

1971

1. HOSPITAL FUNDS—SECTION 4036 G. C.—CAN NOT BE READ SEPARATE AND APART FROM OTHER SECTIONS PERTAINING TO DUTIES AND POWERS OF TRUSTEES OF HOSPITAL FUNDS.
2. BOARD OF GOVERNORS—JOINT MUNICIPAL-COUNTY HOSPITAL—NO AUTHORITY TO ACCEPT OR ADMINISTER CASH DONATED TO BOARD FOR HOSPITAL PURPOSES.
3. BOARD OF GOVERNORS—NO AUTHORITY TO ACCEPT OR ADMINISTER DONATIONS GIVEN FOR SPECIFIC PURPOSES OR FOR INVESTMENT—THESE FUNCTIONS PROPERLY BELONG TO BOARD OF HOSPITAL TRUSTEES.
4. NO AUTHORITY TO PERMIT MERGING OF BOARD OF HOSPITAL TRUSTEES WITH BOARD OF GOVERNORS—COMPOSITION AND QUALIFICATIONS FOR MEMBERSHIP DIFFER—INCOMPATIBLE DUE TO DIVERSITY OF METHOD OF APPOINTMENT.

SYLLABUS:

1. Section 4036 of the General Code cannot be read separate and apart from the other sections pertaining to the duties and powers of trustees of hospital funds.

2. The board of governors of a joint municipal-county hospital has no authority to accept or administer cash donated to the board for hospital purposes.

3. The board of governors of such a hospital has no authority to accept or administer donations given for specific purposes or for investment. These functions properly belong to the board of hospital trustees.

4. There is no authority permitting the merging of the board of hospital trustees with the board of governors. The composition and qualifications for membership in these boards differ and are incompatible due to diversity of method of appointment.

Columbus, Ohio, June 29, 1950

Hon. James S. Peterson, Prosecuting Attorney
Fairfield County, Lancaster, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Your opinion is requested on the following:

"1. Has the Board of Governors appointed under authority of Section 4035-3 G. C. authority to accept and administer cash donated to the Board for general hospital purposes?

"2. Has such Board authority to accept and administer donations given for specific purposes and/or for investment?

"3. If there is no authority in such Board to receive gifts and bequests, could the Board or members thereof act in the capacity of Trustees of Hospital Funds under Section 4036 et seq.; that is, could the Board or its members act in a dual capacity as Board of Governors and as Trustees of Hospital Funds?

"Section 4036 provides for receipt of gifts donated for hospital purposes, but contains no qualifications or conditions upon acceptance of such gifts.

"Section 4037 requires appointment of a Board of Hospital Trustees, when the terms of the gift are that investment is to be made upon approval of an advisory committee, etc.

"Section 4038, -39, -40, -41 provide for appointment and regulations concerning the Board of Hospital Trustees.

"Can Section 4036 be read by itself so as to require no Board of Trustees when the bequest or gift does not require approval of an advisory committee?

“Section 4035-3 vests in the Board of Governors the same powers which previously had been held by the Director of Public Safety of the municipality and we find no legal authority granting the Safety Director the power to receive and administer gifts.

“The Board of Governors of the Lancaster-Fairfield County Hospital has already received a substantial gift granted for general hospital purposes with the sole restriction that it is not to be commingled with the municipal funds. It was the intention of the donor that the Board of Governors use the money as they see fit and the Board has proceeded to set up a depository and designate custodians of the fund. It is anticipated that several more such gifts will be received, but in view of the fact that the organization of our hospital is almost unique in this state, we find very little legal authority for procedure in this matter and believe it to be of sufficient importance to justify this request for your opinion.”

From the content of your letter I am assuming that the Lancaster-Fairfield County Hospital is a municipal hospital contributed to jointly by the county, as provided for in Section 4035-1 of the General Code.

In answering your inquiries regarding the authority of the Board of Governors appointed under Section 4035-3 of the General Code, it will be necessary to review sections of the Code setting up the various hospital authorities.

Section 4023 of the General Code provides for a Board of Hospital Commissioners, and reads as follows:

“When the council of a municipality enters upon and takes possession of grounds purchased, appropriated or otherwise obtained for hospital purposes, and, by resolution or ordinance, determines to erect thereon or rebuild a hospital, the erection and repair thereof, or any addition thereto, shall be vested in a board of five commissioners, called the ‘Board of Hospital Commissioners.’”

Section 4026 of the General Code outlines the powers of the Board of Hospital Commissioners, and reads as follows:

“The board may appoint a clerk, an architect, a superintendent, and other necessary employes, fix their compensation, and adopt a suitable plan for such hospital, and make all contracts for the erection and furnishing thereof. The salary of the appointees, and the plan of the hospital, before any contract for its erection is entered into, shall be submitted to and approved by the council.”

Section 4035 of the General Code provides for the management and supervision of the hospital to be given to the director of public safety. This section reads as follows:

“The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges as he deems expedient. Such director may also employ a superintendent, steward, physicians, nurses, and such other employes as he deems necessary, and fix the compensation of all persons so employed, which compensation shall be subject to the approval of the council.”

Section 4035-1 of the General Code provides that a municipality may enter into an agreement with a county or township for the construction, maintenance and operation of a municipal hospital to be jointly financed and governed.

Section 4035-2 of the General Code provides that where such an agreement is made, the board of hospital commissioners may be enlarged to admit members from the participating subdivision.

Section 4035-3, General Code, provides that a municipality shall have authority, when an agreement is made as provided in Sections 4035-1 and 4035-2, to establish a Board of Governors who shall exercise the authority of and substitute for the director of public safety as provided in Section 4035. Section 4035-3 reads as follows:

“Where such agreement concerns or includes participation of such district, or in the case of a county, of such county, in the maintenance and operation in such hospital, the municipality shall have authority to establish a board of governors to exercise, subject to such further limitations as may be imposed by said agreement, the powers vested under the provisions of section 4035 of the General Code in the director of public safety. Such board may include in its membership such representatives of the participating district, or in the case of a county, such representatives of the county, as shall have been provided for in said agreement. The municipal members of said board shall consist of the mayor, who by virtue of his office shall be its president, and four resident freeholders of the corporation, at least one of whom shall be a doctor of medicine, to be appointed by the mayor with the consent of council. The term of office of such municipal members shall be as provided in section 4025 of the General Code. Such board shall, subject to the terms of said agreement, establish such regulations and elect such officers, other than president, as its

members may determine. Its members shall be entitled to such compensation for their services as may be provided by said agreement.”

Section 4036 provides for the care of property donated for hospital purposes. This section reads as follows:

“In any municipal corporation which has become or may hereafter become the owner or trustee of property for hospital purposes, or of funds to be used in connection therewith, by deed of gift, devise or bequest, such property or funds shall be managed and administered in accordance with the provisions or conditions of such deed of gift, devise or bequest.”

Section 4037 provides for the change of investment of donated property and for its management and control by the board of hospital trustees.

Section 4039 provides for the powers and duties of the hospital trustees in handling gifts and donations. This section reads as follows:

“Such board of trustees shall have the right to apply, control and invest and reinvest the funds coming or arising from such gift, devise or bequest according to the terms and conditions on which acquired.”

Your first inquiry regards the authority of the Board of Governors appointed under Section 4035-3 of the General Code to accept and administer cash donated to the Board for general hospital purposes.

We must first consider the statutory authority granted the Board of Governors. This is found in Section 4085-3, General Code. This section provides that the Board shall have, subject to *limitations* imposed by agreement in organization “the powers vested under the provisions of Section 4035 of the General Code in the director of public safety.” This is the only power and authority granted to the said Board of Governors by statute.

Section 4035, as above mentioned and quoted, provides that the “director of public safety shall have the entire management and control of such hospital * * * and subject to the ordinances of council, shall establish such rules for its government * * * as he deems expedient. Such director may also employ * * *.”

It is clear that this section, 4035, gives the active managerial control to the director of public safety. This power is given to the Board of Governors, when so created, subject to certain limitations as may be agreed upon by the participating parties to the agreement as provided for in Section 4035-1. Clearly, the Board of Governors has no more power than that given the director of public safety.

Sections 4036, 4037 and 4039 make specific provision for the care and management of trust property and property donated for hospital use. Section 4036 specifically provides that property or funds given to a municipality either as owner or trustee for hospital purposes, shall be managed and administered in accordance with the provisions or conditions of the deed of gift, devise or bequest.

This section, 4036, comes under the heading in the General Code of "Trustees of Hospital Funds." The following section, 4037, provides for such a board of hospital trustees and provides that these trustees shall control the investments and reinvestments of funds. Section 4039 provides that the board of hospital trustees shall have the right to invest or reinvest the funds arising or coming from such donations according to the terms and conditions on which acquired.

The Board of Governors, as provided by statute, has the managerial duties of the administration of the hospital. It has the authority to hire employes, provide rules and regulations for admission and to fix compensation. The members of the Board of Governors, however, are not bonded, and there is no provision for their handling of funds, as such, or for their handling of investments or investing money. The duties of the Board of Governors, being statutory in origin, must be interpreted in the light of the surrounding circumstances and cannot be enlarged upon unless it can be shown to have been the distinct intent of the legislature to have so anticipated such enlargement.

The board of hospital trustees, however, is provided by statute to manage and invest trust properties and funds. Their functions are strictly financial in nature and they are required to give bond. While the statute creating this board of trustees is somewhat ambiguous in language, in that it provides for such a board only when deed of gift, devise or bequest requires investment to be made on the approval of an advisory committee appointed by the court or judge, it is sufficiently clear in intent to logically conclude that it was created to handle and invest donations

and gifts from any source. Section 4039 further clarifies the duties of this board by providing that the trustees have the right to invest and handle the gifts and bequests according to the terms and conditions on which acquired.

Therefore, it would seem logical that where no express provision was made by statute for the handling of money by the Board of Governors, and express provision was made for the handling of moneys by the board of trustees, the legislature intended the latter to be confined to handling gifts, bequests and donations and the former to be restricted to the managerial functions provided for by statute. The board of hospital commissioners, as seen from Section 4023, is solely for the purpose of erecting, rebuilding or purchasing a hospital.

Ohio Jurisprudence Vol. 21, at page 248, under title Hospitals and Asylums, §12, states as follows:

“Municipalities are given special power to appropriate and hold property for hospitals, and erect, maintain and regulate such institutions. The statutes provide for a board of hospital commissioners to take charge of the erection or repair of a hospital determined upon by a municipal council, and detail the manner of letting contracts, drawing plans, etc. But the director of public safety is given the entire management and control of the hospital when completed. * * *”

This power, that of the director of public safety, is the power and authority given to the board of governors as organized under Section 4035-3. The powers delegated to it are essentially managerial. There is nothing to indicate a transfer of power or authority from the board of hospital trustees to the board of governors, and therefore the power and authority to handle trust properties remains in the hands of the hospital trustees.

Your second question must be answered along the same reasoning as the first. It follows, then, that since no authority was given the director of public safety by statute to receive or administer donations, no power is given the board of governors to perform such functions.

Your third inquiry regards the possibility of the board of governors acting as a board of trustees or vice versa. Section 4035-3 provides for the appointment and terms of office of the municipal members of the board of governors. It provides that the mayor be a member, and be

president of the board, and four resident freeholders, at least one of whom shall be a doctor of medicine, all to be appointed by the mayor with the consent of council. It further provides that they may receive compensation.

Section 4038 provides for the appointment of the board of hospital trustees. It provides for a board of eight resident electors to be appointed by the sinking fund trustees, or, in event there are no sinking fund trustees, by the legislative body of the municipality. These members are to serve without compensation. Section 4040 further provides for an oath of office and requires bond of \$2500 for each member.

From a comparison of the composition of the two boards and their method of selection, it is clearly evident that while a person might qualify for one board, he would not for another. Also, the members of one board may receive compensation while members of the other may not. It is clearly a case of the legislature setting up two distinct boards, each to perform different functions and with different composition of membership. Had the legislature desired, it could have provided for one board acting in a dual capacity, but in this case there is no evidence to indicate such a desire. Therefore, we must stick to the statutes providing for the two separate boards.

Your letter also inquires whether or not Section 4036 can be read by itself. In the light of succeeding statutes relative to the handling of donations and gifts, and since the section comes under the title of "Trustees of Hospital Funds," the same title under which the organization, duties and powers of the board of hospital trustees are set out, it would seem logical that they should be considered together.

Section 4039 gives the board of trustees the power to apply, control and invest and reinvest the funds coming or arising from such gift, devise or bequest according to the terms and conditions on which acquired. It is to be noted that this section gives the board of trustees the right "to apply, control and invest and reinvest" funds derived from such gift or bequest. It clearly gives the physical control to these funds, although restricting this application and control to the terms and conditions of the donor. Ohio Jurisprudence Vol. 21, at page 250, under title Hospitals and Asylums, §14, states:

"The code provides for the care and management of property and funds donated for hospital purposes, through a board of hospital trustees. * * *"

It would therefore seem most reasonable to conclude that Section 4036 lays down the general principle that donations, gifts and bequests are to be administered and managed in accordance with the provisions or conditions of the donations, gifts or bequests, whereas Section 4039 creates the duty to “apply, control and invest and reinvest” the funds coming or arising from the donations in accordance with the terms and conditions on which acquired.

Therefore, in my opinion Section 4036 cannot be read separate and apart from other sections relating to the trustees of hospital funds, their powers and duties.

In summary, it is my opinion that :

1. The board of governors of a joint municipal-county hospital has no authority to accept or administer cash donated to the board for hospital purposes.
2. The board of governors has no authority to accept or administer donations given for specific purposes or for investment. These functions properly belong to the board of hospital trustees.
3. It is my opinion that there is no authority permitting the merging of the board of hospital trustees with the board of governors. The composition and qualifications for membership in these boards differ and are incompatible due to diversity of method of appointment.

Respectfully,

HERBERT S. DUFFY,
Attorney General.