

Note from the Attorney General's Office:

1960 Op. Att'y Gen. No. 60-1234 was overruled in part by
2001 Op. Att'y Gen. No. 2001-028.

1234

THE PROSECUTING ATTORNEY OF A COUNTY IS THE LEGAL ADVISOR OF A JOINT TOWNSHIP HOSPITAL BOARD—BUT IS NOT THE LEGAL ADVISOR OF A BOARD OF HOSPITAL GOVERNORS—§§513.07, 513.16, 513.17, R.C.

SYLLABUS:

1. The prosecuting attorney of a county is the legal adviser of a joint township hospital board formed pursuant to Section 513.07, Revised Code, but it is not the legal adviser of a board of hospital governors appointed under Section 513.16, Revised Code.
2. A board of hospital governors appointed pursuant to Section 513.17, Revised Code, is authorized to employ counsel to assist such board in performing the duties imposed by Section 513.17, Revised Code.

Columbus, Ohio, April 5, 1960

Hon. Richard L. Davis, Prosecuting Attorney
Highland County, Hillsboro, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“Your opinion is respectfully requested on the following matter:

“Is the Prosecuting Attorney the legal adviser for either a joint township district hospital board or the board of governors of such joint township hospital district?”

Section 309.09, Revised Code, to which you refer, reads:

“The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, and all other county officers and boards, including all tax supported public libraries, and any of them may require written opinions or instructions from him in matters connected with their official duties. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, except as provided in section 305.14 of the Revised Code.

“Such prosecuting attorney shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney, except on the order of the board of township trustees, duly entered upon its journal, in which the compensation to be paid for such legal services shall be fixed. Such compensation shall be paid from the township fund.”

It will readily be seen that under the above quoted section the prosecuting attorney of a county is made the legal adviser for all township officers within the county. The question then arises whether a joint township district hospital board and a board of governors of such a hospital district are township officers.

A joint township district hospital board is formed under Section 513.07, Revised Code, reading in part as follows:

“The boards of township trustees of any two or more contiguous townships in any county may, by a two-thirds favorable vote of each such board, form themselves into a joint township district hospital board for the purpose of establishing, constructing, and maintaining a joint township district general hospital, and such townships shall be a part of a joint township hospital district.

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The board of governors of a joint township hospital district is appointed pursuant to Section 513.16, Revised Code, reading:

“The joint township district hospital board, as soon as possible after its organization, shall appoint one elector from each township represented and the judge of the court of common pleas shall appoint three electors at large from the district, one of whom shall be a doctor of medicine, to constitute a board to be known as ‘the board of hospital governors’ and control the op-

eration of such hospital and for such other duties as are provided by section 513.17 of the Revised Code. Each of such governors shall be appointed for a term of three years. Any vacancy shall be filled by an appointment, in like manner, for the unexpired term of the original appointment.

“The joint township district hospital board may, by a majority vote of its members, remove any such hospital governor for good and sufficient cause, after a hearing upon written charges.”

Thus, the joint township district hospital board is made up of the township trustees of the townships included in the district, the board of governors is made up of persons appointed by the hospital board and by the judge of the court of common pleas.

Regarding the characteristics of an office, it is stated in 32 Ohio Jurisprudence, page 856:

“Generally speaking, one of the requisites of an office is that it must be created by the Constitution or authorized by some statute.”

At page 860 of the same volume the following appears:

“One of the distinguishing characteristics of a public office is that the incumbent, in an independent capacity, is clothed with some part of the sovereignty of the state, to be exercised in the interest of the public as required by law.”

Section 2 of Article X, Ohio Constitution, as pertaining to township officers, reads in part:

“The general assembly shall provide by general law for the election of such township officers as may be necessary. * * *”

Accordingly, under this provision a township officer must be elected to office.

Township trustees are, as such, township officers. They are elected to office, receive their authority from law and are clothed with a part of the state sovereignty. Township trustees when acting as a joint township district hospital board are not, of course, dealing specifically with affairs of their respective townships, but are representing a separate district which has been termed a separate subdivision (See Opinion No. 1161, Opinions of the Attorney General for 1946, page 619). The fact remains, however, that the members of the board are township trustees who are also repre-

senting their respective townships and who are all represented as township officers by the same prosecuting attorney. I conclude, therefore, that the prosecuting attorney is the legal adviser for a joint township district hospital board.

While I have here determined that members of a joint township district hospital board, because they are township trustees, are entitled to representation by the prosecuting attorney, it appears that a member of a board of governors is not in the same situation. First of all, although he might qualify as an officer under the general definition noted above, he does not act as a township officer, but as a part of an agency separate and apart from any one township. Where the township trustee in acting as a member of the hospital board is representing his township, the member of the board of governors is appointed to "erect, furnish, and equip necessary buildings for a joint township general hospital." (See Section 513.17, Revised Code.) His duties, therefore, are performed purely for the district and he has no connection with any one township. He could not, therefore, be termed a township officer even if the election requirement of the constitution, noted above, did not apply. The prosecuting attorney, therefore, is not required under Section 309.09, *supra*, to represent the board of governors and I am unable to find any other provision of law requiring such representation.

Since the board of governors is not entitled to be represented by the prosecuting attorney the question arises as to whether such a board may employ legal counsel to assist in the establishing of the hospital. As you note, the establishment of such hospital could very well require the services of an attorney to prepare abstracts and perform other legal work.

In Opinion No. 1644, Opinions of the Attorney General for 1950, page 195, one of my predecessors held that a joint township hospital board was authorized to retain the services of counsel, other than the prosecuting attorney, to defend a taxpayer's action contesting the sale of bonds of the joint hospital district, the fees of such counsel to be paid from the proceeds of the special tax levied pursuant to Section 3414-3, General Code (now Section 513.13, Revised Code), or from unrestricted contributions received by the hospital board pursuant to Section 3414-5, General Code (now Section 513.15, Revised Code).

At page 201. of Opinion No. 1644, *supra*, it is stated :

“* * * I am of the opinion that the services of counsel in connection with the issuance of bonds for the purpose of establishing a hospital would be one of many acts required to put such hospital into activity and that the payment of the fees for such service from the proceeds of the special tax levy could be necessarily implied from the authority granted to pay the necessary expenses for the operation of such hospital.”

Section 513.17, Revised Code, provides the powers of a board of hospital governors and reads as follows :

“The board of hospital governors shall, with the consent and approval of the joint township district hospital board and as provided by sections 513.07 to 513.18, inclusive, of the Revised Code, prepare plans and specifications, and *may employ technical assistance if necessary*, and proceed to erect, furnish, and equip necessary buildings for a joint township general hospital. Such board of governors shall appoint and fix the compensation for such nurses and other employees as are necessary for the proper conduct of the hospital. Subject to the direction of the board of governors and to the rules and regulations prescribed by it, the superintendent shall have complete charge and control of the operation of such hospital. He shall prepare and submit to the board of governors, quarterly, a statement showing the average daily per capita cost for the current expense of maintaining and operating such hospital, including the cost of ordinary repairs. The members of the board of governors shall serve without compensation, but their necessary expenses, when engaged in the business of the hospital board, shall be paid by the joint township hospital board.

“The board of hospital governors with the approval of the county commissioners may employ counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts. Counsel employed under this section shall be paid from the hospital’s funds.” (Emphasis added)

Thus, the board is specifically authorized to employ “technical assistance” if necessary and counsel to collect delinquent accounts. The word “technical” is defined in Webster’s New Collegiate Dictionary as :

“Of or pertaining to the useful or mechanical arts, or to practice, method, procedure, etc., in any science, business, profession, * * *.” (Emphasis added)

Under this definition, therefore, “technical assistance” could include the employment of legal counsel. In any event, however, I am of the opinion that the authority of the board of governors to employ legal counsel would be necessarily implied from the duties imposed on the board to erect, furnish, and equip necessary buildings for a joint township general hospital, as the services of legal counsel would appear to be necessarily incident to such duties.

Answering your specific questions, therefore, it is my opinion:

1. The prosecuting attorney of a county is the legal adviser of a joint township hospital board formed pursuant to Section 513.07, Revised Code, but is not the legal adviser of a board of hospital governors appointed under Section 513.16, Revised Code.
2. A board of hospital governors appointed pursuant to Section 513.17, Revised Code, is authorized to employ counsel to assist such board in performing the duties imposed by Section 513.17, Revised Code.

Respectfully,

MARK McELROY

Attorney General