

1981

1. HOSPITAL TRUSTEES, COUNTY—ESTABLISHED UNDER SECTION 3131 G. C.—PROSECUTING ATTORNEYS LEGAL ADVISERS TO BOARDS.
2. BOARDS OF COUNTY HOSPITAL TRUSTEES—WITHOUT AUTHORITY TO EMPLOY LEGAL COUNSEL—SECTION 2917 G. C.
3. MEMBERS OF BOARDS OF COUNTY HOSPITAL TRUSTEES—HOLD OFFICE OF TRUST—AMENABLE TO SECTION 12910 G. C.

SYLLABUS:

1. Prosecuting attorneys are the legal advisers to boards of county hospital trustees as established pursuant to Section 3131 of the General Code of Ohio.
2. By virtue of Section 2917 of the General Code of Ohio, boards of county hospital trustees are without authority to employ legal counsel.
3. Members of boards of county hospital trustees hold office of trust, and as such become amenable to Section 12910 of the General Code of Ohio.

Columbus, Ohio, June 30, 1950

Hon. Rex W. Hanna, Prosecuting Attorney,
Hardin County, Kenton, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“Due to a favorable vote of the electors of the county a bond issue has been approved under Section 3131 O. G. C. The members of the board have been appointed, and organized and known as the Board of Trustees of the Hardin County Memorial Hospital, under said Section 3131 O. G. C.

“The Board of Trustees has asked me, as Prosecuting Attorney, to obtain your written opinion on the following questions:

“1. Is the Prosecuting Attorney of Hardin County the legal adviser for the Board of Trustees?

“2. May the Board of Trustees hire legal counsel for advice and procedure?

“3. Would it be illegal for a corporation to sell and furnish

materials to a contractor or subcontractor, where a member of the Board of Trustees is a stockholder and part owner of the company so furnishing such materials?"

Section 3131 of the General Code of Ohio provides that:

"If a tax levy or bond issue for such purpose is approved by vote of the electors in the maner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the governor of the state; whereupon the governor shall, within ten days after the receipt of such certification, appoint a board of county hospital trustees, composed of four freeholders of such county.

"Such board shall be bi-partisan, with two members from each of the two political parties casting the highest number of votes in such county for their respective candidates for governor at the next preceding gubernatorial election. And the governor shall forthwith notify the persons so selected of their appointment as such trustees, by mail, and fix a date not more than ten days later when such trustees shall meet at the county seat of such county to organize such board.

"On the date thus fixed such trustees shall meet and organize such board by electing one of their number as chairman and another as secretary. The county commissioners shall fill all vacancies which may occur in such board of trustees, as well as in the board of hospital trustees hereinafter provided for, which may result from death, resignation or removal from office. Such board of trustees shall hold such meetings as the performance of its duties may require and shall keep a record of its proceedings and a strict account of all its receipts, disbursements and expenditures; and upon completion of their duties as herein provided, they shall file such account with the board of county commissioners and make final settlement with such board.

"Such hospital trustees shall serve until such hospital be fully completed and sufficiently equipped for occupancy, whereupon their successors shall be appointed as hereinafter provided."

Section 3132 of the General Code of Ohio provides that:

"Such board of trustees shall have full charge and control of the selection and purchase of a site for such hospital (taking title thereto in the name of the county), the selection of plans and specifications, the determination and erection of all necessary buildings thereon, and of the selection and installation of all necessary and proper furniture, fixtures and equipment therefor.

"Such hospital trustees and their successors herein provided for may receive and hold in trust for the use of the hospital any grant or devise of land or any gift or bequest of money or other personal property that may be given for the erection or support of the hospital.

“The trustees shall serve without compensation, but shall be allowed their necessary and reasonable expenses incurred in the performance of their duties, the same to be paid out of the funds provided for such hospital. They may employ such help as they shall deem necessary to perform their clerical work and to superintend properly the construction of such hospital, and pay the expenses thereof out of the funds provided for such hospital.

“Each trustee shall give bond for the proper performance of his duties in such sum as the board of county commissioners may require, with sureties to its approval.”

By the clear wording of the aforementioned statutes, said board is a county board for the purpose of constructing and equipping such hospital. The duties of the prosecuting attorney concerning county boards are provided for in Section 2917 of the General Code, and reads as follows :

“The prosecuting attorney shall be the legal adviser of the county commissioners and all other county officers and county boards and any of them may require of him written opinions or instructions in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board may direct or to which it is a party, and no county officer may employ other counsel or attorney at the expense of the county except as provided in section twenty-four hundred and twelve. He shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly entered upon their journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

In order to bring question 3 within the purview of the authority granted this office, said question is being restated as follows :

May the board of trustees, whose membership comprises one who is part owner of a corporation selling material for the construction of such hospital, purchase material from the corporation?

Your attention is directed to Section 12910 of the General Code of Ohio, which reads :

“Whoever, holding an *office of trust* or profit by election or appointment, or as agent, servant or employe of such officer or of a board of such officers, is interested in a contract for the purchase of property, supplies or fire insurance for the use of the county, township, city, village, board of education or a public institution with which he is connected, shall be imprisoned in

the penitentiary not less than one year nor more than ten years.” (Emphasis added.)

In 32 Ohio Jurisprudence, §2, at pp. 855-856, it is said:

“Generally, according to legal definition, an office is an employment on behalf of the government, in any station or public trust, not merely transient, occasional, or incidental. As a general rule, the term ‘office’ embraces the ideas of tenure, duration, emolument, and duties. In accordance therewith, it is said that a public office is the right, authority, and duty created and conferred by law by which, for a given period—either fixed by law or enduring at the pleasure of the creating power—an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.”

In the case of *Doll v. The State*, 45 Ohio St., 445, it is stated in the second branch of the syllabus:

“To become so interested in the contract, it is not necessary that he (the officer) make profits on the same. But it is sufficient, if while acting as such officer, he sell the property to the city for its use, or is personally interested in the proceeds of the contract of sale, and receives the same or part thereof, or has some pecuniary interest or share in the contract.”

Your attention is further directed to Section 12912-1 of the General Code, which reads as follows:

“The provisions of sections 12910, 12911 and 12912 of the General Code of Ohio shall not apply to persons enumerated in said sections who are shareholders of a corporation and own five per cent or less of the stock or stocks not exceeding in value the sum of five hundred dollars, whichever limitation of ownership is the less in amount, and are not officers or directors thereof, when said corporation has made and entered into any of the contracts and transactions mentioned in the aforesaid sections, unless there exists a conspiracy to defraud. If any stockholder desires to avail himself of the provisions of this section, before entering upon such contract or transaction, such person shall first file with the clerk or fiscal officer of such county, township, city, village, board of education or public institution an affidavit, under oath, stating his exact status and connection with said corporation.”

In view of the foregoing, you are advised that it is my opinion that:

1. Prosecuting attorneys are the legal advisers to boards of county hospital trustees as established pursuant to Section 3131 of the General Code of Ohio.

2. By virtue of Section 2917 of the General Code of Ohio, boards of county hospital trustees are without authority to employ legal counsel.

3. Members of boards of county hospital trustees hold office of trust, and as such become amenable to Section 12910 of the General Code of Ohio.

Respectfully,

HERBERT S. DUFFY,
Attorney General.