

394

TUBERCULOSIS—ADDITIONAL TAX MAY NOT BE LEVIED TO PAY FOR CARE, TREATMENT AND MAINTENANCE OF TUBERCULOSIS PATIENTS IN HOSPITALS WITH WHICH COUNTY COMMISSIONERS CONTRACTED—SECTIONS 5625-15a, 3139-18 G. C.—ADDITIONAL TAX MAY BE SUBMITTED TO ELECTORS UNDER SECTION 5625-15 ET SEQ., G. C.

## SYLLABUS:

An additional tax may not be levied under Section 5625-15a, General Code, for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which county commissioners have contracted under Section 3139-18, General Code. An additional tax for such purpose may be submitted to the electors under Section 5625-15, General Code, and related sections.

Columbus, Ohio, August 18, 1945

Hon. H. Lloyd Jones, Prosecuting Attorney  
Delaware, Ohio

Dear Sir:

This will acknowledge receipt of your letter in which you inquire if the board of county commissioners of Delaware County may levy a tax under Section 5625-15a, General Code, for the purpose of supporting tuberculosis patients in hospitals located outside the county, and not owned by the county.

Section 5625-15a, General Code, reads as follows:

The board of county commissioners of any county at any time prior to September 15 in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of tuberculosis hospitals, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

Such resolution shall conform to the requirements of section 5625-15 of the General Code and be certified and submitted in the manner provided in section 5625-17 of the General Code.

If the majority of electors voting on a levy to supplement general fund appropriations for the support of tuberculosis hospitals vote in favor thereof, the board of county commissioners of said county may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of the said years."

The statutes relating to the construction and support of tuberculosis hospitals and the care of persons suffering from tuberculosis were completely revised in 1941 by the 94th General Assembly, and are found in Sections 3139 to 3139-22, General Code. As pointed out by my immediate predecessor in opinion No. 6007, for the year 1943, three methods are now provided under which county commissioners may care for persons having tuberculosis, as follows:

1. By the erection and operation of a county tuberculosis hospital in any county having a population of more than 50,000, as shown by the last federal census. Provision for such hospital and its support by taxation and otherwise, is made by Sections 3139-11 to 3139-15, General Code.

2. By joining with other counties, not to exceed five, in the erection and operation of a district tuberculosis hospital. Provision for such hospital and its support by taxation and otherwise, is made by Sections 3139 to 3139-10, General Code.

3. By contracting with a county tuberculosis hospital district tuberculosis hospital, or with certain general or private hospitals equipped to handle tuberculosis cases, for the care, treatment and maintenance of persons having tuberculosis. This method is provided for by Section 3139-18, General Code.

In cases where a county has joined with others in the erection of a district tuberculosis hospital, the board of county commissioners of each county is required by Sections 3139-5 and 3139-6, General Code, to provide annually its share of the cost of supporting and maintaining the hospital. The pertinent portion of Section 3139-5 reads as follows:

"\* \* \* A statement shall be prepared annually showing the per capita daily cost for the current expenses of maintaining

such hospital, including the cost of ordinary repairs, and each county in the district shall pay its share of such cost as determined by the number of days the total number of patients from such county have spent in the hospital during the year, but any sums paid by the patients from such county for their treatment therein shall be deducted from this amount. The boards of county commissioners of counties jointly maintaining a district hospital for tuberculosis shall make annually an appropriation or otherwise provide sufficient funds to support, and to defray the necessary expense of maintenance of such hospital."

In cases where a county has erected its own tuberculosis hospital, the county commissioners are required by Section 3139-12, General Code, to appropriate necessary funds for the maintenance of the hospital, and all laws applicable to the levying of taxes for the support of district hospitals are made applicable by Section 3139-13, General Code, to county hospitals. These two statutes are not quoted in this opinion on account of their length.

I have been advised by the State Department of Health that Delaware County does not have a county tuberculosis hospital, and also that it has not joined with any other county in the erection of a district hospital. Such being the case, the statutes hereinabove referred to relating to the levying of taxes for the support and maintenance of such hospitals have no application at this time to your county, and the method provided by law by which your commissioners may care for the county's tuberculosis patients is the one provided by Section 3139-18, General Code, which reads as follows:

"Where a county has not provided a county hospital for tuberculosis or has not joined in a tuberculosis hospital district, or where a county tuberculosis hospital is not sufficiently large to provide proper care for all patients who should be hospitalized, the county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper officer of a municipal tuberculosis hospital, for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of such county or district hospital, or into the proper fund of the municipality caring for such patients, the amount provided for in the contract. They shall also pay for the transportation of patients and attendants. The county commissioners of such county may also contract for the care and treatment of residents of the

county suffering from tuberculosis with a general hospital properly equipped both as to personnel and facilities for the care and treatment of the tuberculosis, or with a person, firm, association or corporation operating a hospital exclusively for the care and treatment of the tuberculous; but no contract shall be made unless such general hospital or private hospital has been inspected and approved by the state department of health. Such approval may be withdrawn and such contract shall be cancelled, if, in the judgment of the state department of health, such general hospital or private hospital is not properly managed. If such approval is withdrawn, the person, firm, association, or corporation operating such institution shall have the right to appeal to the public health council for a decision."

It will be noted that the statute just quoted makes no provision for the support of any hospital by the levying of taxes or otherwise, but relates solely to the making of contracts with the hospitals therein referred to and described, under and pursuant to which the county commissioners will pay for the care, treatment and maintenance at such hospitals of county residents who are suffering from tuberculosis. Such being the case, it is my opinion that Section 5625-15a, relating to the levying of an additional tax for the "support of tuberculosis hospitals," applies only to tax levies for the support of a tuberculosis hospital owned by the county making the levy, or for the support of a district tuberculosis hospital in the erection of which the county has joined, and that it makes no provision for the levying of a tax for the purpose of paying for the care, treatment and maintenance of patients at hospitals with which the county commissioners may have contracted under Section 3139-18, General Code.

If your county commissioners desire to submit to the electors the question of an additional tax for the purpose of securing funds to pay for the care, treatment and maintenance of tuberculosis patients at hospitals with which they have contracted under Section 3139-18, General Code, they may proceed under the provisions of Section 5625-15, General Code, and related sections. Such expenses, in my opinion, are included in the general classifications of "Current expenses of the subdivision," referred to in paragraph 1 of that section. See, also, paragraph "f" of Section 5625-1, General Code, which defines "current expenses" as "the lawful expenditure of a subdivision except those for permanent improvements, and except payments for interest, sinking fund and retirement of bonds, notes and certificates of indebtedness of the subdivision."

You are therefore advised that an additional tax may not be levied under Section 5625-15a, General Code, for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which the county commissioners have contracted under Section 3139-18, General Code. An additional tax for such purpose may be submitted to the electors under Section 5625-15, General Code, and related sections.

Respectfully,

HUGH S. JENKINS

Attorney General