

OPINION NO. 94-041**Syllabus:**

A board of trustees of a county tuberculosis hospital has no authority to expend public moneys to promote the approval of a tax levy by the electorate. (1992 Op. Att'y Gen. No. 92-029; 1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142; 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915, approved and followed; 1979 Op. Att'y Gen. No. 79-022, distinguished.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio

By: Lee Fisher, Attorney General, June 17, 1994

You have requested an opinion whether a board of trustees for a county tuberculosis hospital may expend public moneys to promote the approval of a tax levy by the electorate. Information provided indicates that the hospital in question was established pursuant to R.C. 339.31 to provide for the care and treatment of persons suffering from tuberculosis. The hospital also provides care and treatment to individuals with disabilities and diseases other than tuberculosis. *See* R.C. 339.45. Specifically, the hospital provides "services and treatments to patients for rehabilitation services, chronic diseases, and alcohol and drug dependencies."

Expenditure of Public Moneys in the Promotion of a Ballot Issue

Prior opinions of the Attorney General that have considered the propriety of a public entity expending public moneys to promote the approval of a tax levy by the electorate have consistently concluded that, absent statutory authority, a public entity is prohibited from expending public moneys in the promotion of a ballot issue for the benefit of the entities promoting the levy. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-029; 1979 Op. Att'y Gen. No. 79-022; 1968 Op. Att'y Gen. No. 68-124; 1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142; 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915. As stated in Op. No. 92-029,

State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916). Op. No. 79-022 found the power of a community mental health and mental retardation board to expend public funds to promote the approval of a tax levy for the benefit of the board to arise from the duty imposed upon the board by former R.C. 340.03(I), *see* note 1, *supra*, to "[r]ecruit and promote local financial support for mental health and retardation programs from private and public sources." Op. No. 79-022, thus, concluded that the board's authority under former R.C. 340.03(I) was sufficient to distinguish it from the situations addressed in three prior opinions which found no authority to exist for various public entities to expend public funds in the promotion of a ballot issue for the benefit of the entities promoting the levy.

Op. No. 92-029 at 2-109 (footnotes omitted). Resolution of your specific question thus turns on whether the board of trustees of a county tuberculosis hospital is empowered to expend public moneys to promote the approval of a tax levy.

No Express Statutory Authority

Examination of the statutory scheme governing the operation and management of a county tuberculosis hospital discloses no duty or grant of authority similar to that contained in former R.C. 340.03(I), as discussed in Op. No. 79-022, that would authorize the board of trustees of a county tuberculosis hospital to recruit or promote financial support for the purposes of the hospital. Further, none of the board's powers or duties, as described in R.C. Chapter 339, contains a clear and distinct grant of authority to expend public funds to promote the approval of a tax levy. *See* R.C. 339.31-.33. Thus, the board of trustees of a county tuberculosis hospital has no authority to spend public moneys to promote the approval of a tax levy, even though the board may determine that the passage of the levy would enhance the hospital's ability to provide its services and treatments.¹ *See* Op. No. 92-029 at 2-110; 1937 Op. No. 1245 at 2143. "In fact, where the General Assembly has spoken on the subject of the permissibility of spending public funds to promote or oppose passage of a tax levy, it has generally prohibited such expenditure." Op. No. 92-029 at 2-111. *See, e.g.*, R.C. 505.07(B) ("[n]o board of township trustees shall use public funds to support or oppose the passage of a township levy"); R.C. 3315.07(C)(1) ("[e]xcept as otherwise provided in [R.C. 3315.07(C)(2)], no board of education shall use public funds to support or oppose the passage of a school levy").²

¹ The hospital's board of trustees, however, is not prohibited from disseminating information about the activities of the hospital. 1992 Op. Att'y Gen. No. 92-029 at 2-110 n.3; *see also State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (syllabus, paragraph four) ("[u]nless prohibited by statute, utilization of newspaper advertisement for dissemination of information to the general public and to those directly affected by agency action is an implied power of a public agency authorized to perform specific functions and to expend monies therefor, so long as money for such purposes has been appropriated by the proper authority").

² There may also be constitutional impediments to the enactment of a statutory provision authorizing the expenditure of public moneys by the board of trustees of a county tuberculosis hospital for the purpose of advocating voter approval of a tax levy. *See* Op. No. 92-029 at 2-111 n.4.

Conclusion

Therefore, it is my opinion, and you are advised, that a board of trustees of a county tuberculosis hospital has no authority to expend public moneys to promote the approval of a tax levy by the electorate. (1992 Op. Att'y Gen. No. 92-029; 1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142; 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915, approved and followed; 1979 Op. Att'y Gen. No. 79-022, distinguished.)