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HOSPITALS, TUBERCULOSIS—PROCEEDS OF SPECIAL TAX LEVY, SECTION 5705.20 RC—AVAILABLE ONLY FOR SUPPORT OF HOSPITALS—CARE OF PATIENTS WHERE COUNTY COMMISSIONERS HAVE ENTERED INTO CONTRACTS—FUNDS MAY NOT BE EXPENDED FOR CARE, TREATMENT AND MAINTENANCE OF PATIENTS NOT HOSPITALIZED AT TUBERCULOSIS INSTITUTION.

SYLLABUS:

The proceeds of a special tax levy made under the provisions of Section 5705.20, Revised Code, are available only "for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board (of county commissioners) has contracted" pursuant to law; and such funds may not be expended for the care, treatment and maintenance of patients who are not hospitalized at a tuberculosis institution.

Columbus, Ohio, March 19, 1954

Hon. Joseph W. McNerney, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

I have for consideration your request for my opinion regarding the purposes for which the proceeds of a special levy made under the provisions of Section 5705.20, Revised Code, may be expended.

The primary question raised by your inquiry may be stated as follows:

May funds raised by a levy made under the provisions of Section 5705.20, Revised Code, be expended to defray the expense of providing medical care for tubercular patients where such patients reside in their own homes and are not admitted to a tuberculosis hospital for treatment therein?

Section 5705.20, Revised Code, reads in part as follows:

"The board of county commissioners of any county, prior to the fifteenth day of September in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, or for the

care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code, by vote of two thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of tuberculosis hospitals, or for the care, treatment, and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to such section, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill."

This section, prior to the recodification of 1953, was designated as Section 5625-15a, General Code. Prior to 1951, this section authorized the imposition of a special levy "for the support of tuberculosis hospitals." In considering the provisions of this section as then in effect, it was held in Opinion No. 394, Opinions of the Attorney General for 1945, p. 505, that the proceeds of a special levy made under the provisions of such section could not be used "for the purpose of paying for the care, treatment and maintenance of tuberculosis patients at hospitals with which the county commissioners have contracted under the provisions of Section 3139-18, General Code."

In 1951 Section 5625-15a was amended so as to authorize the use of the proceeds of the special levy therein authorized for the additional purpose of meeting the expense of "the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to section 339.20 of the Revised Code." It would appear that the principal purpose of the 1951 amendment was to avoid the limitation on the use of these funds which was pointed out in the 1945 opinion, *supra*. Such being the case, it would not appear that such funds would be available for meeting the expense of medical care of patients who were not actually admitted to a tuberculosis hospital.

In a technical sense it could perhaps be argued that the language added to Section 5625-15a, General Code, in 1951, and thereafter carried into Section 5705.20, Revised Code, is capable of two interpretations.

The first interpretation, and the one which the plain sense of the

language appears to suggest, is that the "care, treatment and maintenance" is to be afforded only to those patients who are actually suffering from tuberculosis at hospitals, and that such care, etc., is to be given at such hospitals on an in-patient basis.

The second possible interpretation is that it would treat the expression "who are suffering * * * at hospitals" as the words *descriptio personarum* to identify the individuals who could be given treatment, maintenance, etc., but would permit such treatment to be given in the patient's home following release from a hospital.

The latter suggested interpretation is, in my opinion, one which subjects the legislative language to considerable strain and is one which could be adopted only in the event that support is found elsewhere in the statute for it. I not only am unable to find such support but, instead, I find in the definitions set out in Section 339.20, Revised Code, considerable support for the contrary view.

It will be observed that Section 5705.20, *supra*, refers to residents of the county who are suffering from tuberculosis at hospitals with which the board has contracted pursuant to Section 339.20, Revised Code. The section thus referred to, 339.20, Revised Code, does not in itself contain provisions for contracts of the sort mentioned. This section is, however, a recodification of Section 3139, General Code, and that section was the initial one in House Bill 59, 119 Ohio Laws, p. 721, by which a general revision was made of the statutes relating to tuberculosis hospitals. Within such act Section 19, afterward codified as Section 3139-18, General Code, and now recodified as Section 339.38, Revised Code, did provide for contracts by the county commissioners for the hospitalization of tubercular residents of the county concerned. Although the matter did not receive particular attention in Opinion No. 394, *supra*, it would appear that the writer of that opinion deemed the reference in Section 5625-15a, General Code, to Section 3139, General Code, to be a reference in effect to Section 3139 *et seq.*, General Code, and specifically to include Section 3139-18, General Code. Accordingly, in considering the nature of the "care, treatment and maintenance" which may be afforded by contract under the provisions of Section 339.38, Revised Code, we may properly refer to the definition as set out in Section 339.20, the second paragraph of which section is as follows:

"As used in this section, 'maintenance, care, and treatment' means proper housing and nutrition, the use of approved and

modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, *as the medical superintendent of each tuberculosis institution prescribes.*" (Emphasis added.)

This definition rather clearly indicates that the maintenance, care and treatment for which the county commissioners may contract under the provisions of Section 339.38, Revised Code, is that maintenance, care and treatment which is afforded to patients actually hospitalized in a tuberculosis institution, for it would appear virtually impossible for the medical superintendent to prescribe such maintenance, care and treatment except in the case of patients under his direct care as resident patients within such institution.

From this it would follow that the funds in question would not be available for expenditure for the purpose suggested in your inquiry, and this conclusion makes it unnecessary to give consideration to your further inquiry concerning the responsibility of the county health commissioner in the disbursement of funds for such purpose.

Accordingly, in specific answer to your inquiry, it is my opinion that the proceeds of a special tax levy made under the provisions of Section 5705.20, Revised Code, are available only "for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the board (of county commissioners) has contracted" pursuant to law; and such funds may not be expended for the care, treatment and maintenance of patients who are not hospitalized at a tuberculosis institution.

Respectfully,
C. WILLIAM O'NEILL
Attorney General