

3386

HOSPITAL FACILITIES CONSTRUCTED BUT NO CORPORATION TO RUN THEM—THE RIGHT TO OPERATE THE FACILITIES REVERTS TO THE BOARD OF COUNTY HOSPITAL TRUSTEES—§339.14, R.C., OPINION 788, OAG, 1957.

SYLLABUS:

Where, pursuant to Section 339.14, Revised Code, hospital facilities have been constructed but no proper corporation is available to operate the hospital, the county hospital commission and the board of county commissioners may, by resolution of each, agree that the control and management of said hospital facilities shall revert to the county; and upon such agreement, the hospital facilities in question should be operated by the board of county hospital trustees under the provisions of Section 339.06, Revised Code.

Columbus, Ohio, October 30, 1962

Hon. John F. DeMuth, Prosecuting Attorney  
Paulding County, Paulding, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Paulding County Hospital Commission was duly organized under the provisions of Sec. 339.14 of the Revised Code of Ohio and built and equipped the new Paulding County Hospital which has been in operation for more than a year. The Paulding County Hospital Commission never leased the new hospital facilities to any corporation as provided for in this section and the new hospital has in fact been operated by the old existing Board of Hospital Trustees of the county.

"R.C. Sec. 339.14 (I) provides that the County Hospital Commission has continuing jurisdiction over the hospital facilities unless the lease to a lessee corporation is terminated and then the hospital facilities and equipment revert to the county to be operated as provided by law.

"I should like to have your formal opinion on the following questions:

"1. In a case where hospital facilities are not leased under the provisions of R.C. Sec. 339.14 does the control and management of a new county hospital built and equipped under said section automatically revert to the county to be operated as provided by law?

"2. In such a case what would be the formal procedure for effecting such a reversion?"

Section 339.14, Revised Code, to which you refer, reads, in part, as follows:

"(A) Upon application to the board of county commissioners by an Ohio corporation or corporations, organized for charitable hospital purposes and not for profit, in this section called participating hospital corporations, the board of county commissioners may, after a determination that the preservation of the public health require additional hospital facilities in the county, appoint a hospital commission of not less than three members, in this section called the county hospital commission. \* \* \*

"(B) The county hospital commission after consultation with participating hospital corporations and agreement as to their respective needs and the needs of the public of the county for

hospital service may, with the consent of the board of county commissioners, *accept conveyances of land*, situated within the county, from any person and may, with the consent of the board of county commissioners, enter into an agreement before or after such conveyance with such person or with any Ohio corporation organized for charitable hospital purposes to lease to such corporation upon such terms as may be agreed upon *such* land together with *buildings thereafter constructed thereon* and furniture, fixtures and equipment therein for use as a general hospital or a facility thereof, said lease shall be for a period not to exceed fifty years, renewable for a like term and may contain provisions for the sale of such property to the lessee corporation upon the unanimous consent of the board of county commissioners for a purchase price representing not less than the actual cost to the county, less depreciation, computed at the rate customarily applied to similar structures.

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“(D) The county hospital commission may take all steps necessary for the construction and equipment of hospital facilities of any kind or character on said land and may request the board of county commissioners to submit to the electors of the county, in the manner provided in sections 133.01 to 133.48, inclusive, of the Revised Code, a bond issue to cover the cost of such construction and equipment at a general or special election, the provisions of section 133.12 of the Revised Code notwithstanding.

“(E) If a bond issue provided for above is approved by the vote of a majority of the electors voting on the issue, the board of elections for such county shall certify the results of such election as provided in section 133.14 of the Revised Code, and the board of county commissioners shall proceed with the authorization and issuance of the bonds or notes in anticipation thereof, in the manner provided by law for the issuance of bonds and notes by boards of county commissioners.

“(F) The county hospital commission shall take title in the name of the county to any land conveyed pursuant to this section, and shall have final approval of all plans and specifications for the erection and equipping of the hospital facilities contemplated in this section. The commission may employ architects and such other assistants as may be required in the construction, including supervision, and pay the expenses thereof out of the funds provided for such hospital facilities.

“(G) All funds arising from a bond issue for the construction of hospital facilities on land conveyed to the county, as provided above, shall be placed in the county treasury to the credit of a fund to be known as the ‘county hospital facility fund.’ Such fund shall be paid out on the order of the county hospital commission,

certified by the chairman and secretary of the commission. *All rentals or other revenue received by the county hospital commission, pursuant to leases made under this section, shall be paid into the bond retirement fund.*

“\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*”

“(I) The county hospital commission has continuing jurisdiction of the hospital facilities constructed under this section provided that the lessee corporation shall be solely responsible for the administration, maintenance, and operation of the leased facilities including the selection of personnel. In the event the lessee corporation fails to administer, maintain, and operate the leased hospital facilities as a public general hospital or facility thereof, in accordance with the terms of the agreement, admitting patients to such general hospital without regard to race, creed, or color, then an opportunity is given by the county hospital commission to be heard on written charges, said lease shall be terminated by the county hospital commission, with the consent of the board of county commissioners, and the control and management of said hospital facilities together with all additions and equipment shall revert to the county to be operated as provided by law.

“\* \* \* \* \* \* \* \* \* \* \* \* \* \* \*”

(Emphasis added)

Under the provisions of division (B) of Section 339.14, *supra*, the county hospital commission, with the consent of the board of county commissioners, may accept conveyances of land, and may enter into an agreement with an Ohio non-profit corporation organized for hospital charitable purposes, to lease the land together with buildings to be erected thereon to said corporation. Under the language used it would appear that a conveyance of land is necessary and that no buildings are erected until the lease agreement is consummated. After the land is conveyed and the lease agreement entered into, the county hospital commission is authorized to construct and equip the hospital with funds raised from a bond issue. The hospital then becomes the property of the county but is operated and maintained by the lessee corporation, with the provision of reverter to the county for operation if there is noncompliance with the terms of the agreement.

It appears that in the instant case a county hospital commission was appointed in accordance with law, and I assume in this regard that an application was made to the board of county commissioners by an Ohio non-profit charitable corporation organized for hospital purposes. I also assume that a conveyance (or conveyances) of land was made to the

commission. From the facts as given, however, there never was a lease agreement before the hospital buildings were constructed, and I can only conclude that the construction of the hospital was not in accord with the terms of Section 339.14, *supra*. This leaves the question of the proper disposition of said hospital.

Division (I) of Section 339.14, *supra*, gives the county hospital commission continuing jurisdiction of the hospital facilities, but does not appear to give said commission the authority to operate the hospital. Clearly, the intention is that the hospital shall be operated by the lessee corporation or by the county "as provided by law" in the event of termination of the lease.

Although, under the law, the lease should have been entered into before the construction of the hospital, I believe that the hospital commission could have entered into a lease with a proper corporation *after* construction of the hospital. In this regard, it is the obvious intention of Section 339.14, *supra*, that a hospital is constructed to be operated by a non-profit hospital corporation, and effect should be given to this intention if it is possible to do so. 50 Ohio Jurisprudence 2d, 139, Section 169. Since such a lease was never entered into, however, I assume that no proper corporation was available to take over the operation of the hospital; and that in view of that fact, the question has arisen whether the county may now operate the hospital.

Under the language of Section 339.14, *supra*, where a lessee corporation fails to comply with the terms of the agreement, the agreement may be terminated. In such a case, the control and management of the hospital reverts to the county, and the hospital is to be operated "as provided by law."

The only provision by which the county may operate a hospital is that found in Section 339.01, et seq., Revised Code, providing for the construction of a county hospital. Section 339.06, Revised Code, provides for the operation of such a hospital by a board of county hospital trustees. The original construction of such a hospital may be made only where a tax levy or bond issue has been submitted to the electors of the county and approved by them (Section 339.01, Revised Code), but there is no requirement that the electors approve other than the original expenditure of purchasing, appropriating, or constructing a hospital or hospital buildings. In this regard, it has been held that a county may accept a hospital or

hospital building and that it shall then be managed by the board of county hospital trustees. On this point, the first paragraph of the syllabus of Opinion No. 788, Opinions of the Attorney General for 1957, page 296, provides:

“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 extended 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.”

I thus am of the opinion that the words “as provided by law” as found in division (I) of Section 339.14, *supra*, refer to operation by the board of county hospital trustees under Section 339.06, Revised Code.

In the instant case, there is, of course, no lease to be terminated. It is clear, however, that when the lessee is at fault, the intent of the section is to place the operation of the hospital in the county. Accordingly, I believe that where it is impossible to enter into a proper lease after construction of the hospital, the situation should be considered to be similar to that where the lessee fails to comply with the agreement, and that the county hospital commission and the board of county commissioners may then agree that the control and management of the hospital shall revert to the county, the hospital to be operated by the board of county hospital trustees. I further believe that the agreement by the commission and the board should be by resolution of each body.

Answering your specific questions, it is my opinion and you are advised that where, pursuant to Section 339.14, Revised Code, hospital facilities have been constructed but no proper corporation is available to operate the hospital, the county hospital commission and the board of county commissioners may, by resolution of each, agree that the control and management of said hospital facilities shall revert to the county; and upon such agreement, the hospital facilities in question should be operated by the board of county hospital trustees under the provisions of Section 339.06, Revised Code.

Respectfully,

MARK McELROY

Attorney General