

OPINION NO. 95-025

Syllabus:

R.C. 339.06(F), as amended in Am. Sub. S.B. 150, 121st Gen. A. (1995) (eff. Nov. 24, 1995), authorizes the administrator of a county hospital or his designee to "employ, contract with, or grant privileges to, such physicians, nurses, and

other employees as are necessary for the proper care, control, and management of the county hospital and its patients."

To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio
By: Betty D. Montgomery, Attorney General, September 25, 1995

You have requested an opinion concerning the authority of the board of trustees of a county hospital to contract with corporations or other entities for the services of physicians or for non-clinical services. The questions with which you are concerned are set forth in a letter accompanying your opinion request and read as follows:

1. Whether a county hospital established pursuant to [R.C.] Chapter 339 has authority in obtaining the services of physicians, either impliedly under [R.C. 339.06(A) or R.C. 339.06(F)] or any other provision, to contract for the professional services of physicians or physician groups through corporations or other entities as independent contractors and not as employees.
2. Whether a county hospital has the authority, impliedly under [R.C. 339.06(A), R.C. 339.06(F)] or any other provision, to contract with corporations or other entities for the provision of various non-clinical services which the board deems necessary to the effective operation of the hospital.

R.C. 339.02 provides for the establishment of a board of county hospital trustees. Pursuant to R.C. 339.06(A), "[t]he board shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient." Because it is a creature of statute, a board of county hospital trustees may exercise only those powers that have been either expressly or impliedly conferred upon it by the General Assembly. 1990 Op. Att'y Gen. No. 90-041.

It is well established, however, that a board of county hospital trustees has broad authority with respect to the management and control of the county hospital. The breadth of such a board's discretion was summarized in 1952 Op. Att'y Gen. No. 1126, p. 97, 103, as follows:

I am not unmindful of the general rule which limits the powers of public officers and boards created by statute quite strictly to the powers set forth in the statutes relative thereto and to those powers that are necessarily implied therefrom, but I also recognize the principle that where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be vested in such trustees, and that the statute can not undertake to enumerate in detail every movement that they may make. In this case the statute not only gives the board of trustees "the entire management and control of the hospital," but gives it also the power to "establish such rules for the government thereof as it deems expedient."

Your questions specifically concern the authority of a board of county hospital trustees with respect to contracting with a corporation or other organization for the provision of

physicians' services or for other non-clinical services. For ease of discussion, I will address both of your questions at the same time.

Pursuant to R.C. 339.06(F), a board of county hospital trustees "shall employ an administrator, whose title, salary, and other benefits shall be determined by the trustees." In administering the county hospital, the county hospital administrator is required to act in accordance with policies set by the governing board of the hospital. R.C. 339.07.

Among the responsibilities of the hospital administrator is the duty to acquire the services of necessary personnel for the hospital. At the time you submitted your opinion request, R.C. 339.06(F) stated in pertinent part:

The administrator or his designee shall employ such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients. The board shall adopt the wage and salary schedule for the county hospital. Such physicians, nurses, and other employees may be suspended or removed by the administrator or his designee at any time when the welfare of such institution warrants suspension or removal. Such physicians, nurses, and other employees shall be in the unclassified civil service, pursuant to [R.C. 124.11]. (Emphasis added.)

This version of R.C. 339.06(F) thus imposed upon the administrator of the county hospital or his designee a mandatory duty to "employ such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients," and stated that such employees "shall be in the unclassified civil service." See R.C. 124.11(A)(20) (included in the unclassified service are "[p]hysicians, nurses, and other employees of a county hospital who are appointed pursuant to [R.C. 339.03¹ or R.C. 339.06]" (footnote added)). See generally *Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (the use of the word "shall" generally indicates the mandatory nature of the duty so described). Having provided so specifically the means by which a county hospital was to obtain the services of necessary physicians and others, the General Assembly indicated its intent that the county hospital use no other means, such as contracting with physicians or other entities for the services of physicians, to obtain the services of necessary physicians, nurses, and other persons. See generally *City of Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 137 N.E. 6, 8 (1922) (where a statute "in terms limits a thing to be done in a particular form, ... it necessarily implies that the thing shall not be done otherwise"). The plain language of former R.C. 339.06(F) thus compelled the conclusion that a county hospital was limited in obtaining the services of physicians, nurses, and other employees "necessary for the proper care, control, and management of the county hospital and its patients" through employing, rather than contracting with, such persons.

As stated in the information accompanying your opinion request, however, it has become common practice among hospitals throughout the state to contract with physicians and others for the provision of various services needed by the hospitals. In part, this practice allows each

¹ R.C. 339.03 permits a board of county hospital trustees to employ help necessary to perform its clerical work and to "employ counsel and institute legal action in its own name for the collection of delinquent accounts."

hospital greater flexibility and economy in providing services as needed for both the hospital and its patients. In recognition of the benefits that would be afforded to county hospitals and their patients through such arrangements, I proposed that the General Assembly amend R.C. 339.06(F) to authorize such practices. The General Assembly has seen fit to accommodate this practice by amending R.C. 339.06(F) to read in pertinent part as follows:

The administrator [of the county hospital] or his designee shall employ, **CONTRACT WITH, OR GRANT PRIVILEGES TO**, such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients.... Such physicians, nurses, and other employees, **IF EMPLOYED**, shall be in the unclassified civil service, pursuant to section 124.11 of the Revised Code. (New language indicated by upper case letters.)

Am. Sub. S.B. 150, 121st Gen. A. (1995) (eff. Nov. 24, 1995). By so amending R.C. 339.06(F), the General Assembly has expanded the means available to county hospitals to obtain necessary services. Based upon this amendment to R.C. 339.06(F), I conclude that a county hospital is no longer restricted to hiring employees for the provision of services to the hospital and its patients, but may now "employ, contract with, or grant privileges to, such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients."

Based upon the foregoing, it is my opinion, and you are hereby advised that, R.C. 339.06(F), as amended in Am. Sub. S.B. 150, 121st Gen. A. (1995) (eff. Nov. 24, 1995), authorizes the administrator of a county hospital or his designee to "employ, contract with, or grant privileges to, such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients."