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HOSPITAL, COUNTY

1. FUNDS FROM BOND ISSUE—EXPENDITURE FOR PRELIMINARY PLAN PREPARATION UNAUTHORIZED; CONTRACT MADE BY COUNTY COMMISSIONERS CONTRARY TO §5705.41, RC
2. CONTRACTS VOID WHEN NO CERTIFICATE OF AVAILABILITY OF FUNDS IS ATTACHED—§5705.41(D), RC
3. DETERMINATION OF FACT — REPAIR OR MAINTENANCE—TO BE MADE BY BODIES HAVING CONTROL OVER RESPECTIVE PROJECTS.

SYLLABUS:

1. A board of hospital trustees, under authority of Section 339.03, Revised Code, is not authorized to expend funds from a bond issue for the construction of an additional hospital building in payment from preliminary plan preparation where such plans were prepared at the instance of the board of county commissioners, which board purported to contract contrary to the requirements of Section 5705.41, Revised Code.

2. Contracts made by subdivisions or taxing units to which no certificate of availability of funds is attached as required by Section 5705.41 (D), Revised Code, are void and no warrant may be issued in payment of amounts due thereon.

3. A determination of whether a given project constitutes a major repair and replacement or a normal operating expense is one of fact to be determined in the first instance by those boards charged with the responsibility of repair and maintenance.

Columbus, Ohio, August 30, 1957

Hon. Edward R. Ostrander, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

I have received a request from your assistant, John F. Clair, Jr., reading as follows:

"Your office is aware from previous correspondence with your immediate predecessor that our county is contemplating the erection of an addition to the existing County Hospital and also the erection of a new hospital building on a separate site in another part of the county. Specifically, I respectfully refer you to Attorney General's Opinion No. 7100 published on September 12th, 1956 and Opinion No. 7630 published January 14th, 1957. Separate bond issues were issued for these purposes and were approved by the voters of Lake County at the General Election in November 1955 and November 1956. Subsequent to the passage of these bond issues and acting in accordance with the Attorney General's Opinions mentioned above, the Board of Hospital Trustees employed the firm of architects to prepare plans and specifications for both of said projects.

"However, previous to the rendering of the above mentioned Attorney General's Opinions and in fact several months prior to the passage of the last bond issue, the Board of County Commissioners, believing in good faith at that time that they were authorized to supervise the construction of the addition and the erection of the new building, under and by virtue of Section 339.01 of the Revised Code of Ohio, informally and orally en-

gaged a local architect to conduct preliminary studies for the proposed new county hospital building. The architect did make such studies and subsequently the Board of Hospital Trustees employed another architect to prepare the necessary plans and specifications. The County Commissioners felt the original employment was necessary in order to determine the amount of the bond issue for the new hospital.

“The Trustees are now asked to pay the local architect’s fees from funds derived from the bond issue and they have no objection to making such payment provided they are legally permitted to do so. Accordingly, I request your opinion as to the following questions:

1. Can the Board of Hospital Trustees lawfully pay the fees of an architect from the proceeds of a bond issue when such architect has been employed by some other authority to make preliminary studies for the project to be financed by the Bond issue in question?

2. Assuming that the informal employment of the architect by the Board of County Commissioners was not reduced to writing and that your answer to number 1 above is in the negative, who, if anyone, has authority to pay the local architect’s fees.

“The Board of Hospital Trustees has further consulted this office concerning the following question: The present existing hospital has recently been examined by the State Fire Marshal who has directed that certain wiring in the existing building be corrected and replaced and that the cost of this project will be somewhat substantial, and I therefore request an informal opinion as to whether this constitutes a major repair and replacement and as such will financing be the responsibility of the County Commissioners or whether such would be a normal operating expense and payable by the Board of Trustees or should it be paid by the Board of Trustees for the construction of said hospital as part of the expense of the planned addition to the existing hospital facilities.”

In answer to your first question I note your statement that the Board of County Commissioners believes that its employment contract with the architect was necessary to arrive at a figure for the proposed bond issue. I note that such agreement was informal; in this regard I direct your attention to Section 5705.41, Revised Code:

“No subdivision or taxing unit shall:

- (D) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required

to meet the same, * * * has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

Therefore, the contract made by the board of county commissioners was void if no such certificate was issued. It is well established that persons contracting with public authorities do so at their peril.

Further, I do not see how the board of hospital trustees could adopt such an illegal contract for to do so would involve accomplishing indirectly that which Section 5705.41, *supra*, expressly prohibits. In addition it should be pointed out that the consideration for such contract has passed and payment made by the board of hospital trustees could not be made for plans prepared before the passage of the bond issue.

For your second question I direct your attention to the fact that persons contracting with governmental agencies are presumed to have notice of the limitations upon the authority of such agencies to contract; therefore, I find no one in the situation you present who is authorized to pay for such plan preparation. In specific answer to your second query, contracts made by subdivisions or taxing units to which no certificate of availability of funds is attached as required by Section 5705.41 (D), Revised Code, are void and no warrant may be issued in payment of amounts due thereon. See 32 Ohio Jurisprudence 940, 941.

In answer to your additional question relative to the proper body to undertake the project of replacing the electrical wiring of the present existing hospital facility, I direct your attention to the following language found in Opinion No. 330, Opinions of the Attorney General for 1957:

“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 under-

taken 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.”

Finding no statutory authority for the two respective boards to cooperate officially in making determinations as to the proper classification for specific projects, each board may, within its sound discretion, find that a particular project is within its authority and then proceed in compliance with the applicable statutes. Such a finding upon a specific project is one of fact and being such, the resolution of it is beyond the scope of this office; however, it should be kept in mind that the *scope* of the proposed project may well be entitled to more relative weight in such a determination than the *cost* of the project.

In specific answer to your question it is my opinion and you are accordingly advised that:

1. A board of hospital trustees, under authority of Section 339.03, Revised Code, is not authorized to expend funds from a bond issue for the construction of an additional hospital building in payment for preliminary plan preparation where such plans were prepared at the instance of the board of county commissioners, which board purported to contract contrary to the requirements of Section 5705.41, Revised Code.

2. Contracts made by subdivisions or taxing units to which no certificate of availability of funds is attached as required by Section 5705.41 (D), Revised Code, are void and no warrant may be issued in payment of amounts due thereon.

3. A determination of whether a given project constitutes a major repair and replacement or a normal operating expense is one of fact to be determined in the first instance by those boards charged with the responsibility of repair and maintenance.

Respectfully,
WILLIAM SAXBE
Attorney General