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INSURANCE PROTECTION—PAYMENT OF PREMIUMS—
COUNTY HOSPITAL—DUTY FALLS UPON COUNTY COM-
MISSIONERS—SECTION 339.06 RC.

SYLLABUS:

Under the provisions of Section 339.06, Revised Code, the duty of paying the premiums for insurance protection on the property of a county hospital falls upon the county commissioners.

Columbus, Ohio, November 24, 1954

Hon. Harold D. Spears, Prosecuting Attorney
Lawrence County, Ironton, Ohio

Dear Sir:

I have before me your request for my opinion on the question of who should pay for the premiums on insurance policies required for the protection of the county hospital. The problem is whether the expense of such insurance is to be paid by the trustees of the hospital out of the hospital operating fund, or by the county commissioners from the county's general fund.

The respective responsibilities of the hospital trustees and the county commissioners appear to be set out in Section 339.06 of the Revised Code. That section reads as follows:

“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 give the board of county hospital trustees a bond in an amount equal to the funds so deposited. 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.

“The board of county hospital trustees shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees as are necessary for the proper care, control, and management of such hospital and its patients, and the board of county hospital trustees shall fix their respective salaries and compensation. Any person, including the administrator, may be removed by the board of county hospital trustees at any time when the welfare of such institution warrants removal. The administrator and such other employees as the board of county hospital trustees deems necessary shall be bonded in amounts established by the board of county hospital trustees, *the expense of which shall be paid out of hospital operating funds*.

“The board of county hospital trustees shall fix the compensation to be paid by or for all patients for all services and treatment rendered by the county hospital. It may provide for the free treatment in such hospital of soldiers, sailors, and marines of the county, under such conditions and regulations as it prescribes.

“The board of county hospital trustees *may designate* the amounts and forms of insurance protection to be provided, and the board of county commissioners *shall secure* such protection.

“The board of county hospital trustees shall, annually on the first day of March, file with the board of county commissioners a statement of its receipts and expenditures for the preceding year and shall submit to such board of county commissioners an estimate of the financial requirements of such hospital for the ensuing year.”
(Emphasis added.)

In the second paragraph of the section above quoted it appears that all of the funds obtained by the hospital trustees, whether from tax levies,

appropriations by the county commissioners or from payments from patients, are to be put into what is known as the "hospital operating fund," and that such fund may be disbursed by the board of hospital trustees for the "uses and purposes of such hospital." Later on in the section, it will be noted that the board of hospital trustees "may designate the amounts and forms of insurance protection to be provided, and the board of county commissioners *shall secure such protection.*"

The above provisions appear to be somewhat vague and possibly contradictory as to the responsibility for the payment of the premiums for this insurance and the problem is to ascertain the precise intention of the legislature.

Prior to 1951, county hospitals under the provisions of Section 3131 et seq. of the General Code, were to be constructed and equipped by a board of trustees appointed by the governor. After their completion it was provided by Section 3136, General Code, that another board of trustees should be appointed to operate and manage the hospital. Effective June 13, 1951, this system was changed and both the construction and operation of the hospital were committed to a single board. This change was embodied in an Act found in 124 Ohio Laws, page 705. In that enactment we find in Section 3137, General Code, the following paragraphs:

"The trustees shall determine the personnel to be bonded, shall prescribe the amount of bond, and shall designate the company with which it shall be placed.

"The trustees shall have the *privilege of designating* the amounts and forms of insurance protection to be provided, and it shall be *incumbent upon the county commissioners to secure such protection.*"
(Emphasis added.)

This section was carried in to the Revised Code as Section 339.06 in substantially the same terms, excepting that the paragraph above quoted relating to insurance, was changed to the following language:

"The board of county hospital trustees *may designate* the amounts and forms of insurance protection to be provided, and the board of county commissioners *shall secure* such protection."
(Emphasis added.)

I will later comment on these changes.

The paragraph relating to the bonds of the employes was carried into the Revised Code precisely as originally enacted in 124 Ohio Laws.

But by an Act which became effective October 15, 1953, Section 339.06 was amended to its present reading, a provision being inserted obligating the board of hospital trustees to pay the premiums on bonds from its operating fund. As originally enacted, there could have been a doubt as to who should pay the premiums on the bonds of employes and the legislature saw fit to make it clear that the hospital board should not only determine what bonds should be given *but also should pay the premiums on same out of the hospital operating funds.*

The second paragraph above quoted from the law as originally enacted, relating to insurance protection was changed slightly in the enactment of the Revised Code, and the change was carried into the amendment of the section in question. As originally enacted by the legislature in 124 Ohio Laws, it was stated that the trustees should have the "*privilege* of designating the amounts and forms of insurance protection to be provided," and that it "shall be *incumbent upon* the county commissioners to secure such protection." As modified in the present language of the Revised Code, the word "privilege" is supplanted by the word "may" and the words "incumbent upon" were changed to "shall."

The fact that the legislature, in its amendment, saw fit to remove the possible doubt as to the obligation to pay the bond premiums, and made no change whatsoever in the accompanying paragraph relative to insurance premiums, appears to me to make it rather clear that the legislature meant what it had said, to wit, that all that the hospital trustees had to do with insurance protection was to designate the "amounts and forms of insurance" but that it was the obligation of, or "incumbent upon" the county commissioners to "secure such protection."

It appears to me that the words "incumbent upon" are a little stronger than the word "shall." The dictionary definition of "incumbent upon" is "obligatory." The retention of the original words would eliminate any claim that the word "shall" might be used as directory rather than mandatory.

The words "secure such protection", as here used, both in the original enactment and in the Revised Code seem to me to import the idea of providing protection by obtaining or providing insurance policies, and it is hard to get away from the conviction that when one is required by law to provide something for another, his duty does not end until he has paid for it. If we may compare the obligation of a man to provide for the sup-

port of his wife or his children, it would seem clear that he has not performed that obligation simply by ordering clothing or other provisions to be sent to them, leaving to them the burden of paying for the same.

If we were to hold that the hospital trustees, having the right to designate the amount and form of the insurance are also obligated to pay for it, then we may well ask: What function does the board of county commissioners perform? Are they mere messengers to order the policies issued and charged to the trustees?

It does not seem difficult to understand why the legislature saw fit to impose on the county commissioners the duty to pay for this insurance when the hospital trustees had funds of their own, which they had the right to use for operating expenses. Since the title to the hospital is unquestionably in the county, represented by the commissioners, it would not seem strange that the legislature should require them to protect the county from the great loss that would result from its destruction, by providing adequate insurance. If the hospital were destroyed, it would certainly not be the obligation of the trustees to rebuild it out of their "operating fund." That would be a capital expense, and the cost of protection evidently was considered by the legislature as being directly related thereto. However, I do not depend upon this reasoning, but find the obligation of the county commissioners in the language of the statute.

It is my opinion that under the provisions of Section 339.06, Revised Code, the duty of paying the premiums for insurance protection on the property of a county hospital falls upon the county commissioners.

Respectfully,
C. WILLIAM O'NEILL
Attorney General