

4173

TUBERCULOSIS—DUTY TO SUPERVISE ALL HOSPITALS AND OTHER INSTITUTIONS FOR CARE AND TREATMENT OF TUBERCULOSIS—PRIVATELY AND PUBLICLY OWNED—ENJOINED UPON STATE DEPARTMENT OF HEALTH—SECTION 3139 G. C.

SYLLABUS:

The duty of supervising all hospitals and other institutions for the care and treatment of tuberculosis, both privately and publicly owned is, under the terms of Section 3139, General Code, enjoined upon the State Department of Health.

Columbus, Ohio, December 22, 1948

Hon. John D. Porterfield, Director, Department of Health
Columbus, Ohio

Dear Sir:

I am in receipt of your request for my opinion which states:

“I hereby request your opinion as to the jurisdiction of the Department of Health in the supervision of a privately owned institution or hospital engaged in the maintenance, care and treatment of persons suffering from tuberculosis, and, specifically, if such institution is required by law to be maintained and operated in accordance with the regulations adopted by the Public Health Council.”

Sections 3139 through 3139-24, General Code, contain the provisions governing tuberculosis hospitals and sanatoria. Section 3139, General Code, provides:

“The state department of health shall have general supervision of all sanatoria, hospitals and other institutions engaged in the maintenance, care and treatment of persons suffering from tuberculosis, and shall formulate and enforce such rules and regulations for their government as it may deem necessary. By maintenance, care and treatment is meant proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational and prevocational rehabilitation, or other services, as the medical superintendent of each tuberculosis institution may prescribe. The location, plans and estimates of cost for all municipi-

pal, county and district hospitals for tuberculosis, and additions thereto, shall be submitted to and shall be approved by the state department of health. The formation of a district for the purpose of providing a hospital for the care and treatment of tuberculosis, for additions thereto, or for withdrawals therefrom, shall be submitted to and be approved by the state department of health." (Emphasis added.)

It will be noted that the above section, in the opening sentence thereof, provides that the state department of health shall have general supervision of *all* sanatoria, hospitals and other institutions engaged in the maintenance, care and treatment of persons suffering from tuberculosis. No distinction is made in said sentence between privately and publicly owned tuberculosis hospitals.

It is likewise noteworthy that said section provides that the location, plans and estimates of cost for all *municipal, county and district* hospitals for tuberculosis, and additions thereto, shall be submitted to and shall be approved by the state department of health.

Here, in the same section of law, the General Assembly, in dealing with the subject of supervision of hospitals for the care and treatment of persons suffering from tuberculosis provided that all of such hospitals shall be under the supervision of the state department of health, while with respect to the location and plans of tuberculosis hospitals to be constructed, that body provided for the approval of such location and plans only in the case of municipal, county and district hospitals. In other words, the legislative language used in the one instance is different from that used in the other. In regard thereto, it is stated in 37 O. Jur. page 570:

"* * * The use by the general assembly of certain language in one instance and wholly different language in the other indicates that different results were intended, and the courts have even so presumed. * * *"

See also *Inglis v. Pontius*, 102 O. S. 140; *Home Association v. Board of Education*, 105 O. S. 438; *Kiefer v. State*, 106 O. S. 285; *McNeill v. Hagerty*, 51 O. S. 255, and *Metropolitan Securities Company v. State Bank*, 117 O. S. 69.

Therefore, since it is clear that the General Assembly intended to enjoin upon the State Department of Health the duty of approving locations and plans only in connection with the construction of municipal,

county and district tuberculosis hospitals, it would seem to follow that in the case of supervision it was intended that the State Department of Health should have the power to exercise general supervision over all sanatoria and hospitals for the treatment of persons suffering from tuberculosis whether publicly or privately owned and operated.

Therefore, in specific answer to your question, you are advised that in my opinion the duty of supervising all hospitals and other institutions for the care and treatment of tuberculosis, both privately and publicly owned is, under the terms of Section 3139, General Code, enjoined upon the State Department of Health.

Respectfully,

HUGH S. JENKINS,
Attorney General.