

**OPINION NO. 91-023****Syllabus:**

A county does not take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08.

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**To: P. Randall Knece, Pickaway County Prosecuting Attorney, Circleville, Ohio**  
**By: Lee Fisher, Attorney General, April 16, 1991**

I have before me your request for my predecessor's opinion with respect to the following questions:<sup>1</sup>

- 1) Does a county take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08?
- 2) What entity conveys title to the real property of a municipal hospital in which a county participates pursuant to R.C. 513.08 when such property is sold to a purchaser?

Your letter of request indicated that in 1949 the City of Circleville and the Board of Commissioners of Pickaway County entered into a contract "pursuant to General Code Section 3414-1, the provisions of which are now contained in the Ohio Revised Code Sections 513.08, et seq. Further, the authority and duties of the Board of Hospital Commissioners, as set forth in this contract, were as allowed by General Code Sections 4026 to 4034, inclusive, which are now Ohio Revised Code Sections 749.06 to 749.14."<sup>2</sup>

As a preliminary matter, I note that the provisions of G.C. 3414-1a, 1947 Ohio Laws 411 (Am. S.B. 273, approved June 17, 1947), are substantially similar to those of R.C. 513.08, which provides, in pertinent part, as follows:

[A] board of county commissioners may, in lieu of proceeding to establish, construct, and maintain a...county hospital, enter into an

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<sup>1</sup> With your approval, I have reworded your questions for purposes of analysis.

<sup>2</sup> Since you have indicated that the arrangement between the county and the municipal corporation was entered into pursuant to G.C. 3414-1, the relevant provisions of which are contained in R.C. 513.08, I have limited my opinion to a discussion of R.C. 513.08.

agreement with a municipal corporation, which proposes to establish, or has established, a municipal hospital, for participation by such...county in the erection or enlargement of such municipal hospital, or in its maintenance and operation, or both. Such agreement may provide for the amounts to be contributed by the...county for such construction or enlargement and for maintenance and operation, the rights and privileges to be enjoyed by the...county and its inhabitants by virtue of such contributions, and the rights or representation by the...county upon the municipal corporation's board of hospital commissioners or board of governors, or both.

Thus, pursuant to R.C. 513.08, a county may participate in the erection or enlargement, or in the maintenance and operation, or both, of a *municipal hospital* which a municipal corporation has established or proposes to establish. The hospital referred to in R.C. 513.08, therefore, is established by the municipal corporation, not jointly by the county and the municipal corporation.<sup>3</sup>

Turning now to your first question, I note that R.C. 513.08 does not expressly provide for the conveyance of title to real property to the county by the municipal corporation. The question, therefore, is whether title may be conveyed by means of the agreement entered into by the municipality and county pursuant to R.C. 513.08. The purpose of the agreement is to allow participation by the county in the erection, enlargement, maintenance and operation of the municipal hospital. The agreement may provide for the amount of contributions to be made by the county for such purposes. I note that the legislature did not specifically authorize contributions for the purchase of a municipal hospital. Therefore, applying the maxim, *expressio unius est exclusio alterius*, the naming of a specific class implies the exclusion of those not named, *Kroger v. Bowers*, 3 Ohio St. 2d 76, 209 N.E.2d 209 (1965), I conclude that, pursuant to R.C. 513.08, the county is not authorized to contribute for the purchase of a municipal hospital. Furthermore, the rights and privileges to be granted are commensurate with the contributions. Thus, since the county is not authorized to contribute to the purchase of a municipal hospital, the rights and privileges granted to the county may not include title to real property of the municipal hospital.

This conclusion is additionally supported by application of the rules of statutory construction. The phrase "rights and privileges" is not defined for purposes of R.C. 513.08, and thus, the natural, literal, common or plain meaning must be used. R.C. 1.42; *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). "Right" is defined by the dictionary to include the following: "Something that is due to a person by law, tradition, or nature....A just or legal claim or title." *The American Heritage Dictionary* 1062 (2d. college ed. 1985). Thus, broadly defined, the word "right" can be used to describe title to real property. "Privilege", however, is defined as "[a] special advantage, immunity, permission, right, or benefit granted to or enjoyed by an individual, class, or caste....Such a right or advantage held as a prerogative of status or rank, and exercised to the exclusion or detriment of others." *Id.* at 986. The word "privilege" is not used to describe a legal claim or title, but rather a special advantage or a benefit. According to a well-established rule of statutory construction known as *noscitur a sociis*, "the meaning of a word may be ascertained by reference to the meaning of words associated with it; and again, according to a similar rule, the coupling of words together shows that they are to be understood in the same sense." *Myers v. Seaberger*, 45 Ohio St. 232, 236, 12 N.E. 796, 798 (1887). Thus, although in some instances it might be appropriate to read the word "right" as meaning legal title, I find that, with respect to R.C. 513.08, "right" must be understood in the sense of a privilege, that is, as a special advantage or a benefit. Accordingly, I determine that the authority of the county and the municipal corporation to determine the rights and privileges of the county with respect to the municipal hospital does not encompass the power of the municipal corporation to convey legal title in the real property of such hospital to the

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<sup>3</sup> I note that where the General Assembly has intended to authorize the joint establishment of a hospital, it has done so in precise, unambiguous language. See, e.g., R.C. 513.07. See also R.C. Chapter 140.

county.<sup>4</sup> See also 1951 Op. Att'y Gen. No. 341, p. 139, 145 ("[i]t was plainly the intention of the legislature that the hospital should be and remain a municipal hospital, the county...being merely entitled to receive the benefit of the hospital in return for [its] contributions, and being entitled, to the extent of [its] agreement with the municipality, to participate in the management"). Therefore, I conclude that the county is not authorized to take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08.

Your second question asks what entity conveys title to the real property of a municipal hospital in which a county participates pursuant to R.C. 513.08. I have already determined that, in such an instance, the county is not empowered to take title to the real property of a municipal hospital. Since the county does not hold title to such property, the county has no authority with respect to the conveyance of such title. I note that the authority of the Attorney General to advise prosecuting attorneys extends only to matters "respecting their duties." R.C. 109.14. As the prosecuting attorney has no duty to represent municipal corporations or municipal hospitals, R.C. 309.09, the Attorney General has no authority to opine on the procedure for the conveyance of title to real property of a municipal hospital. However, I note generally that one must possess title to real property in order to convey such title. See *Rife v. Lybarger*, 49 Ohio St. 422, 31 N.E. 768 (1892). Thus, only the entity or entities which possess title to the real property of a municipal hospital may convey such title. "Municipal hospital" is not statutorily defined, and there are various methods by which a municipal corporation may establish a hospital, not all of which require the municipal corporation to hold title to real property. See, e.g., R.C. Chapter 140; R.C. 749.01; R.C. 749.02; R.C. 749.04. Thus, the determination as to what entity may convey title to the real property of a municipal hospital to a purchaser is based upon the facts of each case.

Based upon the foregoing, it is my opinion, and you are hereby advised, that a county does not take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08.

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<sup>4</sup> Although R.C. 513.08 does not authorize the conveyance of the real property of a municipal hospital to the county, I note that R.C. 721.27 authorizes a municipal corporation to transfer, lease, or convey real property "upon which it has acquired, established, erected, or maintained a hospital...to a board of county commissioners."