

In other words, if the purpose of the proposed contract between the county commissioners and the trustees of Memorial Hospital is to increase the charge for care of the indigent sick and disabled over and above a fair and reasonable charge for the purpose of helping maintain the hospital, such contract would be void, as directly contrary to the Constitution.

A somewhat similar question was presented to the then Attorney General in 1911, wherein the board of county commissioners of Pickaway County proposed to appropriate fifteen hundred dollars to a hospital for "maintaining said hospital," the contract providing that the board of managers of said hospital "shall use and apply so much of said moneys as may be necessary in furnishing and equipping said hospital, etc."

It was ruled (See Annual Report of Attorney General for 1911-12, Vol. II, page 1071) that this was a diversion of public money to a private corporation.

The proposed contract in the instant case would, in any event, be subject to the provisions of Section 5625-33, General Code, which is in part as follows:

"No subdivision or taxing unit shall:

* * *

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. * * * ."

It is not clear to me from your statement of facts whether the contract can be made retroactive. You state that you have been paying the regular charge for individual cases, and it therefore would seem that services already rendered have been paid for. If that is the case, the contract could not be made retroactive because the county would then be in the position of paying twice for the same services.

Specifically answering your question, I am of the opinion that under the provisions of Section 3138-1, General Code, a board of county commissioners may enter into an annual contract with a hospital association for treatment of indigent sick and disabled, provided the consideration is reasonably commensurate with the services performed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1202.

APPROVAL, ABSTRACT OF TITLE TO LAND OF SARAH C. B. SCARBOROUGH IN XENIA TOWNSHIP, GREENE COUNTY.

COLUMBUS, OHIO, November 16, 1929.

HON. ROBERT B. BARCUS, *President, Board of Trustees, Wilberforce University, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed, encumbrance estimate and Controlling Board certificate relating

to the purchase of six and six-tenths (6.6) acres of land located in Greene County, Xenia Township, Ohio, from Sarah C. B. Scarborough, widow and sole devisee of William S. Scarborough, deceased, which premises are more particularly described as follows:

"The following described real estate in the County of Greene in the State of Ohio and in the Township of Xenia, and being bounded and described as follows: Being part of Military Survey No. 929 for 1000 acres in the name of John Fowler on the waters of Massie Creek, lot No. 3 according to a survey in a plat made by John Roberts on the Recorder's Books in Greene County, Ohio. Beginning at the northwest corner of lot No. 4 in the center of the County road; thence running southwest on a line to a stake in the line of R. M. Kendall's heirs a corner of lot No. 7 and lot No. 7 as designated on said plat; thence thirteen and thirty-two hundredths (13.32) poles northwest to a stake in the line of lot No. 7 and the southeast corner of lot No. 2; thence to a stone northeast in the center of said County road; thence southeast along the center of said road twenty-two (22) poles to the beginning, containing 6.6 acres more or less."

You further advise that this real estate is located west of the campus of the combined normal and industrial department of Wilberforce University, and is to be purchased for the sum of thirteen thousand (\$13,000) dollars.

The abstract under consideration was prepared by C. W. Whitmer and Wm. S. Rogers, abstractors of title at Xenia, under date of June 28, 1929, and dates back to March 1, 1803, when the United States of America, through President Thomas Jefferson, granted a patent on one thousand acres of land, embracing the premises in question.

After a careful examination, it is believed that said abstract discloses sufficient title to said premises to be in the name of Sarah C. B. Scarborough on June 28, 1929, free and clear from encumbrances, excepting a mortgage due The Peoples Building & Savings Company of Xenia, which amounted to twenty-five hundred (\$2500) dollars on July 1, 1929, and such unpaid taxes and assessments which may be due, a subject on which the abstract is silent. The abstract should be supplemented in this respect.

Examination has further been made of a deed executed by Sarah C. B. Scarborough conveying said premises to the State of Ohio, which is believed to be in proper form and sufficient to convey the title to said premises to the State of Ohio when the same is delivered.

The encumbrance estimate and Controlling Board certificate are in regular form and executed by the proper officials.

I am herewith returning to you said abstract of title, warranty deed, encumbrance estimate and Controlling Board certificate.

Respectfully,
GILBERT BETTMAN,
Attorney General.