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SYLLABUS:

Under Section 339.06, Revised Code, hospital operating funds may be used for the acquiring of or construction of permanent improvements to county hospital property (Paragraph 3 of Opinion No. 330, Opinions of Attorney General for 1957, page 103, overruled).

Columbus, Ohio, January 9, 1963

Hon. Elmer Spencer, Prosecuting Attorney
Adams County, West Union, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have been requested by the Adams County Board of Trustees for an opinion on the following questions, to-wit:

1. Can the County Commissioners appropriate funds derived from the county hospital operations and an operating levy passed for operating purposes to the use of the County Commissioners?
2. May surplus funds accumulated from normal hospital operations and from an operating levy be used for construction of additional hospital space and the furnishings of patient areas ancillary facilities?

"I might add that the funds derived from the operating levy would be in accordance with a levy passed under Ohio Revised Code Section 5705.22. In reviewing Section 339.01, I note that in 1957 OAG No. 330 that operating funds could not be used for the construction of additional permanent improvements. However, Ohio Revised Code Section 339.06 in the second paragraph of such section, it provides in part 'thereafter such funds may be dispersed by the Board of County Hospital Trustees for the uses and purposes of such hospital, for the replacement of necessary equipment, *or for the acquiring of or construction of permanent improvements to County hospital property, etc.*' (Emphasis added). This section of law became effective November 4, 1959 and I am wondering if this section would in any way alter the law and opinion No. 330 rendered in 1957."

Subsequent to your letter of request, you have advised me that it will only be necessary to answer the second question in your request. (See Opinion No. 1504, Opinions of the Attorney General for 1958, page 7.)

Opinion No. 330, Opinions of the Attorney General for 1957, page 103, which is referred to in your letter of request provides in paragraph 3 of the syllabus as follows :

“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.”

In 1959, however, the General Assembly amended Section 339.06, Revised Code, to provide that hospital operating funds may be disbursed by the board of county hospital trustees “for the acquiring of or construction of permanent improvements to county hospital property.” The intention of the General Assembly in amending Section 339.06, *supra*, is evidenced by the title of the act, 128 Ohio Laws 737, which reads as follows :

“To amend section 339.06 of the Revised Code to allow expenditures from the hospital operating fund for purchase of equipment and construction of improvements.”

It is clear, therefore, that hospital operating funds may now be used for the construction of permanent improvements to county hospital property. Accordingly, it is my opinion and you are advised that under Section 339.06, Revised Code, hospital operating funds may be used for the acquiring of or construction of permanent improvements to county hospital property (Paragraph 3 of Opinion No. 330, Opinions of Attorney General for 1957, page 103, overruled).

Respectfully,

MARK McELROY

Attorney General