

**OPINION NO. 82-107****Syllabus:**

A facility which has been validly created and operated pursuant to the statutes governing tuberculosis hospitals, now R.C. 339.20-47, may, under R.C. 339.45, provide maintenance, care, and treatment for the aged, the infirm, and mentally retarded children, provided that it has the approval of the State Department of Health.

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**To: Lee C. Falke, Montgomery County Prosecuting Attorney, Dayton, Ohio**  
**By: William J. Brown, Attorney General, December 30, 1982**

I have before me your request for my opinion regarding the authority of a county to operate a tuberculosis hospital. In particular, you ask:

- 1) Assuming that a tuberculosis hospital was validly created and operated pursuant to a predecessor statute to the current Section 339.20 et seq., Ohio Revised Code, may what is now a skilled nursing care facility continue to operate under Section 339.45 et seq., Ohio Revised Code, and provide care and treatment for the elderly, aged, and mentally retarded children?

- 2) If the answer to Question (1) is in the negative, may a county operate a skilled nursing care facility?

The situation with which you are concerned involves a facility currently known as the Stillwater Health Center. You have informed me that the facility was created circa 1918 as a district tuberculosis hospital by the Boards of County Commissioners of Montgomery and Preble Counties, and that, in 1970, Preble County sold its interest in the facility to Montgomery County. According to the information you have provided, the facility has, since 1970, provided care and treatment for the aged and infirm and for mentally retarded children, in addition to treating tuberculosis patients. You have indicated that Stillwater is no longer registered as a hospital by the State Department of Health, but that it meets the requirements for participation in the Medicare program as a skilled nursing facility and is certified as an intermediate care facility and an intermediate care facility for the mentally retarded for Medicaid reimbursement purposes. Your first question is whether Stillwater may continue to operate under the statutes governing tuberculosis hospitals.

The pertinent sections of the Ohio Revised Code seem to contemplate precisely the situation which has occurred with respect to the facility in question. R.C. 339.21 and its predecessor, G.C. 3139-1, provide for the establishment of district tuberculosis hospitals, to be governed, pursuant to R.C. 339.23 and its predecessor, G.C. 3139-3, by a board of trustees. R.C. 339.28 authorizes a sale of the sort that occurred in 1970, when Preble County sold its interest in the hospital to Montgomery County, and R.C. 339.33 provides for the management and control of a county tuberculosis hospital by its board of trustees or, with consent of the trustees, by the board of county commissioners.

R.C. 339.45, enacted in 1959, 1959 Ohio Laws 7 (Am. S.B. 3), expressly authorizes a county or district tuberculosis hospital to treat non-tubercular patients. It provides in pertinent part:

The board of trustees of a county or a district tuberculosis hospital may admit patients to such hospital for the maintenance, care, and treatment of disabilities and diseases other than tuberculosis, and for the care of the aged, under such terms and conditions as prescribed by the trustees and approved by the department of health, under the authority conferred by section 339.20 of the Revised Code. (Emphasis added.)

The care of the aged and infirm and of mentally retarded children clearly comes within this statutory authorization.

I am aware of no reason why a facility which has been established as a tuberculosis hospital may not continue to operate under R.C. 339.20 and related sections, even though it is no longer registered as a hospital. R.C. 339.20 through 339.47 provide for the establishment of district and county tuberculosis hospitals and for their management by, or with the consent of, boards of trustees. R.C. 339.23, 339.33. Termination of such facilities is governed by R.C. 339.46. R.C. 339.46(A) authorizes the county commissioners to close such a facility upon request of the trustees if the trustees are of the opinion that the facility "is no longer needed for the care, treatment, and maintenance of tuberculosis patients." R.C. 339.46(B) permits a county which purchases all interests in a district tuberculosis hospital to close the facility or to change its operation "as seems economically beneficial to the board of county commissioners." See also R.C. 339.28. Until such a facility is closed in the manner prescribed by statute, it may continue to operate in the manner and for the purposes prescribed by statute. R.C. 339.45 clearly authorizes such a facility to treat non-tubercular patients of the sort you have described—namely, the aged, infirm, and mentally retarded. See 1961 Op. Att'y Gen. No. 2312, p. 337, 340 (concluding that R.C. 339.45 did not authorize activities unrelated to the ordinary purposes of a hospital, but, rather, that it merely enlarged the character of patients and treatments previously authorized by statute and that use of a levy for purposes authorized by R.C. 339.45 would constitute use for the support of a tuberculosis hospital).

It is, of course, necessary that, in carrying out its operations, a facility established under R.C. 339.20 and related sections comply with any requirements which may be imposed by the State Department of Health. R.C. 339.20 provides that "[t]he department of health shall have general supervision of all sanatoria, hospitals, and other institutions engaged in the maintenance, care, and treatment of persons suffering from tuberculosis, and shall formulate and enforce such rules and regulations for the government of such institutions as are necessary." Pursuant to R.C. 339.45, the board of trustees of a tuberculosis hospital may admit and care for non-tubercular patients only "under such terms and conditions as prescribed by the trustees and approved by the department of health" under R.C. 339.20. R.C. 339.46 provides that, in order for a county acquiring all interests in a district tuberculosis hospital to change the operation of the hospital, the county must give "notice to the department of health at least six months prior to such change." Thus, it is clear that a facility operated under the statutes governing tuberculosis hospitals must have the approval of the State Department of Health. I am, however, aware of no statutory requirement that such facility be registered as a hospital. See R.C. 3701.07 (requiring that every hospital and dispensary annually register with the Department of Health, and authorizing the Director of Health to define and classify hospitals and dispensaries). Provided that the facility satisfies the requirements imposed upon it by the Department of Health, it may perform any functions authorized by statute, including the care of non-tubercular patients pursuant to R.C. 339.45.

You have indicated that, although the facility in question is no longer registered as a hospital, it is currently certified as a skilled nursing facility, intermediate care facility, and intermediate care facility for the mentally retarded for Medicare and Medicaid reimbursement purposes. Whether such certification constitutes sufficient approval of the Department of Health to satisfy the requirements of R.C. Chapter 339 is a question which I am unable to answer on the basis of the information which you have provided. I am, however, aware of no reason why certification to receive Medicare and Medicaid funds as a skilled nursing facility, intermediate care facility, or intermediate care facility for the mentally retarded should interfere with the capacity of a facility to care for non-tubercular patients pursuant to R.C. 339.45. See generally R.C. Chapter 5111. I conclude, therefore, that the fact that a facility which was established as a tuberculosis hospital is not registered as a hospital but is certified as a skilled nursing facility, intermediate care facility, and intermediate care facility for the mentally retarded for purposes of obtaining third party payments for Medicare and Medicaid patients does not prevent the facility from operating under R.C. 339.45 and related sections to provide maintenance, care and treatment for the aged, the infirm, and mentally retarded children, if the facility has the approval of the Department of Health required by R.C. Chapter 339.

Since the answer to your first question is in the affirmative, it is unnecessary for me to address your second question.

In conclusion, it is my opinion, and you are hereby advised, that a facility which has been validly created and operated pursuant to the statutes governing tuberculosis hospitals, now R.C. 339.20-.47, may, under R.C. 339.45, provide maintenance, care, and treatment for the aged, the infirm, and mentally retarded children, provided that it has the approval of the State Department of Health.