

3

## SYLLABUS:

Under Section 339.14, Revised Code, a county hospital commission may request the board of county commissioners to place on the ballot a bond issue to cover the costs of construction of hospital facilities, even though there has been no conveyance of land by a person as contemplated by that section, provided the person concerned is bound by agreement with the county hospital commission to make such conveyance in the event the bond issue is approved by the voters.

Columbus, Ohio, January 22, 1963

Hon. Everett Burton

Prosecuting Attorney

Scioto County

Portsmouth, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"A question has arisen in this county relative to the construction of a hospital under the provisions of Revised Code Section 339.14. The Women's Auxiliary of Portsmouth General Hospital, Inc., a Corporation not for profit organized and existing under the laws of the State of Ohio, proposes to file an application with the Board of County Commissioners of this county for the purpose of having a hospital commission established in accordance with said statute. The hospital commission then will request the Board of County Commissioners to submit the question of the issuance of bonds for the construction of the hospital to the electorate.

"The Women's Auxiliary proposes to provide the necessary land for the site, although it does not presently own such land. We are of the opinion that under the provisions of Section 339.14 (D) the land must be held in the name of the county as provided in subsection (F) as a prerequisite of any action being taken to request the Board of County Commissioners to place a bond issue on the ballot. The proponents of this program desire to proceed immediately to take the necessary steps to have the issue placed upon the ballot to be voted upon in the May primary with the intention of acquiring the land at some subsequent date.

"This matter is one of great importance, since the proposed bond issue requiring a 55% plurality under Revised Code Section 339.01 was rejected by the voters of the county at the November, 1962, General Election. The proponents now wish to follow the procedure which requires only a majority vote. Since this will involve a substantial expenditure of public funds and is dependent upon the interpretation of statutes which affect all counties in this state uniformly, we believe that a decision relative thereto should be given by the Attorney General, rather than by this office.

"The question, therefore, is: Is it a pre-requisite to the making of a request by the county hospital commission to the Board of County Commissioners to place on the ballot a bond issue for the construction of hospital facilities pursuant to Revised Code Section 339.14 that title to the land upon which such facilities are to be constructed be vested in the county?"

Section 339.14, Revised Code, here pertinent, reads, in part, as follows:

"(A) Upon application to the board of county commissioners by an Ohio Corporation or corporations, organ-

ized for charitable hospital purposes and not for profit, in this section called participating hospital corporations, the board of county commissioners may, after a determination that the preservation of the public health require additional hospital facilities in the county, appoint a hospital commission of not less than three members, in this section called the county hospital commission. \* \* \*

“(B) The county hospital commission after consultation with participating hospital corporations and agreement as to their respective needs and the needs of the public of the county for hospital service may, with the consent of the board of county commissioners, *accept conveyances of land*, situated within the county, from any person and may, with the consent of the board of county commissioners, enter into an agreement before or after such conveyance with such person or with any Ohio corporation organized for charitable purposes to lease to such corporation upon such terms as may be agreed upon *such land together with buildings thereafter constructed thereon* and furniture, fixtures and equipment therein for use as a general hospital or a facility thereof, said lease shall be for a period not to exceed fifty years, renewable for a like term and may contain provisions for the sale of such property to the lessee corporation upon the unanimous consent of the board of county commissioners for a purchase price representing not less than the actual cost to the county, less depreciation, computed at the rate customarily supplied to similar structures.

“(C) If the land conveyed under division (B) of this section is adjacent to an existing hospital, the county hospital commission may, at the time of the acceptance of the conveyance and the leasing of the proposed hospital facilities, enter into an agreement with the owner of such existing hospital for the use of common walls in the construction of the county hospital.

“(D) The county hospital commission may take all steps necessary for *the construction and equipment of hospital facilities* of any kind or character *on said land* and may request the board of county commissioners to submit to the electors of the county, in the manner provided in sections 133.01 to 133.48, inclusive, of the Revised Code, a bond issue to cover the cost of *such construction and equipment* at a general or special election, the provisions of section 133.12 of the Revised Code notwithstanding.

“(E) If a bond issue provided for above is approved by the vote of a majority of the electors voting on the issue, the board of elections for such county shall certify

the results of such election as provided in section 133.14 of the Revised Code, and the board of county commissioners shall proceed with the authorization and issuance of the bonds or notes in anticipation thereof, in the manner provided by law for the issuance of bonds and notes by boards of county commissioners.

“(F) *The county hospital commission shall take title in the name of the county to any land conveyed pursuant to this section, and shall have final approval of all plans and specifications for the erection and equipping of the hospital facilities contemplated in this section. The commission may employ architects and such other assistants as may be required in the construction, including supervision, and pay the expenses thereof out of the funds provided for such hospital facilities.*

“\* \* \*

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(Emphasis added)

In general, the pertinent steps in a procedure under Section 339.14, *supra*, appear to be as follows:

1. Upon application made by a proper Ohio corporation or corporations, the board of county commissioners may appoint a hospital commission (the county hospital commission).

2. The county hospital commission may, with the consent of the board of county commissioners, accept conveyances of land, situated within the county, from any person.

3. The county hospital commission may enter into an agreement with a person making a conveyance of land or with a hospital corporation to lease to said corporation such land plus buildings thereafter constructed thereon. *Such agreement to lease may be made before or after the conveyance.*

4. The county hospital commission may construct and equip hospital facilities on the land conveyed.

5. The county hospital commission may request the board of county commissioners to submit a bond issue to the electors to cover the costs of construction and equipment; a bond issue so submitted requires a majority vote.

It appears clear that the ultimate construction and operation of a hospital under Section 339.14, *supra*, is based upon a convey-

ance of land to the hospital commission as, without such a conveyance, the hospital can certainly not be constructed and equipped, nor leased. This fact was recognized by my predecessor in office in Opinion No. 3386, Opinions of the Attorney General for 1962, issued on October 30, 1962, in which he said:

“\* \* \* Under the language used it would appear that a conveyance of land is necessary and that no buildings are erected until the lease agreement is consummated. After the land is conveyed and the lease agreement entered into, the county hospital commission is authorized to construct and equip the hospital with funds raised from a bond issue. The hospital then becomes the property of the county but is operated and maintained by the lessee corporation, with the provision of reverter to the county for operation if there is noncompliance with the terms of the agreement.”

(I interpret my predecessor's reference to “lease agreement” to mean the actual lease finally entered into, and not the “agreement to lease”.)

While Section 339.14, *supra*, states that *an agreement to lease* may be entered into either before or after the conveyance, there is no provision specifying whether the conveyance must be made before the bond issue may be submitted to the electors. The intent of the legislature in this regard should be ascertained, therefore, by reading all of the provisions of the section together.

In construing ambiguous provisions of a statute, the position in the order of precedence of the several provisions may be given due consideration. 50 Ohio Jurisprudence 2d, 91, Section 110. On viewing the order of precedence of the various parts of the procedure here concerned, I note that the provision as to conveyance, and agreement to lease, is in division (B), and the provision as to the bond issue appears later in the section in division (D). Also, division (D) first provides that the hospital commission may take steps necessary for the construction and equipment of hospital facilities *on such land*, and later provides that the request for a bond issue may be made. Since the conveyance must be made before construction can begin, such language might be construed to require that conveyance be made before the bond issue may be submitted.

On the other hand, it appears significant that an agreement to lease may be entered into *before* the conveyance. If the law required that such an agreement could be entered into only after a conveyance was made, then it would be apparent that all procedures as to construction and operation of the hospital, including the submission of the bond issue, would be dependent upon a conveyance of land, as the hospital commission would not proceed with the construction, etc., of a hospital unless an agreement had been made with a hospital corporation for the operation of the hospital. Under the language used, the intent of the legislature may be interpreted to allow the hospital commission to proceed with the bond issue on the basis of the agreement to lease, the actual conveyance then being dependent upon whether the bond issue is approved.

I might add that to allow the submission of the bond issue where there is no conveyance, but there is an agreement to lease, would appear to better carry out the intent of the legislature, which is to provide more hospital facilities (126, Ohio Laws, 101). In this regard, it could easily be possible that a conveyance would be made, but the bond issue would not pass, in which case there would be no hospital and the land could not be given back to the person who made the conveyance. Persons who are interested in helping to provide more hospital facilities would undoubtedly be more likely to donate land if, before making a conveyance of the land, they could be certain that funds would be available to construct the hospital thereon; and it appears logical to assume that the legislature considered this aspect in enacting the legislation in question.

In view of the legislative intent to allow for the construction of more hospital facilities, and since Section 339.14, *supra*, is silent as to when the hospital commission may request that the bond issue be submitted to the electors, I am constrained to conclude that such a request may be made before the actual conveyance of the land, provided there has been an agreement to lease as contemplated by that section.

As to the agreement to lease, the county would certainly not want to incur the costs of an election unless assurance is given that a favorable vote will result in a conveyance of land and in further

action to construct hospital facilities. To obtain such assurance where an agreement to lease is entered into prior to the conveyance by a particular person, the agreement would necessarily require a provision binding the person concerned to make the conveyance in the event the bond issue is approved by the voters; and I am of the opinion that where an agreement to lease is entered into prior to the conveyance, it should contain such a provision.

In conclusion, it is my opinion and you are advised that under Section 339.14, Revised Code, a county hospital commission may request the board of county commissioners to place on the ballot a bond issue to cover the costs of construction of hospital facilities, even though there has been no conveyance of land by a person as contemplated by that section, provided the person concerned is bound by agreement with the county hospital commission to make such conveyance in the event the bond issue is approved by the voters.

Respectfully,

WILLIAM B. SAXBE

Attorney General