

OPINION NO. 72-117

Syllabus:

1. A board of hospital governors is not a hospital agency, as defined by Section 140.01 (A), Revised Code.
2. A joint township district hospital board may not lease a hospital facility to a board of hospital governors under Section 140.05, Revised Code.

To: William H. Weaver, Williams County Pros. Atty., Bryan, Ohio
By: William J. Brown, Attorney General, December 13, 1972

I have before me your request for my opinion, which reads as follows:

"The Williams County General Hospital was organized in about 1948 as a Joint Township District Hospital pursuant to Revised Code Section 513.07 of Ohio.

"The Joint Township Trustees of said hospital desire to lease said hospital to the Board of Hospital Governors.

"Therefore, having reference to amended Ohio Senate Bill 343, which was passed September 22, 1971, and which became effective September 24, 1971, what authority, if any, does the Joint Township Trustees of said hospital have as to entering a lease with the Board of Hospital Governors, as to the above amended Ohio Senate Bill 343?"

Chapter 140, Revised Code, was enacted by Senate Bill No. 343, to which you refer in your request. I understand your question to ask whether a joint township district hospital board may lease a hospital facility to a board of hospital governors under Section 140.05, Revised Code, which reads, in part, as follows:

"A public hospital agency may lease any hospital facility to one or more hospital agencies for use as a hospital facility, or to one or more city or general health districts, community mental health and retardation boards, county boards of mental retardation, or the department of mental hygiene and correction, for uses which they are authorized to make thereof under the laws applicable to them, or any combination of them, and they may lease such

facilities to or from a hospital agency for such uses, upon such terms and conditions as are agreed upon by the parties." (Emphasis added.)

In order to determine the scope of Section 140.05, we must look first to the definitions of the terms used therein. Section 140.01, Revised Code, contains the definitions applicable to Chapter 140, and reads, in part, as follows:

"(A) 'Hospital agency' means any public hospital agency or any nonprofit hospital agency.

"(B) 'Public hospital agency' means any county, county hospital commission established pursuant to section 339.14 of the Revised Code, municipal corporation, joint township hospital district, or state or municipal university or college, operating or authorized to operate a hospital facility.

"(C) 'Nonprofit hospital agency' means a corporation or association not for profit, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, which has authority to own or operate a hospital facility or which provides or is to provide services to one or more other hospital agencies." (Emphasis added.)

Attention must also be directed to the definitions in Chapter 513, Revised Code, which deals with township hospitals. A joint township hospital district, one of the public hospital agencies referred to in subsection (B) above, may be formed by the township trustees of any two or more contiguous townships. Upon an affirmative vote to form such a hospital district, the various boards of township trustees unite to form a joint township district hospital board for the purpose of establishing and maintaining a general hospital or other hospital facilities in the district. Section 513.07, Revised Code. The hospital board is then required, in conjunction with the common pleas court, to appoint, as soon as possible, a board of hospital governors which shall proceed to erect and equip the hospital building, employ nurses and other employees, and select a superintendent who shall control the operation of the hospital. Sections 513.16 and 513.17, Revised Code; see also Opinion No. 1234, Opinions of the Attorney General for 1960.

In the light of those definitions, I return to Section 140.05, which provides that "a public hospital agency may lease any hospital facility to one or more hospital agencies for use as a hospital facility." Since a joint township hospital district is a public hospital agency under the definition in Section 140.01 (B), the hospital board, which is the governing body of such district, may lease its hospital facility, but only to some other hospital agency or agencies, as defined by Section 140.01. Thus, for a joint township district hospital board to be able to lease a hospital facility to a board of hospital governors, such board of governors must be either a public hospital agency, as defined by Section 140.01 (B), or a nonprofit hospital agency, as defined by Section 140.01 (C).

A nonprofit hospital agency is defined by Section 140.01 (C) as "a corporation or association not for profit", and a board of governors, being a public board created by Section 513.16, would not appear to qualify. Nor would a board of governors qualify as a public hospital agency, since it is not one of the public bodies

enumerated in the definition of a public hospital agency in Section 140.01 (B). It might be argued that a board of governors qualifies as a public hospital agency, since it is created in part by the joint township hospital district which is, under Section 140.01 (B), such a public hospital agency. One of my predecessors has, however, clearly distinguished the hospital board from the hospital governors. See Opinion No. 1234, *supra*. I conclude, therefore, that a board of hospital governors is not a hospital agency, and cannot lease a hospital facility from a joint township district hospital board.

In support of this conclusion, an examination of the powers of the board of governors, as set forth in Section 513.17, shows that it has the power to "erect, furnish, and equip necessary buildings for a joint township general hospital", but that no power is granted to such board to lease a hospital facility. Section 513.171, Revised Code, provides that a joint township district hospital board may lease the hospital property to a charitable corporation "in lieu of vesting the control and operation of the hospital * * * in the board of hospital governors pursuant to sections 513.16 and 513.17 of the Revised Code." Hence the board of governors is a statutorily-created agency of the joint township district hospital board whose purpose is to operate the hospital. It is not an independent entity, as is a charitable corporation. Thus it cannot be regarded as a separate "hospital agency", for purposes of Chapter 140, Revised Code, to which a hospital facility can be leased. The method by which the control of the hospital is transferred to the board of governors does not involve a lease, under Section 513.171; and since a board of governors is created by statute, it only has such powers as are given to it by statute. See Opinion No. 1971, Opinions of the Attorney General for 1950.

In specific answer to your question it is my opinion, and you are so advised, that:

1. A board of hospital governors is not a hospital agency, as defined by Section 140.01 (A), Revised Code.

2. A joint township district hospital board may not lease a hospital facility to a board of hospital governors under Section 140.05, Revised Code.