

**Note from the Attorney General's Office:**

1957 Op. Att'y Gen. No. 57-330 was overruled in part  
by 1963 Op. Att'y Gen. No. 63-3532.

330

1. COUNTY HOSPITAL TRUSTEES—BOND ISSUE/TAX LEVY—339.01 RC—ADDITION TO EXISTING HOSPITAL—FUNDS TO BE EXPENDED BY TRUSTEES.
2. COUNTY HOSPITAL BUILDING FUNDS—339.04 RC—EXPENDITURE—CERTIFICATION BY CHAIRMAN AND SECRETARY.
3. CONSTRUCTION BY TRUSTEES OF COUNTY HOSPITAL—ONLY BY PROCEEDS OF BOND ISSUE/TAX LEVY UNDER 339.01 RC—USE OF OPERATING FUND FOR CONSTRUCTION PURPOSES UNAUTHORIZED BY LAW.

SYLLABUS:

1. When a bond issue or tax levy approved under the terms of Section 339.01, Revised Code, provides funds for constructing an addition to an already existing county hospital and to build a new building, such funds are, under Section 339.04,

Revised Code, credited to the county hospital building fund to be expended on the order of the board of county hospital trustees.

2. Funds in the county hospital building fund are, under Section 339.04, Revised Code, expended on the order of the board of county hospital trustees, certified by the chairman and secretary of the board.

3. Projects of construction by the board of trustees of a county hospital can be undertaken only by the use of the proceeds of a bond issue or tax levy therefor submitted and approved in accordance with Section 339.01, Revised Code; and the use of a county hospital operating fund for such purpose is not authorized by law.

Columbus, Ohio, April 10, 1957

Hon. Robert E. Cook, Prosecuting Attorney  
Portage County, Ravenna, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As a result of your opinion 1957 AGO 7630, several additional questions have arisen in this county concerning the expenditure of the proceeds of a bond issue, the purpose of which was to construct an addition to an existing county hospital building and to construct a separate building to be used as nurses quarters.

“I have been requested by the board of county commissioners to ask your opinion on the following questions:

1. Where the proceeds of a bond issue are for the purpose of constructing an addition to an already existing county hospital building and to build a new building to be used as nurses quarters, would the board of hospital trustees be the proper board to expend such bond funds in the construction of said addition and new building?
2. If your answer to question No. 1 is ‘yes’, should the funds be expended by the Treasurer of the board of hospital trustees or should it be paid by voucher by the county auditor?
3. At the time of building an addition to a county hospital from funds derived from a bond issue, is it permissible for the board of hospital trustees to build an additional wing and to pay for the cost of same from operating revenue under the powers given to the board of trustees under section 339.06 of the Revised Code.”

Some confusion appears to have arisen from seeming inconsistencies in the language of Opinions No. 3524 and 4030, Opinions of the Attorney General for 1954, and Opinions No. 7100 and 7630, Opinions of the Attorney General for 1956.

I invite your attention initially to Section 339.01, Revised Code, which reads :

“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.”

Section 339.03, Revised Code, reads in pertinent part :

“The board of county hospital trustees shall have complete charge of the selection and purchase of a site for a county hospital, taking title to such site in the name of the county, the selection of plans and specifications, the determination and erection of all necessary buildings on such site, and of the selection and installation of all necessary and proper furniture, fixtures, and equipment.”

Section 339.04, Revised Code, reads :

“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.”

Recently amended Section 339.06, Revised Code, reads in pertinent part :

“The board of county hospital trustees shall, upon completion of construction and equipping of the county hospital, assume and continue the operation of such hospital. The board of county hospital trustees shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

“The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation.

The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. Such banks or trust companies shall furnish security for every such deposit to the extent and in the manner provided in section 135.16 of the Revised Code, but no such deposit shall otherwise be subject to the provisions of sections 135.01 to 135.23, inclusive, of the Revised Code. The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees for the uses and purposes of such hospital, on a voucher signed by the administrator, provided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees. All moneys appropriated by the board of county commissioners or from special levies by the board of county commissioners for the operation of the hospital, when collected shall be paid to the board of county hospital trustees on a warrant of the county auditor and approved by the board of county commissioners."

Plenary authority with regard to county hospitals is in the first instance conferred upon the board of county commissioners by Section 339.01, *supra*. That authority is limited and conditioned by the succeeding sections which provide for the assumption of enumerated powers by a board of county hospital trustees.

The original purchase, appropriation, or construction of a hospital or hospital building may be undertaken only when a bond issue or tax levy therefor has been approved by the electors of the county, Section 339.01, *supra*. As pointed out in Opinions No. 7100 and 7630, Opinions of the Attorney General for 1956, the construction of a county hospital may be a continuing process and it is not necessarily completed when one building or facility is erected. On the contrary, each time a new building is purchased, appropriated, or constructed as part of a county hospital, pursuant to a mandate of the electorate as provided in Section 339.01, *supra*, there is a continuation of the "original purchase, appropriation, or construction" as that phrase is used in that section, and the project must be carried out in accordance with the requirements of law relating to the initial establishment of the hospital. That is to say, each purchase, ap-

appropriation, or construction which is financed by a tax levy or bond issue approved by the electors of the county must be under the control of the board of hospital trustees, inasmuch as Section 339.04, *supra*, places all moneys from those sources in a special fund, the county hospital building fund, to be paid out only on the order of the board of hospital trustees.

The board of county hospital trustees may also undertake such ordinary building maintenance as it may be able to complete with funds from the operating revenues of the hospital, this under that board's powers of general management and control as provided in Section 339.06, *supra*.

Such board may not, however, undertake a construction project from such funds and on its own initiative, since as noted above construction may be carried out only under the terms of Section 339.01, *supra*. Of course, there may arise questions as to what is construction and what is merely improvement, enlargement, etc., and each such question must be resolved on its facts. However, I think that adding a wing to a hospital is clearly a continuation of the original construction. It may also be suggested, incidentally, that a county hospital, a government agency created for public service, should not ordinarily accumulate from its operating revenues a sufficient surplus to support a major construction project.

The two items of construction and maintenance as noted above are to be carried out under the supervision and control of the board of hospital trustees. However, as also explained above, such powers with regard to county hospitals as are not specifically assigned to the board of county hospital trustees remain with the board of county commissioners. In this regard I direct your attention to Opinion No. 4030, Opinions of the Attorney General for 1954, p. 356, the syllabus of which reads as follows:

"A board of county commissioners has authority under the provisions of Section 339.01, Revised Code, to 'enlarge, improve, and rebuild' an existing county hospital, and in exercising such power such board should act directly rather than by making funds for such purpose available to the board of trustees of such hospital."

On page 359 in the same opinion it is said:

"Neither in this (Section 339.06, Revised Code) nor in other sections of Chapter 339, Revised Code, is there any suggestion

of the authority of the board of trustees *to use funds appropriated by the county commissioners* to "enlarge, improve, and rebuild a county hospital" although the authority of the commissioners in making such enlargement and improvement is clearly set out in Section 339.01, *supra*." (Emphasis added.)

Section 339.06, Revised Code, has since been amended but not so as to change the proposition of law here under discussion. It remains true that when the board of county commissioners appropriates funds to enlarge, improve, or rebuild a county hospital the expenditure of those funds remains under the supervision and control of the board of county commissioners. Such funds are thus distinguished from funds appropriated for operation, which under the provisions of Section 339.06, *supra*, become a part of the hospital operating fund which is controlled by the board of county hospital trustees.

Control of the several elements of the building, improvement, and repair of a county hospital may thus be summarized and distinguished as follows:

1. Construction may be undertaken by a board of county hospital trustees only when funds therefor have been provided by a bond issue or tax levy approved by the electors of the county, and control of funds from those sources and consequently of the construction is vested in such board.

2. Projects of building maintenance such as can be supported by the surplus from operating revenues may be undertaken by the board of county hospital trustees under its general powers of management and control.

3. Projects of enlargement, improvement, and rebuilding, funds for which are appropriated by the board of county commissioners, are under the supervision and control of the board of county commissioners.

Answers to your three questions are contained in the preceding discussion, but I will now answer them specifically:

1. Where the proceeds of a bond issue are for the purpose of constructing an addition to an already existing county hospital building and to build a new building to be used as nurses quarters, would the board of hospital trustees be the proper board to expend such bond funds in the construction of said addition and new building?

Section 339.03, *supra*, places the erection of all necessary buildings among the powers of the board of county hospital trustees. Section 339.04, *supra*, gives the same board control of all funds from bond issues or tax levies for county hospital construction. Thus the board of county hospital trustees is the proper board to expend these funds.

2. If your answer to question No. 1 is "yes", should the funds be expended by the Treasurer of the board of hospital trustees or should it be paid by voucher by the county auditor?

The last sentence of Section 339.04, *supra*, provides that moneys from the county hospital building fund shall be paid out on the order of the board of county hospital trustees, certified by the chairman and secretary of the board.

3. At the time of building an addition to a county hospital from funds derived from a bond issue, is it permissible for the board of hospital trustees to build an additional wing and to pay for the cost of same from operating revenue under the powers given to the board of trustees under section 339.06 of the Revised Code?

Construction by a board of county hospital trustees is limited to those projects financed by the use of funds derived from a bond issue or tax levy as provided in Section 339.01, *supra*.

I am of the opinion therefore, and you are advised:

1. When a bond issue or tax levy approved under the terms of Section 339.01, Revised Code, provides funds for constructing an addition to an already existing county hospital and to build a new building, such funds are, under Section 339.04, Revised Code, credited to the county hospital building fund to be expended on the order of the board of county hospital trustees.

2. Funds in the county hospital building fund are, under Section 339.04, Revised Code, expended on the order of the board of county hospital trustees, certified by the chairman and secretary of the board.

3. Projects of construction by the board of trustees of a county hospital can be undertaken only by the use of the proceeds of a bond issue or tax levy therefor submitted and approved in accordance with



Section 339.01, Revised Code; and the use of a county hospital operating fund for such purpose is not authorized by law.

Respectfully,  
WILLIAM SAXBE  
Attorney General