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1. HOSPITAL—AGREEMENT MADE, SECTIONS 4035-3, 3414-1 G. C.—COUNTY OR JOINT TOWNSHIP DISTRICT AND ITS INHABITANTS—IN CONSIDERATION OF CONTRIBUTIONS MADE TO COST OF MAINTENANCE AND OPERATION OF HOSPITAL OF MUNICIPALITY ARE TO ENJOY RIGHTS AND PRIVILEGES—CONTRIBUTIONS PAID INTO MUNICIPAL TREASURY— CUSTODY OF TREASURER— SUBJECT TO APPROPRIATION AND DISBURSEMENT— SAME MANNER AS OTHER FUNDS FOR MAINTENANCE AND OPERATION OF MUNICIPAL HOSPITAL.
2. UNDER SUCH AGREEMENT BOARD OF GOVERNORS HAS SAME POWERS AS ARE CONFERRED ON DIRECTOR OF PUBLIC SAFTY OF CITY—SECTION 4035 G. C.— SUBJECT TO FURTHER LIMITATIONS IMPOSED BY AGREEMENT.
3. BOARD OF GOVERNORS—AWARD OF CONTRACTS AND PURCHASE OF MATERIALS AND SUPPLIES—GOVERNED BY SECTIONS 4370, 4371 G. C.—POWERS AND PROCEDURE, DIRECTOR OF PUBLIC SAFETY.
4. BOARD OF GOVERNORS HAS POWER TO DETERMINE NUMBER OF EMPLOYES FOR MUNICIPAL HOSPITAL AND FIX THEIR COMPENSATION—SECTIONS 4035 AND 4035-3 G. C.
5. EMPLOYES SUBJECT TO PROVISIONS OF SECTION 486-8 ET SEQ., G. C. RELATIVE TO CIVIL SERVICE.
6. COST, EXAMINATIONS BY BUREAU OF INSPECTION AND SUPERVISION OF PUBLIC OFFICES—PAYABLE BY MUNICIPALITY TO WHICH HOSPITAL BELONGS.

SYLLABUS:

1. Where an agreement has been made, pursuant to Sections 4035-3 and 3414-1c of the General Code, whereby a county or a joint township hospital district, and its inhabitants, in consideration of certain contributions made to the cost of maintenance and operation of a hospital belonging to a municipality, are to enjoy the rights and privileges of such hospital, such contributions shall be paid into the treasury of the municipality and be in the custody of the treasurer subject to appropriation and dis-

bursement in the same manner as other funds provided for the maintenance and operation of such municipal hospital.

2. In the operation and management of a municipal hospital as to which an agreement has been made, as above set forth, the board of governors has the same powers as are conferred on the director of public safety of a city by Section 4035, General Code, subject to such further limitations as are imposed by such agreement.

3. The board of governors, in the award of contracts and purchase of materials and supplies incident to the operation and management of such hospital, is governed by the provisions of Sections 4370 and 4371, General Code, relating to the powers and procedure of a director of public safety in such matters.

4. Under the provisions of Sections 4035 and 4035-3, General Code, such board of governors has the power to determine the number of employes for such municipal hospital and fix their compensation.

5. The employes of such municipal hospital are subject to the provisions of Section 486-8 and related statutes relative to civil service.

6. The cost of examination by the Bureau of Inspection and Supervision of Public Offices, of such hospital is payable by the municipality to which the hospital belongs.

Columbus, Ohio, May 28, 1951

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, which reads:

"The regular examination of municipal hospital records in the cities of Circleville, Lancaster and Wooster, Ohio, of recent date, disclosed that said cities have executed agreements with other taxing subdivisions for joint participation in the construction and operation of their respective municipal hospitals under authority of Sections 3414-1a, 3414-1c, 4035-1, 4035-2 and 4035-3, of the General Code. * * *

"Several questions have arisen in connection with the joint operation and management of said municipal hospitals under the terms of the respective agreements executed between the several parties concerned. In order that you may have all of the facts and information pertaining to the aforesaid joint hospital plans, we enclose copies of legislation enacted and contracts executed for the purpose of governing the operation of said municipal hospitals located at Circleville, Lancaster and Wooster. * * *

"In the case of the city of Circleville and Pickaway County, the board of governors has assumed control of the hospital funds. Said funds are received by the board, deposited in an account to

their credit, and disbursed by said board on checks issued by properly authorized employes.

“In the case of the other two joint hospitals hereinbefore cited, the hospital fund is maintained in the city treasury of the cities of Lancaster and Wooster, respectively, and all expenditures from such hospital funds are approved by the board of governors and disbursed on warrants issued by the city auditor.

“In view of the facts set forth, and provisions of the respective agreements enclosed herewith, we respectfully request that you review the pertinent statutes relating to the joint operation and management of municipal hospitals under a board of governors and give us your formal opinion in answer to the following questions :

“1. When a council has authorized the acceptance of participation by a joint township hospital district, or county, for the construction and/or operation of a municipal hospital, under a board of governors established and appointed pursuant to the authority of sections 4035-3 and 3414-1c of the General Code of Ohio, in whose custody shall the funds provided for the management and operation of such joint hospital be held, and how shall the same be appropriated and disbursed?

“2. In the operation and management of such joint municipal-county, or township district hospital, are the powers of the board of governors limited by the provisions of Section 4035-3, General Code, to the powers provided in Section 4035, General Code, for a Director of Public Safety?

“3. How shall the board of governors of such joint municipal-county, or township district hospital, proceed in the award of contracts for materials, supplies, etc.?

“4. In view of the provisions of Sections 4035 and 4035-3, General Code, how shall the compensation of the employes of such joint municipal hospital be fixed?

“5. Do the employes of a joint-municipal-county, or township district hospital, come within the classified civil service as set forth in Section 486-8, General Code?

“6. Is the cost of examination of such joint-county, or township district, municipal hospitals by the Bureau of Inspection and Supervision of Public Offices chargeable to the hospital fund?”

The subject of municipal hospitals is covered generally by Section 4023 et seq. of the General Code. Section 4023 provides as follows:

“When the council of a municipality enters upon and takes possession of grounds purchased, appropriated, or otherwise obtained for hospital purposes, and, by resolution or ordinance, determines to erect thereon or rebuild a hospital, the erection and repair thereof, or any addition thereto, shall be vested in a board of five commissioners, called the ‘Board of Hospital Commissioners.’”

By the sections which follow, this board is authorized to employ architects, a superintendent, etc., and to erect or rebuild a hospital. Section 4035, General Code, reads as follows:

“The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient. Such director may also employ a superintendent, steward, physicians, nurses, and such other employes as he deems necessary, and fix the compensation of all persons so employed, which compensation shall be subject to the approval of the council.”

In 1947, the General Assembly enacted supplementary sections 4035-1 to 4035-4, General Code (122 Ohio Laws, 411.) Section 4035-1 reads as follows:

“Council of a municipality may, under agreement with a joint township hospital district board, or with the county commissioners of a county, accept participation by such district, or such county, in the erection or enlargement of a *municipal hospital*, or in the maintenance and operation of such a hospital (,) or both. Such agreement may provide for the amounts to be contributed by such district, or in the case of a county, by such county, for the construction and enlargement of such hospital and for its maintenance and operation, the rights and privileges to be enjoyed by the district and its inhabitants, or in the case of a county, by the county, and its inhabitants, by virtue of such contributions, and its rights of representation upon the *municipality's* board of hospital commissioners or board of governors.” (Emphasis added.)

Section 4035-2, General Code, reads as follows:

“If any such agreement becomes operative, the municipality may enlarge its board of hospital commissioners, established under sections 4023, 4024 and 4025 of the General Code so as to admit to membership thereon such representatives of the participating joint township hospital district, or in the case of a county, such representatives of the county, as have been provided for in

said agreement, and said board shall thereupon proceed under and be governed by the provisions of sections 4026 and 4034, inclusive, of the General Code subject, however, to such additional restrictions upon its authority and procedure as may be imposed by said agreement."

The foregoing sections relate to the erection or enlargement of a hospital, and it will be observed that it is constantly referred to as "municipal hospital." It is plain from a reading of these and all other sections to which reference will be made, that the legislature was dealing with a *municipal* hospital and did not contemplate in any degree a *joint* hospital, even though the township or county might be permitted to have a part in its erection and management. The statute speaks of their "representation on the *municipality's* board of hospital commissioners or board of governors."

Section 4035-3, General Code, makes provision for a board of governors, to manage the hospital, after it has been erected. That section reads as follows:

"Where such agreement concerns or includes participation of such district, or in the case of a county, of such county, in the maintenance and operation in such hospital, *the municipality shall have authority to establish a board of governors* to exercise, subject to such further limitations as may be imposed by said agreement, the powers vested under the provisions of section 4035 of the General Code in the director of public safety. Such board may include in its membership such representatives of the participating district, or in the case of a county, such representatives of the county, as shall have been provided for in said agreement.
* * *"

(Emphasis added.)

It is to be noted that the board of governors is established by the municipality, and that such board is to have the powers vested in the director of public safety by Section 4035 supra. There follows a provision to the effect that such board may include in its membership such representatives of the participating district or county as shall have been provided in the agreement aforesaid. The mayor, by virtue of his office, is to be president of the board of governors.

We find in Section 3411 et seq., of the General Code, provisions authorizing the trustees of a township to provide hospitalization for the inhabitants of the township.

Section 3414-1, General Code, authorizes the trustees of two or more contiguous townships in any county to form themselves into a *joint township district hospital board*, for the purpose of establishing and maintaining a joint township district general hospital. All members of the boards of township trustees of the townships so participating are to be members of the joint district hospital board.

By the same act (122 Ohio Laws, page 411) to which reference has already been made, giving a municipality authority to contract with a county or joint township hospital board, there were enacted Sections 3414-1a, 3414-1b, 3414-1c and 3414-1d, General Code. Section 3414-1a provides in part, as follows.

“Such joint township district hospital board, or the board of county commissioners of any county, may, in lieu of proceeding to establish, construct and maintain a joint township hospital, or in the case of a county, a county hospital, enter into an agreement with a municipality which is proposing to establish, or has established, a municipal hospital for participation by said district, or by said 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 such district, or in the case of a county, by such county, for the construction or enlargement of such hospital and for its maintenance and operation, the rights and privileges to be enjoyed by the district and its inhabitants, or in the case of a county, by the county, and its inhabitants, by virtue of such contributions, and the rights of representation by said district, or in the case of a county, by such county, upon the municipality’s board of hospital commissioners or board of governors, or both. * * *

(Emphasis added.)

Section 3414-1b authorizes the township trustees and county commissioners participating to appropriate funds and to make such contributions. Section 3414-1c reads in part, as follows:

“Where such agreement provides for representation of such district, or in the case of a county, of such county, on the board of hospital commissioners of *such Municipal hospital* or *on its board of governors* or both, such representatives of the district shall be appointed by the joint township district hospital board, shall be electors of the district, and in the case of a county, such representatives of the county shall be appointed by the county commissioners, shall be electors of the county, and, in the case of membership on the board of governors, at least one such elector so appointed shall be a doctor of medicine. In the case of a joint

township district, not more than one elector from any one township included in said district shall be appointed to either board unless each township included in said district shall first have had an elector thereof appointed to such board. * * *

(Emphasis added.)

Your letter refers repeatedly to a "joint municipal-county, or township district hospital," but it will be observed that in every case, the statutes quoted refer to the hospital as a "municipal hospital," and there is no mention in any of the statutes which we are considering of a "joint municipal-county hospital" or a "joint municipal-township district hospital." It was plainly the intention of the legislature that the hospital should be and remain a municipal hospital, the county or the joint township hospital trustees, as the case may be, being merely entitled to receive the benefit of the hospital in return for their contributions, and being entitled, to the extent of their agreement with the municipality, to participate in the management.

Keeping in mind, therefore, that we are dealing with a municipal hospital and that the director of public safety has full control of such hospital and the power to fix the compensation of all employes therein, and that the board which is given authority to manage such hospital is endowed with all the powers of the director of public safety, it would seem that most of the questions which you raise are readily answered by according to such board all powers which the law confers upon such director and making the board subject to such procedure as would be followed by the director of public safety if he were engaged in the management of a municipal hospital (Section 4035 supra.) Since he has the power to make rules for the government of the hospital and the admission of persons to its privileges, the board in question would have like power. Since he is authorized to employ a superintendent and other necessary employes as he deems necessary, and to fix the compensation of all persons so employed, it seems plain that the board that succeeds to his powers would have the same authority.

The director of public safety is by Section 4370, General Code, endowed with the management of certain institutions of a city, including hospitals, and is given authority to make all contracts in reference thereto. By the terms of Section 4371, General Code, he may make contracts and purchases for all institutions under his supervision, not involving more than \$1,000.00, but when more than that sum is involved, he is required

to advertise for bids after being first authorized and directed by ordinance of the council. The board of governors of the hospital which we have been discussing would have the same power and proceed in the same manner. The city treasurer being authorized by Section 4298, General Code, to receive all moneys due the city, would be the custodian of all the funds paid by the participating subdivisions to the city pursuant to the provisions above noted, and would disburse them on the order of the director of public safety or, when his powers have been taken over by the board of governors, then upon orders issued by that board.

I have discussed the powers of the board of governors on the assumption that they have not been further limited by the agreement made pursuant to Section 4035-3 *supra*. That section provides that the board is to exercise "*subject to such further limitations as may be imposed by said agreement*, the powers vested under the provisions of Section 4035 of the General Code, in the director of public safety." What limitations a contract in any case may impose cannot, of course, be assumed. It is certain, however, that the power to limit does not under any circumstances permit an enlargement of the board's powers or a relaxing of the limitations imposed by law.

As to the civil service status of the employes of a municipal hospital to which a county or a joint township hospital district is contributing pursuant to the statutes aforesaid, it is my opinion that such employes are as clearly municipal employes as though there was no agreement of contribution, and are accordingly subject to the provisions of Section 486-8, General Code, and other provisions of law relative to civil service.

Answering your question as to the cost of examination of a municipal hospital such as we have been considering, I think it will be a sufficient answer to say that since the hospital remains a municipal hospital such costs will be paid by the municipality to which the hospital belongs.

In specific answer to the questions submitted, it is my opinion:

1. Where an agreement has been made, pursuant to Sections 4035-3 and 3414-1c of the General Code, whereby a county or a joint township hospital district, and its inhabitants, in consideration of certain contributions made to the cost of maintenance and operation of a hospital belonging to a municipality, are to enjoy the rights and privileges of such hospital, such contributions shall be paid into the treasury of the municipality and be in the custody of the treasurer subject to appropriation and dis-

bursement in the same manner as other funds provided for the maintenance and operation of such municipal hospital.

2. In the operation and management of a municipal hospital as to which an agreement has been made, as above set forth, the board of governors has the same powers as are conferred on the director of public safety of a city by Section 4035, General Code, subject to such further limitations as are imposed by such agreement.

3. The board of governors, in the award of contracts and purchase of materials and supplies incident to the operation and management of such hospital, if governed by the provisions of Sections 4370 and 4371, General Code, relating to the powers and procedure of a director of public safety in such matters.

4. Under the provisions of Sections 4035 and 4035-3, General Code, such board of governors has the power to determine the number of employes for such municipal hospital and fix their compensation.

5. The employes of such municipal hospital are subject to the provisions of Section 486-8 and related statutes relative to civil service.

6. The cost of examination by the Bureau of Inspection and Supervision of Public Offices, of such hospital is payable by the municipality to which the hospital belongs.

Respectfully,

C. WILLIAM O'NEILL

Attorney General