

1500.

DISTRICT TUBERCULOSIS HOSPITAL—COUNTY COMMISSIONERS
WITHOUT AUTHORITY TO BORROW MONEY OR ISSUE BONDS
FOR PURPOSE OF REPLENISHING MAINTENANCE FUND OF SAID
HOSPITAL.

Under section 3152 G. C., county commissioners of counties composing a tuberculosis hospital district may not borrow money or issue bonds for the purpose of replenishing or paying back to the maintenance fund of the district hospital moneys expended from said maintenance fund for betterments to the hospital of such district.

COLUMBUS, OHIO, August 18, 1920.

HON. THOMAS F. HUDSON, *Prosecuting Attorney, Springfield Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of a request for the opinion of this department from yourself and others as prosecutors of Clark, Greene, Madison and Champaign counties, constituting a tuberculosis hospital district, relative to the power and authority of county commissioners in such matters. Noting that the letter appears to have been sent from your office, it is deemed advisable to direct the opinion to you and to enclose a copy to each of the other prosecuting attorneys.

As your letter is understood, you inquire:

1. Whether the commissioners of the county composing the district have power to borrow money or issue bonds for the repayment of the costs of betterments and additions to the district hospital, which have been paid for out of the maintenance fund, which is a fund created to defray the current expenses of the hospital.
2. In case such power is found to exist, should each county issue bonds for its pro rata share of the total so expended and may any of such counties raise their respective share of such expense by tax levy for the current year, while others of said counties issue bonds for the same purpose?

As pointed out in opinion 1265, directed to the prosecuting attorney of Columbiana county, copy of which is enclosed, relating to tuberculosis hospitals, the sections have been subjected to frequent amendment.

Section 3152 originally provided that.

“The board of commissioners of counties jointly maintaining a district hospital for tuberculosis shall make annual assessments of taxes sufficient to support and defray all necessary expenses of such hospital.”

In 103 O. L., 495, this section was amended by the insertion of this new matter:

“To meet the expenses incurred in the purchase of the site and for the erection of buildings or for the purpose of enlarging, improving or rebuilding thereof, the commissioners may borrow such sum or sums of money as may be apportioned to the county, at a rate of interest not to exceed six per cent. per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof. Such principal and interest shall be paid as provided in section 2435 of the General Code.”

The language quoted from the section as it originally stood referring to defraying the necessary expense of maintenance, was unchanged and continued in the section.

From a consideration of this state of the law contained in this section, it must be concluded that the legislature has evidenced an intention to require or authorize what may be called maintenance funds to be raised by tax levies and to authorize the borrowing of money or issuance of bonds for "the purpose of enlarging, improving or rebuilding" the hospital.

In one part of your letter you refer to the subject of the \$6,000 expenditure as for "betterments," but in another part it is noted that the reference is to "these betterments and additions to said hospital." It is suggested that an addition would seem to be an enlargement and may be a rebuilding of the hospital as those terms are used in this section, but that "betterments" is not quite sufficiently definite to justify a categorical answer to your question in its entirety. But it may be said that if by the term "betterments and additions" is meant that the hospital is to be enlarged, improved or rebuilt, the answer to your first question is that money may be borrowed and bonds issued for such purpose. Otherwise it is believed that authority to issue bonds for such purpose does not exist in this section and no other section is found authorizing the issuance of bonds or the borrowing of money for maintenance purposes. Of course it requires direct authority for the issuance of bonds. No authority being found for borrowing money or issuing bonds for maintenance purposes in the first instance, of course it follows that no such power exists to replace money already paid out for such purpose. Furthermore, even if the \$6,000 was expended for a purpose within the meaning of section 3152, as amended, that is, for enlarging, improving or rebuilding in whole or in part, but was paid from the maintenance fund, still bonds could not be issued or money borrowed for the specific purpose of replenishing or paying back to a maintenance fund, as the latter purpose is not within or among the purposes defined by this section for which such money may be borrowed or such bonds issued.

It is believed that while the raising of maintenance funds by borrowing or issuing bonds is not authorized, it does not follow that the raising of the funds necessary for the erection, enlargement, improvement or rebuilding of the hospital by levies is prohibited, as the power in this particular instance to issue bonds presupposes and carries with it the power to levy a tax, and it would seem logical that the matter of issuance of bonds, when authorized, is a matter upon which each county acts individually, and if the purpose for which the bonds are issued squares with that part of section 3152, above quoted, some of the counties may issue bonds for that purpose while others may raise their respective shares by tax levy.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1501.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
SCIOTO COUNTY, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, August 19, 1920.