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1. COUNTY COMMISSIONERS—NO STATUTORY AUTHORITY TO ESTABLISH COUNTY HOSPITAL WITHOUT SUBMITTING TO VOTE OF ELECTORS QUESTION OF TAX LEVY OR BOND ISSUE—SECTION 3127 G. C.
2. WHEN BOARD OF COUNTY COMMISSIONERS OWNS LAND AND BUILDINGS SUITABLE FOR COUNTY HOSPITAL—PROPERTY MAY BE CONVEYED WITHOUT CONSIDERATION TO BOARD OF COUNTY HOSPITAL TRUSTEES—MUST BE ACCEPTED FOR SUCH USE—TAX LEVY OR BOND ISSUE SUBMITTED TO VOTE SHOULD BE SUFFICIENT IN AMOUNT TO PROVIDE FOR NECESSARY AND PROPER FURNITURE, FIXTURES AND EQUIPMENT FOR OPERATION OF HOSPITAL—SECTIONS 3131, 3127 G. C.

SYLLABUS:

1. A board of county commissioners has no statutory authority to establish a county hospital without submitting to a vote of the electors the question of a tax levy or bond issue under the provisions of Section 3127, General Code.
2. Where a board of county commissioners already owns land and buildings suitable for use as a county hospital, they may convey such property without consideration to a board of county hospital trustees appointed under authority of Section 3131, General Code, provided such trustees are willing to accept it for such use; and the tax levy or bond issue submitted to a vote of the electors in such case under the provisions of Section 3127, General Code, should be sufficient in amount to provide only for such necessary and proper furniture, fixtures and equipment as will place such building in suitable condition for operation as a hospital.

Columbus, Ohio, September 11, 1951

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The County Commissioners of Stark County own a farm and buildings purchased as a site for a new county home 25 years ago but never so used. The building is already constructed and is suitable for a small hospital for certain kinds of cases, among which are cases for acute alcoholism. The commissioners are desirous of using the buildings as a hospital under authority of Sections 3127 to 3128 of the General Code. Section 3127 provides that the county commissioners shall have power to purchase, appropriate or construct a county hospital and further provides as follows:

"That no money shall be expended for the *original* purchase, appropriation or construction until a tax levy or bond issue has been submitted to the electors."

"The sections following No. 3127 provide for the method of organizing a county hospital after the same is fully completed.

"Therefore, we ask the opinion of your office as to the following questions:

"1. Where the county commissioners already own suitable land and buildings may they use the same for a county hospital organized under Sections 3127 to 3128, without submitting a tax levy or bond issue to the voters under Section 3127 of the General Code?

"2. Where no expenditure of money for original purchase, appropriation or construction is necessary, but additional expenditures for furnishings are necessary, may the county commissioners purchase such furnishings from the general fund without submitting a tax levy or bond issue by virtue of Section 3127?

"3. If the answer to the first two questions are favorable, may the county commissioners utilize a county hospital in part **for the care and treatment** in cases of acute alcoholism in as much as Section 3138-1 seems to give authority to commissioners to care for indigent, sick and disabled?"

The construction of county hospitals is authorized by Section 3127, General Code, and special provision is made therein for financing the cost

of the original construction of such hospitals. The following sections and parts of sections are pertinent to that portion of your inquiry which relates to the construction and equipment of these structures:

Section 3127, General Code:

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

Section 3131, General Code:

"If a tax levy or bond issue for such purpose is approved by a vote of the electors in the manner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the board of county commissioners of said county; whereupon the board of county commissioners, together with the probate judge of said county and the common pleas judge of said county senior in point of service shall within ten days after such certification, appoint a board of county hospital trustees, composed of six electors of such county as follows:

"One for one year, one for two years, one for three years, one for four years, one for five years and one for six years from the first Monday of March thereafter. * * *"

Section 3132, General Code:

"Such board of trustees shall have full charge and control of the selection and purchase of a site for such hospital (taking title thereto in the name of the county), the selection of plans and specifications, the determination and erection of all necessary buildings thereon, and of the selection and installation of all necessary and proper furniture, fixtures and equipment therefor. * * *"

Section 3134, General Code:

"All funds arising from a special tax levy or bond issue for the purchase, appropriation or construction of such 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 said board of county hospital trustees, certified by the chairman and secretary thereof."

Section 3135, General Code:

"Before making a contract for the expenditure of money on any structure or improvement in excess of one thousand dollars, the hospital trustees shall advertise according to law for bids, and cause plans, specifications and detailed drawings to be distributed among the bidders."

Section 3137, General Code:

"Such board shall, upon completion of construction and equipping of said hospital, assume and continue the operation of such hospital. It shall have the entire management and control of the hospital and shall establish such rules for the government thereof and the admission of persons thereto as it deems expedient; it shall have control of the property of the hospital and deposit all monies thereof with the county treasurer to the credit of the hospital operating fund; and the same shall be paid out only for the maintenance and operation of such hospital, on the warrant of the county auditor issued pursuant to the orders of the trustees. * * *"

The primary question here to be resolved is whether the county commissioners have any statutory authority to operate a county hospital which was not constructed under the provisions of Section 3127, General Code. A secondary question relates to the authority of the commissioners to use a portion of county home lands, no longer needed for the purpose for which originally acquired, for some other public purpose.

In Section 3127, et seq., General Code, it is to be observed that nowhere is there any authority given to the county commissioners to construct a hospital or hospital buildings without submitting to the electors the question of financing such cost. Moreover, it is to be observed that nowhere in these sections is there any authority for the county commissioners themselves to operate a county hospital after such hospital has been erected. Under the provisions of Section 3137, General Code, sole authority for the operation, management and control of a county hospital is conferred on a board of trustees. These trustees, however, are the same as those appointed under the provisions of Section 3131, General Code, for the purpose of supervising the initial construction of a county hospital. In this connection it is clear that the board of

county commissioners are authorized to appoint such board of trustees only in the event that a tax levy or bond issue is first approved by a vote of the electors, as provided in Section 3127, General Code.

This lack of authority on the part of the county commissioners to appoint a board of trustees to operate a hospital in a situation where such hospital has not initially been constructed under the authority of Section 3127, General Code, is apparent in the manner in which the statute provides for a series of steps in an integrated process beginning with the vote of the electors on the tax levy or bond issue and continuing through the point where the board of trustees, initially appointed to supervise the construction of the hospital, becomes the governing body for the operation of the hospital.

Whether the reason for this integrated process provided by statute lies in a legislative intent not to permit the county authorities to establish on a permanent basis an institution the annual cost of which will be an indefinitely recurring expense to be borne by the taxpayers, or whether some other reason motivated the adoption of this provision, it is perhaps idle to speculate. The important point to be borne in mind is that there is no statutory authority for the operation of a county hospital by any administrative agency other than the board of trustees appointed under the provisions of Section 3131, General Code, to supervise the initial construction of such hospital; and that the commissioners have no authority to appoint such board until an election has been held under the provisions of Section 3127, General Code.

For these reasons, I must conclude that a board of county commissioners does not possess any authority to establish and operate a county hospital where the question of a tax levy or bond issue to provide for the initial construction of such hospital has not been submitted to a vote of the electors as provided in Section 3127, General Code,

It does not necessarily follow from this conclusion, however, that the commissioners may not utilize the county home land and buildings already owned by them in the establishment of a county hospital. The statutory authority of the commissioners with respect to the use and disposition of property acquired for county home purposes is found in Section 2557-2, General Code, which reads as follows:

“After a county home has been closed the county commissioners may sell all or parts of the county home farm, or lease

all or parts of it, or both, and all receipts from such sales or leases shall be paid to the county treasurer and credited to the general county fund and be subject to appropriation for such purposes as the commissioners may decide."

It is to be observed that the language of this section is permissive and not mandatory. We must conclude, therefore, that the General Assembly contemplated the possibility of a situation where a county home might be closed and the county home property no longer needed for the purpose for which it was originally acquired, and where the commissioners might elect not to sell such property but rather to keep it. If the commissioners may lawfully retain such property after the need for which it was originally acquired has ceased to exist, then it must necessarily follow that they may use it to meet some other need.

The same reasoning is equally applicable to a situation involving only a *portion* of a county home property, where such home has not been closed, since "the words 'after a county home has been closed' in Section 2557-2, General Code, do not constitute a condition precedent to the general power of county commissioners to sell a portion of county lands derived from Section 2447, General Code." *Seran v. Biddle*, 39 Ohio Opinions, 295, Common Pleas, Stark County, 1948. I must conclude, therefore, that where the county already owns a building suitable for hospital purposes, it may properly be devoted to that use; and to that end may be conveyed without consideration to the board of trustees appointed pursuant to the provisions of Section 3131, General Code, provided such trustees are willing to accept it for such use. Moreover, I am more strongly persuaded to this view for the reason that a contrary conclusion would require a vain and useless ceremony of "sale" under authority of one statute and "purchase" under another, the vendor and the vendee being the same party in interest. The law does not, of course, require a vain ceremony.

It would appear that this conclusion raises a practical question which you have not included in your inquiry. This question relates to the purpose which may be served by holding an election on a tax levy or bond issue, in a situation where it is not expected that any funds will be required for the acquisition of a hospital site or the construction of a hospital building. It is to be observed here, however, that under the provisions of Section 3134, General Code, all funds arising from a special tax levy

or bond issue for the purchase, preparation or construction of a county hospital is to be paid into the county hospital *building* fund; and that such funds shall be paid out on the order of the board of county hospital trustees. Under the provisions of Section 3132, General Code, this board of hospital trustees is charged with the selection and *installation* of all necessary furniture, fixtures and equipment for such hospital. From this language we must conclude that the special hospital fixtures and equipment which will undoubtedly be needed in the instant case should be paid for from the county hospital building fund, the principal source of revenue of which is a special tax levy or bond issue, as the case may be.

Accordingly it would appear that in the instant case, even though there is no need of raising funds by such tax levy or bond issue for the purpose of acquiring a hospital site or for the construction of a hospital building, there is nevertheless, a need to raise by this means the funds necessary to equip the building to the extent that its intended use as a hospital will require. In this situation, the amount of money to be raised by this means would of course be estimated accordingly in submitting the issue to a vote of the electors.

Respectfully,

C. WILLIAM O'NEILL

Attorney General.