

OPINION NO. 1209**Syllabus:**

Money advanced from the general fund of the county in payment of the costs of constructing a new county hospital building for which a special tax levy has been approved by the electors, under Section 339.01, Revised Code, may be repaid from the county hospital fund created pursuant to Section 339.04, Revised Code.

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To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William B. Saxbe, Attorney General, July 13, 1964

I am in receipt of your request for my opinion which reads as follows:

"The Board of Trustees of Maumee Valley Hospital, a County Hospital organized under Chapter 339 of the Ohio Revised Code, desire to construct a new hospital building. Although a 9.3 mill tax levy was passed by the

voters last year, the sum the levy is to produce will be collected over the next five years. The Trustees desire to build in the immediate future because of need and because of the availability of a Federal contribution.

"Since the Hospital Trustees appear to have no borrowing power under the statutes, the County Commissioners have agreed to use general fund money to erect the building, with the proviso that the general fund be reimbursed by the Hospital Trustees from the levy funds.

"May the Commissioners and the Hospital Trustees legally agree that the building will be built by advancing county funds, to be repaid by the Hospital trustees, over the life of the levy?"

If I understand the proposed arrangement correctly, monies from the general fund are to be used directly in payment of the costs of constructing a new building rather than transferred to the county hospital building fund created by Section 339.01, Revised Code. I note this distinction at the outset because it has been significant to the conclusion reached in at least two prior Opinions of the Attorney General which will be considered below.

The authority to construct or enlarge a county hospital or county hospital building is found in Chapter 339, Revised Code. Specifically, Section 339.01, Revised Code, provides:

"The board of county commissioners may purchase, appropriate, construct, enlarge, improve, and rebuild a county hospital or hospital buildings. No money shall be expended for the original purchase, appropriation, or construction of such hospital or buildings until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines, and pioneers of the county."

The authority to expend general fund monies for the construction of a county hospital building (the initial question to be answered) seems to be found in this section. The only condition upon the expenditure of money for construction of a hospital or hospital building is that a tax levy or bond issue be first approved by the electors, and that condition is met here. While this condition would indicate that the legislature contemplated that the hospital or hospital building would be paid for with funds from a special tax levy or with the proceeds from a bond issue, this limitation is not expressed in the statute and may not be logically implied in light of Section 5705.05, Revised Code, which provides in material part:

"The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation

from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for carrying into effect any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements * * *. The power to include in the general levy for current expenses additional amounts for purposes for which a special tax is authorized shall not affect the right or obligation to levy such special tax. * * *

"* * * * * * * *"

I am, then, of the conclusion that county general fund monies may be used in payment of all or a part of the costs of constructing a county hospital or county hospital building.

The next question is whether monies from the special tax levy, voted in this instance, may be paid into the general fund to reimburse that fund for the monies expended for the costs of constructing the new hospital building.

Section 339.04, Revised Code, provides:

"All funds arising from a special tax levy or bond issue for the purchase, appropriation, or construction of a county hospital, and contributions thereto, shall be placed in the county treasury to the credit of a fund to be known as the 'county hospital building fund.' Such fund shall be paid out on the order of the board of county hospital trustees, certified by the chairman and secretary of the board."

This section is to be read together with Section 5705.10, Revised Code, a part of the Tax Levy Law, which provides to the extent material:

"* * * * * * * *"

"All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

"* * * * * * * *"

Monies may not be transferred from one fund of a subdivision to another fund except under the circumstances and in the manner set forth in Sections 5705.14, 5705.15 and 5705.16, Revised Code. Generally speaking, transfers are authorized only from the unexpended balances of funds the purposes for which have terminated. A condition which I take it does not, or will not, exist here.

The validity of a transaction similar to that proposed here, was considered in Opinion No. 859, Opinions of the Attorney

General for 1951. It was concluded, as the syllabus discloses:

"For the purpose of paying the preliminary costs and expenses involved in the establishment of a garbage disposal district and constructing disposal plants as contemplated by Section 6600, General Code, funds may be advanced from the general fund of the county, and upon the sale of revenue bonds for such purpose as provided by Section 6600-6, General Code, a portion of the proceeds from such bonds may be used to reimburse the general fund for monies so advanced."

It was reasoned at page 654, in the text:

* * * * *

"If, as I have suggested, money is advanced from the general fund to meet these expenses, the repayment to that fund of the proceeds of the bonds when issued is certainly not an attempt to transfer an unneeded balance, but is a direct application of the funds to the original purpose for which they are raised. In other words, reimbursement is an entirely different matter from a transfer such as is contemplated by the statutes.

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This opinion was followed by Opinion No. 4342, Opinions of the Attorney General for 1954, the first branch of the syllabus of which concludes:

"1. Money appropriated from the general fund of a school district to a lunchroom rotary fund, pursuant to Section 3313.81, Revised Code, and clearly labeled or intended as an advancement, may be repaid from the lunchroom fund to the general fund."

As is apparent, the Attorney General arrived at the determination in both the 1951 and the 1954 opinions that the expenditure from the special fund was not a transfer but was the payment of an indebtedness for which such fund existed. On the facts presented, the same conclusion can be reached here.

A transfer suggests a permanent change, in contradistinction to an advance which connotes the expectation of repayment. And while the nature of a transaction cannot be changed by the label placed upon it I am persuaded that there is a real difference between an advance from a special or general fund and a transfer. Examining the transaction in question as a whole it is apparent that it is an advancement and that no transfer of funds within the meaning of Sections 5705.14, 5705.15 and 5705.16, Revised Code, will take place.

Accordingly it is my opinion and you are advised that:

Money advanced from the general fund of the county in payment of the costs of constructing a new county hospital building for which a special tax levy has been approved by the electors,

under section 339.01, Revised Code, may be repaid from the county hospital fund created pursuant to Section 339.04, Revised Code.