

**Note from the Attorney General's Office:**

1969 Op. Att'y Gen. No. 69-062 was modified by  
1979 Op. Att'y Gen. No. 79-052.

**OPINION NO. 69-062****Syllabus:**

1. A board of county commissioners is not authorized to enlarge a county hospital where the use thereof would be for other than general hospital operations.

2. A board of county hospital trustees, acting alone, does not have authority to construct a hospital addition unless county electoral approval is first obtained pursuant to Section 339.01, Revised Code.

3. Section 340.07, Revised Code, does not authorize a board of county commissioners to lease facilities for a community health and retardation center.

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**To: Reynold C. Hoefflin, Greene County Pros. Atty., Xenia, Ohio**  
**By: Paul W. Brown, Attorney General, June 16, 1969**

I have before me your request for my opinion on the following questions:

"1. Does the Greene County Board of County Commissioners under Section 339.01 have the power to enlarge Greene Memorial Hospital in an enlargement program which would include facilities for the Greene County Board of Health and the Greene-Clinton County Community Mental Health and Retardation Center?

"2. Does the Greene County Board of County Hospital Trustees have authority under Section 339.03 to accomplish the same purpose as mentioned in Item 1, in connection with the Greene County Board of County Commissioners, or acting alone?

"3. If it is possible for the above mentioned construction, is it appropriate for the County Commissioners to lease the out-patient part of the building from the Greene County Board of County Hospital Trustees for the out-patient portion of the Greene-Clinton County Community Mental Health and Retardation Center in view of Section 340.07 which specifically authorizes the County Commissioners for the acquisition, construction, reconstruction, maintenance and operation of such a program but at no point therein authorizes the leasing of said property.

"4. In the event said property may be leased to the Mental Health and Retardation Board and the property leased to the Greene County Public Health Department, is it necessary that full compensation for the lease be paid to the Hospital Trustees by the County Commissioners or may a nominal sum be made payable for these leases?"

Regarding question number one, Section 339.01, Revised Code, which clearly authorizes the enlargement of existing hospital facilities, provides as follows:

"The board of county commissioners may purchase, acquire, lease, appropriate, construct, enlarge, improve, and rebuild a county hospital or hospital buildings. No money shall be expended for the original purchase, appropriation, or construction of such hospital or buildings until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county."

This section of the Revised Code places the initial responsibility of enlarging existing county hospital facilities with the board of county commissioners. You will note that this section does not contain a purpose clause other than that which would allow such a facility to be dedicated as a commemorative monument.

The purpose for which a county hospital may be leased may be found in Section 339.09, Revised Code, which provides as follows:

"When the county hospital has been fully completed and sufficiently equipped for occupancy, in lieu of sections 339.06 to 339.08, inclusive, of the Revised Code, the board of county commissioners of any county 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 general hospital, the lands, the buildings, and equipment of any general hospital owned by said county."  
(Emphasis added)

Pursuant to this section the board of county commissioners have express authority to lease a county hospital, but only "for use as a general hospital." I can find no authority which would allow the leasing of either an entire hospital, as contemplated by the above cited section, or an addition thereto for a purpose other than as a general hospital.

Since county officials have only such powers and duties as are expressly given them by statute, the acts of such officers which exceed the limits of their powers are void. State, ex rel. Shriver v. Board of Commrs., 148 Ohio St. 277, 280 (1947). It would seem, therefore, that the construction or use of an addition to a hospital for purposes other than general hospital operations is not authorized by the statute in question.

For a determination of your second question I direct your attention to Opinion No. 330, Opinions of the Attorney General for 1957, wherein the then Attorney General distinguished the various methods of constructing or enlarging a county hospital, pursuant to Section 339.01, supra, and Section 339.03, as follows:

"1. Construction may be undertaken by a board of county hospital trustees only when

funds therefor have been provided by a bond issue or tax levy approved by the electors of the county, and control of funds from those sources and consequently of the construction is vested in such board.

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"3. Prospects of enlargement, improvement, and rebuilding, funds for which are appropriated by the board of county commissioners, are under the supervision and control of the board of county commissioners."

The first above quoted paragraph refers to the situation where the "original" construction of a county hospital is submitted to county electors for approval pursuant to Section 339.01, supra. In such a case funds derived from a bond issue or tax levy are placed in a county hospital building fund to be expended on the order of the hospital trustees pursuant to Section 339.04, Revised Code.

This office has ruled that Section 339.04, supra, is likewise applicable to the situation where an addition to an already existing hospital building is to be constructed. Opinion No. 330, Opinions of the Attorney General for 1957. However, again the board of hospital trustees may act only on authority of a bond issue or tax levy. In either case the authority of the county board of hospital trustees to act on their own initiative is substantially restricted inasmuch as county electoral approval is a prerequisite. See Opinion No. 7630, Opinions of the Attorney General for 1957, construing the powers of a county board of hospital trustees under Section 339.03, Revised Code.

The alternative method is pursued via Section 339.01, supra, which provides that a board of county commissioners may "enlarge, improve, and rebuild" existing facilities. According to Opinion No. 4030, Opinions of the Attorney General for 1954, the commissioners may act directly and without the necessary bond issue or tax levy. They may thus proceed on an independent basis, as distinguished from the restrictions imposed on the board of county hospital trustees.

In response to your specific inquiry, therefore, it appears that a board of county hospital trustees, acting alone, does not have authority to construct a hospital addition unless county electoral approval is first obtained pursuant to Section 339.01, Revised Code.

The answer to your third question relates to a recent opinion issued by this office in which a similar problem was encountered. I determined in Opinion No. 69-026, Opinions of the Attorney General for 1969, that the leasing of land for a land-fill operation is not authorized under Section 343.01, Revised Code. Section 340.07, Revised Code, contains similar language in that money may be appropriated for the "acquisition, construction, reconstruction, maintenance, and operation" of mental health facilities. According to State, ex rel. Fisher v. Sherman, 21 N.E. 2d 447, 135 Ohio St. 458 (1939), the Ohio interpretation of the word "acquire" does not anticipate a lease arrangement, but rather refers to the purchase of something, or to make property one's own. Consequently, I must conclude that Section 340.07,

supra, does not authorize a board of county commissioners to lease facilities for a community mental health and retardation center.

This conclusion is dispositive of your fourth question. Inasmuch as a board of county commissioners is not authorized to lease county hospital facilities for a community mental health and retardation center, the issue is moot.

Therefore, it is my opinion and you are hereby advised:

1. A board of county commissioners is not authorized to enlarge a county hospital where the use thereof would be for other than general hospital operations.
2. A board of county hospital trustees, acting alone, does not have authority to construct a hospital addition unless county electoral approval is first obtained pursuant to Section 339.01, Revised Code.
3. Section 340.07, Revised Code, does not authorize a board of county commissioners to lease facilities for a community mental health and retardation center.