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HOSPITALS, JOINT TOWNSHIP DISTRICT—FUNDS DERIVED FROM OPERATING LEVIES—§§ 513.12, 513.13, 321.31 RC — DEPOSIT OF SUCH FUNDS, §§ 135.01 *et seq.* RC — TAX MONEYS PLACED IN ERROR MAY BE RECOVERED, § 513.16 RC.

SYLLABUS:

1 .A joint township district hospital board is, by Section 513.12, Revised Code, charged with the duties of receiving, controlling and expending the proceeds of an operating tax levied in a joint township hospital district pursuant to Section 513.13, Revised Code, and the treasurer of a county is by Section 321.31, Revised Code, directed to pay the proceeds of such operating levy to the treasurer of such joint township district hospital board.

2. The proceeds from an operating tax levied in a joint township hospital district pursuant to Section 513.13, Revised Code, are public moneys, as defined in Section 135.01, Revised Code, which must be deposited in accordance with Chapter 135., Revised Code, and any investment in direct obligations of the United States may be made only as directed in Section 135.12, Revised Code.

3. Tax moneys which have in error been placed in the custody and control of a board of hospital governors appointed as provided in Section 513.16, Revised Code, together with the increment earned on any investments of such moneys, must be recovered by the joint township district hospital board and by that board be deposited or invested as directed by Chapter 135., Revised Code.

Columbus, Ohio, December 17, 1957

Hon. James I. Shaw, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been requested by the Board of Hospital Governors of Jackson, German, Noble and St. Marys Joint Township Hospital District and by the Joint District Hospital Board of the Jackson, German, Noble and St. Marys Joint Hospital District to obtain from you your opinion of the handling of accumulated funds derived from a one mill tax levy for operational expenses of the Joint Township Hospital.

“The Jackson, German, Noble and St. Marys Joint Township Hospital District was created some seven years ago under

Ohio General Code Section 3411 *et seq.* (now Ohio Revised Code Section 513.01 *et seq.*) and bonds were issued for the construction of the hospital.

"In 1951 a one mill tax levy for operating expenses was submitted to the electors in the District and was approved under Ohio General Code 3414.3 (Now Ohio Revised Code Section 513.13). At the time this operating levy was submitted to the electors, the expenses of the hospital for operation were not fully met by the receipts received from patients, and an operating levy was needed to make up the difference of expenses over receipts. The operating levy, which was approved by the electors, went into effect on the 1951 tax duplicate for a period of five years. At a subsequent date the tax levy was reduced from one mill to .85 of a mill due to the increase in valuation on the tax duplicate in the Townships making up the District. Each year the entire amount allowed was levied and collected from the taxpayers.

"Due to the increase in business and a more efficient form of management, the receipts from the hospital operation were increased and the hospital was self-sustaining. Payment of the funds derived from the levy was made by the County Auditor to the Joint District Hospital Board, and that Board in turn paid the entire amount over to the Board of Hospital Governors of Jackson, Noble, German and St. Marys Joint Hospital District. The Board of Hospital Governors did not need all the tax levy funds for operating expenses and accumulated a surplus of funds. In November 1954, this Board started purchasing Series J Government Bonds and, from that time to the date hereof, they have purchased \$154,000 face amount of Series J Government Bonds for a purchase price of \$110,880. They have also recently purchased a \$20,000 U. S. Treasury Bill. All of these Series J Bonds and the U. S. Treasury Bill are in the possession of the Board of Hospital Governors in a safety deposit box in The Home Banking Company, St. Marys, Ohio.

"Final payment has been made on this operating levy by the County Auditor since the levy expired on the 1956 tax duplicate. A renewal levy was not submitted to the electors of the District in the recent November 1957 election.

"The County Auditor of Auglaize County was collecting from the taxpayers in the Hospital District both for the operating levy and for the levy to retire bonds issued for the construction of the hospital. When the amounts for each levy were collected, they were paid to the Joint District Hospital Board in one check. The Joint District Hospital Board some two years ago advised the County Auditor to make the check for the operating levy direct to the Board of Hospital Governors. This was done according to those instructions until I learned

of this manner of payment upon taking over the office of Prosecuting Attorney. At that time I advised the County Auditor that the payment of the operating levy would have to be made to the Joint District Hospital Board since they were the taxing authority.

“As the legal adviser to the Joint District Hospital Board and also to the Board of Hospital Governors, I have met with them on several occasions, and I informed both of these Boards that it was my opinion that the funds derived from the operating levy should have been retained by the Joint Township Hospital Board and paid out to the Board of Hospital Governors as that Board needed it for operating expenses of the Hospital. I also advised the Joint Township Hospital Board that they should not have levied the full amount allowable for operating expenses from the taxpayers in the District when it was not needed for operating expenses by the Joint Township Hospital. I also advised both Boards that it was my opinion that the Board of Hospital Governors had no authority in law to purchase Series J Government Bonds or a U. S. Treasury Bill, but that such money so received from the operating levy should have been retained by the Joint District Hospital Board and deposited under the Uniform Depository Act, being Section 135.01 *et seq.* of the Ohio Revised Code.

“From the facts above set forth, the questions present themselves as follows:

“1. Should the funds received from the operating levy in the Joint Township Hospital District be paid by the County Auditor to the Joint Township Hospital Board or direct to the Board of Hospital Governors?

“2. If the funds so received from the operating levy are to be paid to the Joint District Hospital Board, should this Board pay to the Board of Hospital Governors the entire amount received from the operating levy, or should the Joint District Hospital Board pay over to the Board of Hospital Governors only so much as is needed for operating expenses of the hospital?

“3. If the funds arising from the operating levy can be paid direct to the Board of Hospital Governors by the County Auditor, can the Board of Hospital Governors purchase Series J. Government Bonds or U. S. Treasury Bills, or must the Board of Hospital Governors deposit said funds under the Uniform Depository Act under their authority given to them under Ohio Revised Code Section 513.16 and 513.17?

“4. If the funds from the operating levy must be paid to the Joint Township Hospital Board, does such Board have authority to purchase Series J. Government Bonds and U. S.

Treasury Bills, or must such Board deposit the funds so received under the Uniform Depository Act?

“5. If the operating levy funds should not have been wholly turned over to the board of Hospital Governors, should the bonds and treasury bill held by them be now redeemed and the funds derived from such redemption returned to the Joint Hospital District Board to be by that Board paid over to the Board of Hospital Governors as the budget of the Hospital requires it for operating expenses?”

Section 513.07, Revised Code, formerly Section 3414-1, General Code, authorizes boards of township trustees of any two or more contiguous townships in any county to form themselves into a joint township district hospital board for the purpose of establishing, constructing and maintaining a joint township district general hospital and provides that such townships shall be a part of a joint township hospital district. The members of all such boards of township trustees comprise the joint township district hospital board, and these members are directed by the said Section 513.07, Revised Code, to elect a president, secretary, treasurer, and such other officers as they deem proper and necessary. By Section 513.12, Revised Code, a joint township district hospital board is empowered, after proper approval by the electorate of the district, to issue and sell bonds in order to purchase a site, and to construct and equip a hospital. Section 513.13, Revised Code, provides for a tax levy outside the ten-mill limitation to provide funds for the payment of necessary expenses incurred in the operation of the hospital.

Section 513.16, Revised Code, relates to the appointment of a board of hospital governors to control the operation of a joint township district general hospital, while Section 513.17, Revised Code, directs the board of hospital governors, with the consent and approval of the joint township district hospital board, to erect, furnish and equip the hospital and to provide the staff and other personnel necessary to operate the said hospital. The board of hospital governors appoints a superintendent who has complete charge and control of the operation of the hospital, subject to the direction of the board of governors. As was said in Opinion No. 1801, Opinions of the Attorney General for 1947, page 208, a duly appointed board of hospital governors is vested with the duty of the management and control of a joint township district hospital.

This, however, does not lead me to the conclusion that the proceeds of a special tax levy should be disbursed to the board of hospital governors

to be managed, controlled and expended entirely under the jurisdiction of that board. It is the joint township district hospital board which is empowered by Section 513.12 and 513.13, Revised Code, to proceed to sell bonds and levy a tax. Section 513.15, Revised Code, directs that the ownership of all property, both real and personal, of a joint township district hospital shall vest in the joint township district hospital board. Moreover, Section 513.12, Revised Code, clearly indicates that it is the joint township district hospital board which receives funds and controls expenditures in connection with such a hospital. That section reads in part as follows :

“All necessary expenses for the operation of such hospital may be paid out of any moneys derived from the special levy approved for such purposes by such voters, or out of any other moneys received from hospital income or services rendered, or from unencumbered funds from any other source. The board of township trustees of the townships participating in such district may appropriate and pay over to the joint township hospital board, for maintenance of such hospital, any unencumbered funds of the township.

“Such necessary expenses as are incurred by the board of township trustees in meeting with other boards of township trustees for the consideration of proposals to proceed under Sections 513.07 to 513.18, inclusive, of the Revised Code, shall be paid from the general fund of the township incurring such expenses. *When such hospital board has funds of its own, derived from the special levy approved by the electors of the district, as provided in section 513.13 of the Revised Code, or unencumbered funds from any other source, then the expenses incidental to such hospital shall be paid by the hospital board.*” (Emphasis added.)

A further indication of this intention is found in Section 513.17, Revised Code, which reads in part as follows :

“* * * The members of the board of governors shall serve without compensation, but their necessary expenses, when engaged in the business of the hospital board, shall be paid by the joint township hospital board. * * *”

The General Assembly has directed the treasurer of a county as to his duty in disbursing tax revenue. Section 321.31, Revised Code, reads :

“Immediately after each settlement with the county auditor, on demand, and on presentation of the warrant of the auditor therefor, the county treasurer shall pay to the township clerk, treasurer of a municipal corporation, the clerk of the school dis-

trict, or the treasurer of any board authorized by law to receive the funds or proceeds of any special tax levy, or other properly designated officers delegated by the boards and subdivisions to receive such funds or proceeds, all moneys in the county treasury belonging to such boards and subdivisions.” (Emphasis added.)

I find no legislative authority, either express or implied, by which a joint township district hospital board may delegate to a board of hospital governors the right to receive, either directly or indirectly, the proceeds of an operating levy and the power and duty to manage and expend such funds.

It is my conclusion that it is the duly elected treasurer of a joint township district hospital board to whom the county treasurer must pay the proceeds of a special operating tax levied in a joint township hospital district, and, further, that the joint township district hospital board must retain the control of such funds for the purpose of expending them for hospital expenses.

The conclusions reached hereinbefore make it unnecessary to consider the third question in your inquiry. Having determined that the proceeds of the operating levy must be paid to and controlled by the joint township district hospital board, it now becomes necessary to determine whether they have authority to purchase, otherwise than as prescribed by the Uniform Depository Act, Chapter 135., Revised Code, bonds or treasury bills issued by the United States Government. In this connection I invite your attention to Opinion No. 1644, Opinions of the Attorney General for 1950, page 195, which was issued to your predecessor in office. The second paragraph of the syllabus of that opinion reads:

“The proceeds from the sale of bonds issued by a joint township hospital district must be deposited in a public depository in accordance with the provisions of the Uniform Depository Act, Section 2296-1, et seq., General Code, except that excess funds which cannot be deposited in the public depositories of the subdivision because of the limitations which the act places upon the amount of funds which can be deposited therein may be invested in short term government securities as prescribed in the third paragraph of Section 2296-12, General Code.”

I am unable to conclude that the proceeds from a voted tax levy on the property in the joint township hospital district falls within any different statutory provision. Certainly these funds are public moneys within the definition in Section 135.01, Revised Code, formerly Section 2296-1, General Code. That definition reads as follows:

“(A) ‘Public moneys’ means all moneys in the treasury of the state or any subdivisions of the state, or moneys coming lawfully into the possession or custody of the treasurer of state or of the treasurer of any subdivision. ‘Public moneys of the state’ includes all such moneys coming lawfully into the possession of the treasurer of state; and ‘public moneys of a subdivision’ includes all such moneys coming lawfully into the possession of the treasurer of the subdivision.”

Certainly a joint township hospital district is a subdivision within the following language in Section 135.01, Revised Code:

“(B) ‘Subdivision’ means any * * * special taxing or assessment district, or other district or local authority electing or appointing a treasurer.”

It is my conclusion that, pursuant to Chapter 135., Revised Code, a joint township hospital district is a subdivision and the funds derived from a special operating levy and which are held by the joint township district hospital board are public moneys to be deposited or invested in compliance with the provisions of that chapter. Any governmental obligations in which public moneys may be invested can only be those authorized by Section 135.12, Revised Code, and such investments must be made in the manner prescribed by that section.

Your fifth question has been answered by the foregoing. The joint township district hospital board is charged with the duty of the custody and control of funds for the use of a joint township district hospital and is further charged with the duty of payment of expenses for the operation of the hospital. Moneys which have been improperly transferred to a board of hospital governors, together with any increment earned on such moneys which have been invested by that board, should be recovered by the joint township district hospital board and administered according to law.

It is, therefore, my opinion and you are advised:

1. A joint township district hospital board is, by Section 513.12, Revised Code, charged with the duties of receiving, controlling and expending the proceeds of an operating tax levied in a joint township hospital district pursuant to Section 513.13, Revised Code, and the treasurer of a county is by Section 321.31, Revised Code, directed to pay the proceeds of such operating levy to the treasurer of such joint township district hospital board.

2. The proceeds from an operating tax levied in a joint township hospital district pursuant to Section 513.13, Revised Code, are public moneys, as defined in Section 135.01, Revised Code, which must be deposited in accordance with Chapter 135., Revised Code, and any investment in direct obligations of the United States may be made only as directed in Section 135.12, Revised Code.

3. Tax moneys which have in error been placed in the custody and control of a board of hospital governors appointed as provided in Section 513.16, Revised Code, together with the increment earned on any investments of such moneys, must be recovered by the joint township district hospital board and by that board be deposited or invested as directed by Chapter 135., Revised Code.

Respectfully,

WILLIAM SANBE

Attorney General