

**OPINION NO. 65-164****Syllabus:**

Section 749.19 of the Revised Code does not authorize a county or tuberculosis hospital to use tax funds for the payment of dues and fees to maintain membership in the specified organizations.

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**To: Chester W. Goble, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, September 2, 1965**

Your request for my opinion reads as follows:

"Section 749.19, R.C., provides that 'The governing body of any publicly owned hospital may authorize such hospital to be a member of and maintain membership in any local, state, or national group or association organized and operated for the promotion of the public health and welfare or advancement of the efficiency of hospital administration and in connection therewith to use tax funds for the payment of dues and fees not to exceed, in the aggregate, the sum of seven hundred fifty dollars in any one year.'

"In view of the fact that this section is located in the chapter of the Revised Code relating to municipal hospitals, a state examiner making an examination in one of our counties, has raised the question of whether the provisions of this statute would authorize the governing body of either a county hospital established pursuant to the provisions of Section 339.01, et seq., or a tuberculosis hospital established pursuant to the provisions of Section 339.20, et seq., of the Revised Code, to use tax funds for the payment of dues and fees to the groups or associations enumerated in Section 749.19, R.C."

The problem centers around the wording of Section 749.19, supra, which states:

"The governing body of any publicly owned hospital\* \* \*"

The language on its face would appear to include county and tuberculosis hospitals as well as municipal hospitals, but an uncertainty is created because of the fact that this section is found in a chapter which pertains only to municipal hospitals. It becomes a question of statutory construction, when an uncertainty such as this is present, to determine whether the legislature intended to include county and tuberculosis hospitals by stating "any publicly owned hospital" in a section of a chapter which pertains to municipal hospitals when they could have expressly included county and tuberculosis hospitals in that section or provided for the same authority to join these associations and to use tax funds for the payment of dues and fees in the chapters pertaining to county and tuberculosis hospitals.

"Any" is a word of flexible meaning and must be interpreted in the light of the full context. 50 O.Jur. 2d, Stat., Section 204, page 183.

It is a general principle of construction that a section of the Revised Code only applies to the chapter which it is within, unless it is clear by the wording of the statute that it is intended to have broader application, Section 749.19, supra, is within the chapter pertaining to municipal hospitals, and, therefore, that section only applies to municipal hospitals and not to county and tuberculosis hospitals.

Statutes or sections of statutes which expressly refer to each other may be regarded as in pari materia, and should be construed together. 50 O.Jur. 2d, Stat., Section 218, page 192. Section 749.35, Revised Code, states:

"In lieu of the provisions of sections 749.04 to 749.35, inclusive, of the Revised Code, regarding any general hospital owned by a municipal corporation\* \* \*"  
(Emphasis added)

Section 749.19, supra, is, of course, within these sections, and as stated in Section 749.35, supra, it is regarding "any general hospital owned by a municipal corporation" which is a municipal hospital. Therefore, Section 749.19, Revised Code, supra, when it refers to "any publicly owned hospital," is referring to a municipal hospital. Section 749.35, supra, also used the word "any," and it should be similarly construed in Section 749.19, supra.

It is a fundamental rule of statutory construction that sections and acts in pari materia; that is, in relation to the same matter, subject or object should be construed together. 750 O.Jur. 2d, Stat., Section 216, page 189. Section 749.21, Revised Code, is in the same chapter as 749.19, supra, and similar wording which is contained in both sections should be construed similarly. Section 749.21, Revised Code, states in pertinent part as follows:

"When the deed of gift, devise, or bequest mentioned in Section 749.20, of the Revised Code\* \* \*, and any hospital property \* \* \*, shall be managed, controlled, and ad-

ministered by a board of hospital trustees."  
(Emphasis added)

Section 749.20, Revised Code, refers to a municipal corporation which is the owner of property for hospital purposes; therefore, it refers to a municipal hospital. Therefore, Section 749.2. supra, when it states "any hospital property," refers to municipal hospital although it does not so specify in that section. "Any" should be similarly construed in Section 749.19, supra.

Section 749.23, Revised Code, states in pertinent part as follows:

" \* \* \* \* \*"

"No member of the board shall be interested, directly or indirectly, in any contract concerning any hospital under the control of such board.  
(Emphasis added)

" \* \* \* \* \*"

That section is referring to the board of hospital trustees, which manages property received by a municipal hospital by deed of gift, devise, or bequest. Therefore, "any hospital" refers to a municipal hospital, and "any" should be similarly construed in Section 749.19, supra.

Another source which may be consulted to determine legislative intent is the act in which the pertinent section was enacted. The act was Amended Senate Bill No. 273, enacted by the 97th General Assembly in 1947. (122 Ohio Laws, 411) This act provided for participation by joint township hospital districts, or by counties by agreement with municipalities, in the construction or enlargement of municipal hospitals, and in the maintenance and operation of such hospitals. The act was not concerned with county or tuberculosis hospitals. One of the sections of the act, Section 4035-4, General Code, is the predecessor of Section 749.19, Revised Code. "Any publicly owned hospital" can be construed to mean any type of publicly owned municipal hospital which would be set up under an agreement with a county or a township entered into pursuant to the sections enacted by the act.

Section 4035-4, General Code, stated "governing body," the same as the present section 749.19, supra. In the two preceding Sections, 4035-2 and 4035-3, General Code, which were enacted in the same act, there were two types of governing bodies which could be provided for. Pursuant to Section 4035-2, General Code, the municipality could enlarge its board of hospital commissioners if such an agreement were made, and pursuant to Section 4035-3, General Code, the municipality had authority to establish a board of governors if such an agreement was made with a county or a township. Therefore, by saying "governing bodies," the section was referring to the two possible types of governing bodies which could exist over a municipal hospital if an agreement with a county or township existed, and it does not refer to a governing body of a county or a tuberculosis hospital.

It is well established there must be a clear and distinct grant of authority to expend monies. Several Ohio court cases and Ohio Attorney General Opinions have generally stated this proposition of law. The case of State ex rel., Clark v. Cook, 103 Ohio St., 465, stated in the second paragraph of the syllabus:

"Boards of education and similar governmental bodies are limited in the exercise of their powers to such as are clearly and distinctly granted."

In the case of Board of Education v. Ferguson, 68 Ohio App., 514, the court stated in the first paragraph of the syllabus:

"The authority of boards of education is derived solely from the statutes, and is limited strictly to such powers as are expressly granted or clearly implied."

In 1943, the then Ohio Attorney General stated:

"It is equally well settled that the authority of administrative boards such as boards of education, to act in financial transactions must be clearly and distinctly granted and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the political subdivision, for which the board acts."

See, Opinion No. 5846, Opinions of the Attorney General for 1943, at page 110.

The governing body of a publicly owned hospital comes within the purview of the above cited cases and opinion. Since the authority to join these associations is quite doubtful, the doubt must be resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the hospital for which it acts. Section 749.19, supra, has been amended by the 106th General Assembly, in Senate Bill No. 340, to change the amount of tax funds which may be used for the payment of dues and fees from \$750 to \$5,000. The ability to impose such a large financial obligation upon a hospital and the taxpayers who support the hospital should not be at all doubtful.

If the legislature wanted the county and tuberculosis hospitals to have the authority to acquire the membership in these organizations, they could have put this authority in the sections pertaining to these hospitals, or expressly referred to county and tuberculosis hospitals when they put this authority in the section pertaining to municipal hospitals.

Therefore, it is my opinion and you are hereby advised that Section 749.19 of the Revised Code does not authorize a county or

tuberculosis hospital to use tax funds for the payment of dues and fees to maintain membership in the specified organizations.