

2033

MEMORIAL HOSPITAL, COUNTY—MUST BE ERECTED UNDER COUNTY HOSPITAL STATUTES, SECTION 3127 ET SEQ., G. C.—CANNOT BE CONSTRUCTED UNDER WAR MEMORIALS STATUTES, SECTION 3059 ET SEQ., G. C.

SYLLABUS:

A county memorial hospital must be erected under the county hospital statutes, Section 3127 et seq., General Code, and cannot be constructed under the war memorials statutes, Section 3059 et seq., General Code.

Columbus, Ohio, July 7, 1947

Hon. D. H. Peoples, Prosecuting Attorney, Meigs County
Pomeroy, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“On the 17th day of June, 1946, the Meigs County Commissioners duly adopted the following resolution :

RESOLUTION TO ESTABLISH AND MAINTAIN A COUNTY HOSPITAL WHICH SHALL BE A U. S. VETERAN'S MEMORIAL HOSPITAL.

WHEREAS, according to Section 3059, General Code, the county commissioners hereby declare by resolution that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the necessary requirements of such County of Meigs, and that it is necessary to levy a tax or taxes in excess of such limitation for either or both of the following purposes :

(a) For purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States.

(b) For the operation and maintenance of a memorial and the functions related thereto.

(c) The functions of such memorial building shall include the functions of a general hospital and the equipment of the same.

Such resolution shall be confined to the purpose or purposes hereinabove set forth, and shall specify one mill levy over and above the ten mills previously provided for the purposes herein described, and shall run for ten years.

This resolution shall take effect at the earliest date authorized by law.

Passed by the Board of County Commissioners of Meigs County the 17th day of June, 1946.

BOARD OF COMMISSIONERS
MEIGS COUNTY, OHIO.

(Signed by three commissioners.)

Thereafter, a notice of election on tax levy in excess of the ten mill limitation was duly published for four weeks in accordance with Section 3060 of Ohio General Code, and at the general election held in November, 1946, the said question was submitted on the following ballot:

PROPOSED TAX LEVY

An additional tax for the benefit of the County of Meigs, State of Ohio, for the purpose of purchasing a site, erecting, equipping and furnishing, or for establishing a memorial to commemorate the services of all members and veterans of the armed forces of the United States, and for the operation and maintenance of a memorial, and the functions related thereto, said functions of such memorial building to include the functions of a general hospital and the equipment of the same, at a rate not exceeding one mill for each one dollar of valuation, which amounts to ten cents for each one hundred dollars of valuation, for ten years.

More than 65% of the electors voted in favor thereof and the question was carried. The additional tax levy was immediately placed on the tax books and collections are being made thereon and placed in 'The Memorial Fund' in the County Treasury, virtue of Section 3064.

Thereafter, the County Commissioners appointed a board of eleven members, by virtue of Section 3061, the members of which met the requirements of said Section. Said Board of Trustees, after taking oath of office filed their bond and qualifying, have been investigating the various matters relating to the constructing, equipping and operating of a hospital, but have not made any commitments relative thereto.

The only memorial intended by the Commissioners was a general hospital for this county, which was to be known as a veterans' Memorial Hospital.

The Board of Trustees of said Veterans' Memorial Hospital, before making any commitments for the expenditure of said moneys, desire a clarification of their powers and duties in so far as the same may pertain to constructing, equipping, maintaining and operating a County Hospital.

This is desired because the resolution of the County Commissioners and the appointments of the Board of Trustees was made under Section 3059 et seq., which relates to 'Memorial Buildings' and not under Section 3127 et seq., which relates to 'County Hospitals.' One of your predecessors in office rendered an opinion, 1920 OAG 778, under a former statute, which held in substance, that a County Memorial Hospital must be erected under the County Hospital Statutes and cannot be constructed under the memorial building statutes.

The following questions are presented :

1. Does the Board of Trustees appointed under Section 3061 have authority to erect, equip, maintain and operate a Veterans' Memorial Hospital for Meigs County, Ohio, including the employing of such doctors, nurses and other persons necessary to operate the same.

2. Can moneys derived from the additional tax levy submitted by virtue of the resolution of the County Commissioners, above set forth, be expended for erecting, equipping, maintaining and operating a Veterans' Memorial Hospital for Meigs County, Ohio.

3. If the above are answered in the affirmative, then in the event there isn't sufficient moneys derived from said additional tax levy to erect or operate such hospital, can the County Commissioners appropriate and expend funds for the erection or operation thereof, and may the County Commissioners secure additional funds for the original construction and thereafter the maintenance thereof under G. C. 3127, et seq., or any other section of law.

In view of the fact that the above is an urgent matter, your early consideration will be appreciated."

The 96th General Assembly revised the sections of the General Code with reference to war memorials. The scope of types and purposes of such memorials is now much greater than under the former sections.

Section 3059, General Code, provides for the resolution which must be passed by the taxing authority, to declare the necessity of levying a tax for a memorial and specifies the purposes of the same. Subparagraph (c) of the resolution passed by the county commissioners, as set forth in your letter, does not appear in the statute. As will appear later in this opinion, there is no authority for the inclusion of the same.

Sections 3065 and 3066, General Code, set forth the purposes of memorials, their administration and maintenance, and the specifications of a memorial building, and the powers of the trustees in connection therewith. These sections read as follows :

Section 3065 :

"Such memorial shall be maintained so as to commemorate the services of all members and veterans of the armed forces of the United States. The board shall make rules and regulations for the use, administration and maintenance of such me-

morial or memorials as is fitting and necessary to carry out the purposes thereof.

The board of trustees may establish rental fees and other charges for the use thereof, and shall have authority to waive all or any portion of said charges.

When said memorial is a building, it shall provide suitable apartments of sufficient dimensions to commemorate the soldiers, sailors, marines and all members of the armed forces of the United States, so designated by the Congress of the United States, both men and women of the county, who have lost their lives while in the service of the country and suitable tablets shall be maintained with the names of such soldiers, sailors and marines inscribed thereon. Said building may include a public auditorium, music hall and recreational facilities.”

Section 3066:

“In addition to the usual powers of such boards of trustees, said trustees shall have the following specific powers to be exercised in their best discretion: (1) to conduct, maintain and operate such memorial for the benefit of the entire county for community, civic and patriotic purposes; (2) to provide with or without cost, suitable and convenient county headquarters for all nationally organized veterans’ organizations, chartered by the Congress of the United States; (3) to use, rent and lease office space in said memorial buildings to agencies of the United States and the state of Ohio or any of their political subdivisions engaged in any activity for the benefit of the men and women of the armed forces of the United States and the honorably discharged veterans thereof, all earnings or receipts of whatever kind or description to be used for the maintenance thereof according to the requirements of this act; (4) to coordinate and assemble within a county, as nearly as possible, in a one-stop information or service center, all governmental agencies operated for the benefit of the honorably discharged veterans of the armed forces of the United States in such memorial.”

The duties and purposes above outlined do not warrant the inclusion of subparagraph (c) of the county commissioners’ resolution. In fact, Section 3059, General Code, specifically authorizes only two purposes, those listed in subparagraphs (a) and (b) of the resolution.

The above sections indicate the intention of the Legislature with reference to memorial buildings. The language contained therein clearly indicates buildings which may include a public auditorium, a music hall, a recreational building or one which contains offices or headquarters for

veterans' organizations, or service centers. Certainly none of these activities would be applicable to a hospital. It is not believed that a hospital was in contemplation of the Legislature in providing for a memorial building.

Section 3127 et seq., General Code, provides for procedure relating to establishment of a county hospital.

The latter part of Section 3127 provides:

“Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county.”

This language signifies the intention of the Legislature. In effect it says that a hospital built under these sections may be dedicated as a county memorial hospital.

It is a general principle of law that where there are two statutes, or groups of statutes, one general in nature and the other specific in character, the specific statutes will govern. Section 3127 et seq., General Code, specifically govern the building of county hospitals and are therefore controlling.

In your letter you refer to an opinion of one of my predecessors, Opinion No. 1445, Opinions Attorney General, 1920, page 778, which opinion relates to the proper procedure for building county hospitals. The conclusion reached was that a county hospital must be established under Section 3127 et seq., General Code, and not under Section 3059 et seq., General Code. The principles announced in this opinion are concurred in and followed.

It follows that your first two questions must be answered in the negative and that having thus answered them no answer is required to your third question.

Accordingly, it is my opinion, and you are advised, that a county memorial hospital must be erected under the county hospital statutes, Section 3127 et seq., General Code and cannot be constructed under the war memorials statutes, Section 3059 et seq., General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.