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REVENUES OF A TUBERCULOSIS HOSPITAL MAY BE USED FOR PATIENTS ADMITTED WHO HAVE ILLNESSES OTHER THAN TUBERCULOSIS—§§5705.20, 339.45, R.C.

SYLLABUS:

Revenues derived from a levy authorized by Section 5705.20, Revised Code, for the support of a tuberculosis hospital are not prohibited by the provisions of Section 339.45, Revised Code, from being used for the care, treatment and maintenance of patients admitted to such hospital with illnesses other than tuberculosis.

Columbus, Ohio, June 28, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Inquiry has been made by one of our examiners as to the propriety of using a surplus in revenues arising from a special tuberculosis levy authorized by R.C. 5705.20, Revised Code, to

pay for non-tubercular activities permitted by Section 339.45 Revised Code.

“The particular levy in question appeared on the ballot, as follows:

‘A RENEWAL of part of an existing levy, being a reduction of ONE TENTH (.1) of ONE MILL, to constitute a tax for the benefit of County, Ohio, for the purpose of SUPPORT OF THE MEMORIAL HOSPITAL, A TUBERCULOSIS HOSPITAL, at a rate not exceeding FIVE TENTHS (.5) OF ONE MILL for each ONE DOLLAR of valuation’

“May the revenues of a levy, as above, authorized by Section 5705.20, Revised Code, for the support of tuberculosis hospitals or clinics be used for the treatment of other illnesses, or must these ancillary purposes be supported by revenues from another source by reason of the second paragraph of Section 339.45 Revised Code.”

I am also in receipt of copies of correspondence concerning this question from the prosecuting attorney of the county in which the tuberculosis hospital is located, and your communication requesting me to consider such correspondence herein.

It appears from such correspondence that the trustees of the hospital are contemplating the use of part of the hospital for the care and treatment of persons with disabilities and diseases other than tuberculosis. It further appears that as a result of the special levy in question, the hospital now has a cash balance on hand, which the trustees of the hospital would like to use to start a program of physical rehabilitation to enable such persons to become better able to care for themselves.

Section 339.45, Revised Code, provides as follows:

“The board of trustees of a county or a district tuberculosis hospital may admit patients to such hospital for the maintenance, care, and treatment of disabilities and diseases other than tuberculosis, and for the care of the aged, under such terms and conditions as prescribed by the trustees and approved by the department of health, under the authority conferred by section 339.20, of the Revised Code.

“Costs of hospitalization for non-tuberculosis diseases and disabilities, and the care of the aged shall not be a charge upon public funds appropriated or levied for the care, treatment, and maintenance of tuberculosis patients whether in hospitals or clinics.

“The superintendent of a county or district tuberculosis hospital providing for the care, treatment, and maintenance of tuberculosis patients and patients with other illnesses shall have the entire charge and control of the hospital.”

I note that the levy in question was for the purpose of the support of a *tuberculosis hospital*, whereas Section 339.45, *supra*, refers to public funds appropriated or levied for the care, treatment, and maintenance of *tuberculosis patients*. The question, therefore, is whether revenues derived from the levy in question are public funds levied for the care, treatment, and maintenance of tuberculosis patients.

Section 5705.20, Revised Code, (formerly Section 5625-15a, General Code), now provides for special levies in three situations as follows:

- (1) for the support of tuberculosis hospitals, or
- (2) for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted, or
- (3) for the support of tuberculosis clinics

Section 5625-15a, *supra*, originally provided for a special levy in only one situation, i.e. for the support of tuberculosis hospitals. In Opinion No. 394, Opinions of the Attorney General for 1945, page 505, the then Attorney General held that under the provisions of Section 5625-15a, *supra*, as then in effect, a board of county commissioners could not levy a tax for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which the board had contracted under Section 3139-18, General Code (now Section 339.38, Revised Code). Although revenues derived from a levy for the support of a tuberculosis hospital might be used for the care, treatment and maintenance of tuberculosis patients in such hospitals, according to Opinion No. 394, *supra*, a levy for the support of the hospital is not the same as a levy for the support of tuberculosis patients.

Paragraphs four and five of the syllabus in Opinion No. 5584, Opinions of the Attorney General for 1942, page 783, provide as follows:

“4. When a special levy has been voted for the support of a county tuberculosis hospital, the county commissioners are not compelled to appropriate each year the entire amount derived from such levy, but the unappropriated balance must be held in the special fund set up in compliance with Section 5625-9, General

Code, for future appropriation for the maintenance and operation of such hospital.

“5. The county commissioners are without a power to transfer to the general fund moneys produced by a special levy voted by the electors for maintenance of a county tuberculosis hospital, so long as such hospital is being maintained and operated.”

Had Section 339.45, *supra*, converted the hospital to some totally different type of institution, or had the newly authorized activities been unrelated to the ordinary purposes of a hospital, it could be argued that use of the funds in question for this new purpose would constitute a use other than that authorized by the voters. In my opinion, however, Section 339.45, *supra*, merely enlarged the character of patients and treatments previously authorized by statute and that use of the levy for this purpose would still be a use for the “support of the Memorial Hospital, a tuberculosis hospital.

Accordingly, it is my opinion and you are advised that revenues derived from a levy authorized by Section 5705.20, Revised Code, for the support of a tuberculosis hospital are not prohibited by the provisions of Section 339.45, Revised Code, from being used for the care, treatment and maintenance of patients admitted to such hospital with illnesses other than tuberculosis.

Respectfully,
MARK MCELROY
Attorney General