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COUNTY HOSPITALS

1. ACQUISITION FOR A NOMINAL CONSIDERATION—ONCE ACQUIRED, ADMINISTERED AS PROVIDED §339.06, RC.
2. TUBERCULOSIS HOSPITAL TO BE MANAGED AFTER ACQUISITION AS PROVIDED IN §339.33, RC.
3. NO NECESSITY FOR TAX LEVY WHEN ORIGINAL ACQUISITION IS FOR NOMINAL CONSIDERATION; §339.01, RC.
4. LEVY FOR OPERATING EXPENSES MAY BE MADE BEFORE HOSPITAL COMPLETED OR ACQUIRED.
5. CERTIFICATE OF AVAILABILITY OF FUNDS UNNECESSARY—§5705.41, RC—GIFT OR NOMINAL CONSIDERATION.

SYLLABUS:

1. When a hospital or hospital building is transferred to a county as a gift or for a nominal consideration only and no portion of the county hospital building fund provided in Section 339.04, Revised Code, is expended to effect such transfer, then such transfer is made to the county under the authority of the board of county commissioners but after such hospital is acquired by the county it shall be managed

and controlled by the board of county hospital trustees under the provisions of Section 339.06, Revised Code.

2. A hospital or hospital building to be used for the care and treatment of persons suffering from tuberculosis may be acquired for the county by a board of county commissioners under the provisions of Section 339.31, Revised Code, and after acquisition shall be managed and controlled by the board of hospital trustees provided by Section 339.33, Revised Code.

3. The submission to the electors of a tax levy or bond issue as provided in Section 339.01, Revised Code, is required only when funds are to be expended for the original purchase, appropriation, or construction of a hospital or hospital buildings and is not required to authorize the assumption of the continuing expense of operating such hospital or hospital buildings.

4. In submitting to the electors of a county a request for a special tax levy to provide funds for the operating expense of a county hospital for the next fiscal year, there may be included amounts intended for the expected expense of operating a hospital facility not yet completed or acquired but expected to be completed or acquired within the next fiscal year.

5. When a hospital or hospital building is transferred to a county as a gift or for a nominal consideration so that no tax levy or bond issue need be submitted under the provisions of Section 339.01, Revised Code, and no certificate of availability of funds as provided by Section 5705.41, Revised Code, is necessary, then the county may enter into a conditional agreement to accept such transfer conditioned on the passage of a tax levy to provide funds for the operation of such hospital or hospital building.

Columbus, Ohio, July 12, 1957

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

A portion of your request for my opinion reads as follows:

“Negotiations are now being held between the City of Cleveland and the Board of County Commissioners of Cuyahoga County for the transfer to the County, under a single agreement, of the following three city-owned institutions:

Blossom Hill School for Girls, located in Brecksville,
Ohio,

Cleveland Boys' School, at Hudson, Ohio,
Cleveland City Hospital.

“Blossom Hill School for Girls and the Cleveland Boys' School are two juvenile correctional schools which have been owned and operated by the City of Cleveland for many years. City Hospital is one of the largest municipally-owned hospitals in Ohio

and likewise has been owned and operated by the City of Cleveland for many years. City Hospital is a general hospital but has a number of units or pavilions which are used as follows:

Lowman Pavilion, used for the care and treatment of persons suffering from tuberculosis.

Toomey Pavilion, used for the treatment of contagious diseases, one unit of which is used for the care and treatment of children one to six years old suffering from tuberculosis.

Hamann Pavilion, used for general medical and surgical services including surgery for persons suffering from tuberculosis.

"It is proposed by the City of Cleveland that these three institutions be transferred and conveyed to the County for the purchase price of one dollar, effective January 1, 1958. The City is to continue its responsibility for retiring the outstanding bonded indebtedness on these institutions, which has already been authorized and approved by the City voters and the City council. The City will also use the proceeds of bond issues now available for the completion of an out-patient department at City Hospital, for which the City has already committed itself with architects and building contractors.

"Cuyahoga County will assume complete financial responsibility for the management, operation and maintenance of these three institutions, and will assume the total financial responsibility for the City's indigent sick at City Hospital. It is further proposed that the County, following the transfer and as part of the consideration therefor, shall construct a new school building at the Boys' School and new chapels at the Boys' School and Blossom Hill, estimated to cost about \$650,000. For this purpose the County must agree to submit the question of issuing bonds of the County in this amount to a vote of the electors.

"Although no funds will be needed to acquire these three institutions, approximately \$3,000,000 will be required for their annual operation. In order to finance these operating costs it will be necessary for the board of county commissioners to submit tax levies to the electors of the County as provided by R. C. 5705.191 or 5705.22, or both, 5705.20 and 5705.24.

"It is contemplated that the two juvenile correctional schools would be operated as county children's homes under the provisions of R. C. 307.02 and 335.16(J).

"Cuyahoga County has a county hospital for the care and treatment of persons suffering from tuberculosis, the management and control of which are in a board of trustees of the county tuberculosis hospital, popularly known as Sunny Acres, as pro-

vided in R. C. 339.31 et seq. This county also has a county hospital, popularly known as Highland View, which was constructed under the provisions of R. C. 339.01 et seq. and is being operated by a board of county hospital trustees, as provided by these statutes. We have advised the county commissioners that in the event they acquire City Hospital, insofar as it is a general hospital it would have to be operated by the present board of trustees of the Cuyahoga County Hospital as a branch thereof. 1956 Opinion of the Attorney General No. 7100 and 1951 Opinion No. 726. We have also advised the county commissioners that existing units and pavilions at City Hospital devoted to the care and treatment of persons suffering from tuberculosis would have to be under the management, control and operation of the board of trustees of the County Tuberculosis Hospital as provided in R. C. 339.33.

“As to the acquisition of City Hospital, since no original purchase, appropriation or construction of a county hospital or buildings is involved, we are in doubt as to the proper procedure to acquire this facility. Accordingly, we submit the following questions.

“1. Does the board of county commissioners have authority to acquire City Hospital and then turn that portion of it exclusive of the tuberculosis units and pavilions over to the board of trustees of the county hospital to operate, and turn the tuberculosis units and pavilions over to the board of trustees of the county tuberculosis hospital; or do the boards of trustees of the county hospital and the county tuberculosis hospital, since they will be charged with the operation of City Hospital, have complete charge of these negotiations for its acquisition, and in the event they determine to acquire it, to take title in the name of the county?

“2. Regardless of whether your answer to question No. 1 is that the board of county commissioners or that the respective boards of hospital trustees have authority to negotiate for this acquisition, must the board of county commissioners, before City Hospital can be acquired and the transfer made, first submit to the electors a tax levy and thus obtain an expression of the electors of the county of their wishes as to whether the county should take over the hospital although the proceeds of such tax levy are not needed for the purchase, equipment or repair of said hospital but only for operating funds for the ensuing year or years after the acquisition?

“3. In the event you determine that it is not necessary, prior to the acquisition of City Hospital, to first submit a tax levy to the electors, may the board of county commissioners enter into an agreement with the City of Cleveland to accept a transfer of City Hospital on condition that the electors of the county approve a tax levy for the operation of the hospital? In other words, can the board of county commissioners agree and undertake to submit

such a tax levy to the electors for the necessary operating funds even though at the time of submission of the levy the county would not be the owner of the hospital? Furthermore, do the county commissioners have the authority to submit such tax levy before the acquisition of City Hospital land and buildings?"

In this opinion I will consider your three enumerated questions relative to the transfer of the hospital. Your questions relative to the transfer of the juvenile correctional schools will be treated in a subsequent opinion.

The answer to your first question is dependent on the answer to your second, which I shall therefore first consider.

Section 339.01, Revised Code, reads in part:

"The board of county commissioners may purchase, 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."

(Emphasis added.)

The nominal consideration of one dollar to be paid for the hospital is a mere formality of transfer, and the county cannot be said to be expending any money for the purchase. Submission to the electorate is not, then, required unless it can be said that the purpose of the election prescribed by Section 339.01, *supra*, is not merely to secure approval of the proposed expenditure to purchase or construct but is to secure authorization for the assumption of the continuing financial burden of operating and maintaining a hospital or hospital building. In my opinion, the latter is not the purpose. The statutory language contradicts this view. Moreover, under the provisions of Section 339.12, Revised Code, a board of county commissioners can lease a municipal hospital for a term of years, and no authorization by the electorate is required to enable such board to assume the expense of operating this hospital during the term of the lease. I conclude, therefore, that the election required by Section 339.01, *supra*, does not concern assumption of the expense of operating and maintaining a hospital but only the original expenditure of purchasing, appropriating or constructing a hospital or hospital buildings.

With regard to your first question I refer you to Opinion No. 330,

Opinions of the Attorney General for 1957, p. 103, in which there appears the following language:

“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.”

Under the provisions of Section 339.04, Revised Code, all funds arising from the special tax levy or bond issue required by Section 339.01, Revised Code, are placed in a fund which can be expended only on the order of the board of county hospital trustees. Thus any construction or purchase, money for which is derived from such a fund, is under the authority and supervision of such trustees. When, however, a hospital building is acquired without the expenditure of money from this county hospital building fund, that acquisition can be undertaken by the board of county commissioners under the general authority granted them by Section 339.01, Revised Code. The hospital acquired would then be operated by the board of county hospital trustees as provided by Section 339.06, Revised Code.

As to the portion of the municipal hospital used for the care and treatment of persons suffering from tuberculosis, such portion may be acquired by the board of county commissioners under the provisions of Section 339.31, Revised Code, and the control thereof shall be vested in a board of trustees as provided by Section 339.33, Revised Code.

With regard to your third question it is my opinion that in submitting to the county budget commission a request for funds for operating expenses in the coming year or in submitting to the electors a request for a special tax levy for such operating expenses the board of county commissioners and the board of county hospital trustees may include amounts intended for operating a hospital facility not yet ready for operation or not yet acquired but expected to be ready or acquired so that funds for its operation must be available in the coming year. If such were not the case a county might be deprived of the full use of a hospital facility during the year when it was built or acquired.

Further, I can see no impediment to the conditional agreement you suggest in your third question. The transfer of the hospital to the county involves no expenditure of money by the county such as would necessitate

the certificate of availability of funds required by Section 5705.41, Revised Code. A promise by the county to accept the transfer may be conditioned on the passage of the tax levy to provide operating funds.

As you are aware, the facts presented in your letter suggest certain latent problems not mentioned in your enumerated questions. I have, however, confined myself to considering your specific enumerated questions.

In specific reply to your three enumerated questions, it is my opinion, and you are advised that :

1. When a hospital or hospital building is transferred to a county as a gift or for a nominal consideration only and no portion of the county hospital building fund provided in Section 339.04, Revised Code, is expended to effect such transfer, then such transfer is made to the county under the authority of the board of county commissioners but after such hospital is acquired by the county it shall be managed and controlled by the board of county hospital trustees under the provisions of Section 339.06, Revised Code.

2. A hospital or hospital building to be used for the care and treatment of persons suffering from tuberculosis may be acquired for the county by a board of county commissioners under the provisions of Section 339.31, Revised Code, and after acquisition shall be managed and controlled by the board of hospital trustees provided by Section 339.33, Revised Code.

3. The submission to the electors of a tax levy or bond issue as provided in Section 339.01, Revised Code, is required only when funds are to be expended for the original purchase, appropriation, or construction of a hospital or hospital buildings and is not required to authorize the assumption of the continuing expense of operating such hospital or hospital buildings.

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5. When a hospital or hospital building is transferred to a county as a gift or for a nominal consideration so that no tax levy or bond issue

need be submitted under the provisions of Section 339.01, Revised Code, and no certificate of availability of funds as provided by Section 5705.41, Revised Code, is necessary, then the county may enter into a conditional agreement to accept such transfer conditioned on the passage of a tax levy to provide funds for the operation of such hospital or hospital building.

Respectfully,

WILLIAM SAXBE

Attorney General