levies, and money received from the operation of the hospital." 2010 Op. Att'y Gen. No. 2010-024 at 2-173; *see* R.C. 140.06; R.C. 339.03; R.C. 339.06(D); R.C. 339.15; R.C. 5705.22.

Responsibility for the operation of a county hospital is vested in a board of county hospital trustees:

"[s]uperintendents of city hospitals, directors or superintendents of city or county infirmaries, *or other charitable institutions*, directors or superintendents of work-houses, *** founded and supported in whole or in part at public expense" to dispose of the unclaimed body of a deceased person). *See generally* R.C. 1.49(C) (when construing a statute the legislative history of the statute may be consulted to determine the intent of the General Assembly).

[4] Although a county may have only one county hospital, such hospital includes "all of the county hospital's branches and hospital facilities, wherever located." R.C. 339.01(A)(2); *see* R.C. 339.01(C); R.C. 339.021; R.C. 339.09-091; R.C. 339.14; 1956 Op. Att'y Gen. No. 7100, p. 651.

> (A) The board of county hospital trustees, upon completion of construction or leasing and equipping of a county hospital, shall assume and continue the operation of the hospital.
>
> (B) The board of county hospital trustees shall have the entire management and control of the county hospital. The board shall establish such rules for the hospital's government and the admission of persons as are expedient.

R.C. 339.06.

In order to perform this function, a board of county hospital trustees may operate and manage the county hospital "by directly employing a hospital administrator or by entering into a contract for the management of the hospital under which an administrator is provided."[5] R.C. 339.07(A). The duties of an administrator of a county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 include the following:

> After the [county] hospital is completed, the administrator shall serve as the chief executive officer and shall carry out the administration of the county hospital according to the policies set forth by the board.
>
> The administrator shall administer the county hospital, make reports, and take any other action that the administrator determines is necessary for the operation of the hospital.
>
> ….
>
> The administrator shall ensure that the hospital has such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients.

R.C. 339.07(B).

A county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 thus is not privately operated for a profit. Instead, the hospital is publicly operated and managed by the county through a board of county hospital trustees. A primary purpose of the hospital is to provide assistance or charity to the sick, injured and ailing, with doors open to the public. *See* R.C. 339.07(B); *see also* R.C. 339.06(G) (a board of county hospital trustees "may provide for the free treatment in the hospital of soldiers, sailors, and marines of the country, under

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[5] Instead of a board of county hospital trustees operating and managing a county hospital pursuant to R.C. 339.07, a county may lease the operation and management of all or portions of the county hospital to another public or private entity. *See* R.C. 140.03; R.C. 140.05; R.C. 339.09-.091; R.C. 339.12; R.C. 339.14; *see also* R.C. 339.17; 1996 Op. Att'y Gen. No. 96-004 at 2-17 and 2-18. In your particular situation, the county hospital is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07. Your first question thus concerns whether a county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 may dispose of the unclaimed body of a deceased person in accordance with R.C. 1713.34.

such conditions and rules as it prescribes"). *See generally Merriam-Webster's Collegiate Dictionary* 601 (11th ed. 2005) (defining a "hospital" as "an institution where the sick or injured are given medical or surgical care"); 1921 Op. Att'y Gen. No. 2214, vol. I, p. 582, at 584 ("no authority is given the county hospital trustees to charge anything for the treatment of patients whom they find to be 'subjects for charity'"); 1919 Op. Att'y Gen. No. 711, vol. II, p. 1319, at 1321 ("the test of a public use as distinguished from a sectarian use, is a common or equal right free from discrimination or unreasonable restriction, and when the hospital is maintained and devoted to such public use, so that charity patients are admitted on equal terms without regard to religion or sect, and does not embody in its administration the teaching or inculcation of sectarian principles or doctrine, it is not considered to be disqualified under the provisions of the act to enter into the agreement with the county commissioners for receiving public funds in the operation of its hospital and the treatment of the indigent sick and disabled").

In light of the provisions of R.C. Chapter 339 governing county hospitals, it follows that a county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 is an organization that is dedicated to a general public purpose or the dispensing of charity. A county hospital is founded and supported in whole or in part at public expense and thus is a charitable institution for purposes of R.C. 1713.34. *See generally White Cross Hosp. Ass'n v. Bd. of Tax Appeals*, 38 Ohio St. 2d 199, 201, 311 N.E.2d 862 (1974) ("[h]ospitals are charitable institutions because of the services furnished to the public" (quoting *Doctors Hosp. v. Bd. of Tax Appeals*, 173 Ohio St. 283, 287, 181 N.E.2d 702 (1962) (Bell, J., concurring))); *Cleveland Osteopathic Hosp. v. Zangerle*, 153 Ohio St. 222, 227-28, 91 N.E.2d 261 (1950) ("[o]ne recognized test for ascertaining whether a hospital is charitable or otherwise is whether it is maintained and conducted for gain, profit or advantage"); *In re Application for Tax Exemption by Dana W. Morey Found.*, 21 Ohio App. 2d 230, 240, 256 N.E.2d 232 (Union County 1970) ("since both the lessor [(a county hospital operated under R.C. Chapter 339)] and lessee are charitable institutions, there is nothing but ownership of [the] property [in question] by nonprofit institutions of charitable service character"); *Shaker Med. Ctr. Hosp. v. Blue Cross of Northeast Ohio*, 115 Ohio App. 497, 502, 183 N.E.2d 628 (Cuyahoga County 1962) ("[t]here can be no question that this hospital is a proprietary hospital operated at a profit for the Doctor's benefit by his retention of the many concessions above described by reason of which it must be distinguished from what are sometimes denominated as community fund type hospitals which are operated not for profit as charitable institutions for the benefit of the patients served by them"); *Merriam-Webster's Collegiate Dictionary* 601 (11th ed. 2005) (defining a "hospital" as "a charitable institution for the needy, aged, infirm, or young"). Accordingly, a county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 may deliver the unclaimed body of a deceased person to a college or the Board in accordance with R.C. 1713.34.

Your second question asks whether a board of township trustees may dispose of the unclaimed body of a deceased person in accordance with R.C. 1713.34 in lieu of burying or cremating the body pursuant to R.C. 9.15. A board of township trustees is expressly authorized by R.C. 1713.34 to deliver the unclaimed body of a deceased person to a college or the Board. Nothing in R.C. 1713.34 indicates whether a board of township trustees may deliver the unclaimed body of a deceased person to a college or the Board in lieu of burying or cremating the body pursuant to R.C. 9.15.

Nevertheless, R.C. 9.15 explicitly conditions the duty of a board of township trustees to bury or cremate the unclaimed body of a deceased person upon the body not being delivered to a college or the Board in accordance with R.C. 1713.34:

> When the body of a dead person is found in a township or municipal corporation, and such person was not an inmate of a correctional, benevolent, or charitable institution of this state, and the body is not claimed by any person for private interment or cremation at the person's own expense, or *delivered for the purpose of medical or surgical study or dissection in accordance with* [*R.C. 1713.34*], it shall be disposed of as follows:
>
> (A) If the person was a legal resident of the county, the proper officers of the township or municipal corporation in which the person's body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
>
> (B) If the person had a legal residence in any other county of the state at the time of death, the superintendent of the county home of the county in which such body was found shall cause it to be buried or cremated at the expense of the township or municipal corporation in which the person had a legal residence at the time of death.
>
> (C) If the person was an inmate of a correctional institution of the county or a patient or resident of a benevolent institution of the county, the person had no legal residence in the state, or the person's legal residence is unknown, the superintendent shall cause the person to be buried or cremated at the expense of the county. (Emphasis added.)

See 1996 Op. Att'y Gen. No. 96-026 at 2-91 (R.C. 5101.521 (now R.C. 9.15) "provides for the public payment of burial expenses when the following factors are present … (4) the body is not delivered for the purpose of medical or surgical study or dissection in accordance with R.C. 1713.34…. When all these factors are present, the body of the dead person must be disposed of by the appropriate governmental entity").

The language of R.C. 9.15 means that a board of township trustees does not have a duty to bury or cremate the unclaimed body of a deceased person when the body has been delivered to a college or the Board in accordance with R.C. 1713.34. When the unclaimed body of a deceased person is delivered to a college or the Board in accordance with R.C. 1713.34, the responsibility for the burial or cremation of the body rests with the party "in whose keeping the [body] was placed," rather than with a township or other governmental entity. R.C. 1713.36; *see also* R.C. 1713.35 ("[i]f the body of a deceased person delivered as provided in [R.C. 1713.34] is subsequently claimed in writing by a relative or other person for private interment at his own expense, it shall be given up to such claimant").

R.C. 1713.34 thus provides a board of township trustees with an alternative method by which to dispose of the unclaimed body of a deceased person. In other words, a board of township trustees may dispose of the unclaimed body of a deceased person in accordance with either R.C. 9.15 or R.C.

1713.34. Accordingly, in lieu of burying or cremating the unclaimed body of a deceased person pursuant to R.C. 9.15, a board of township trustees may deliver the body to a college or the Board in accordance with R.C. 1713.34.

In conclusion, it is my opinion, and you are hereby advised as follows:

1. A county hospital that is operated and managed by a board of county hospital trustees pursuant to R.C. 339.07 may deliver the unclaimed body of a deceased person to a college or the Board of Embalmers and Funeral Directors in accordance with R.C. 1713.34.

2. In lieu of burying or cremating the unclaimed body of a deceased person pursuant to R.C. 9.15, a board of township trustees may deliver the body to a college or the Board of Embalmers and Funeral Directors in accordance with R.C. 1713.34.

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General