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SYLLABUS:

A board of trustees of a county hospital, when in the process of entering into contracts for constructing an addition to an existing hospital, are bound by the provisions of Section 153.31 (D), Revised Code, requiring an accurate estimate of the aggregate cost, and Section 153.46, Revised Code, prohibiting a contract in excess of such estimates.

Columbus, Ohio, October 11, 1963

Hon. Harry Friberg
Prosecuting Attorney
Lucas County
Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of Maumee Valley Hospital, a county hospital, are in the process of entering into contracts for constructing an addition to the existing hospital. The question has arisen as to whether in awarding such contracts the board is bound by the provisions of Revised Code Section 153.31 (D), requiring an accurate estimate of the aggregate cost and Revised Code Section 153.46, prohibiting a contract in excess of such estimate.

“It is the opinion of this office that the Board is legally bound to comply with these sections. A member of the Board of Trustees contends that since Revised Code Sec-

tion 339.05 requires a board of county hospital trustees to advertise for bids, but contains no specific requirement that estimates be obtained, that the Board in question is not bound by the provisions of the sections previously quoted.

“Your opinion will be most highly appreciated.”

I find the following in regard to the law and facts pertaining to building construction and repairing by county hospital trustees. Section 339.05, Revised Code, provides as follows:

“Before making a contract for the expenditure of money on any structure or improvement in excess of one thousand dollars, the board of county hospital trustees *shall advertise according to law* for bids, and shall cause plans, specifications, and detailed drawings to be distributed among the bidders.”

(Emphasis added)

In Opinion No. 3524, Opinions of the Attorney General for 1954, the syllabus reads as follows:

“The provisions of Section 339.05, Revised Code, requiring advertisement for bids, applies to a contract for the installation of an air conditioning unit or any other improvement of a county hospital, the cost of which is in excess of one thousand dollars.”

Thereafter, in Opinion No. 4735, Opinions of the Attorney General for 1955, it is stated in the second branch of the syllabus:

“2. The publication of notice to bidders for the construction of such hospital is governed by the provisions of Section 153.40, Revised Code, relating to county buildings; * * *”

In Opinion No. 3743, Opinions of the Attorney General for 1954, it is provided in the 1st and 4th branches of the syllabus as follows:

“1. Section 153.44, Revised Code, must be read in *pari materia* with the provisions of Section 153.42, which dispenses with competitive bidding on ‘additions or repairs’ of public buildings where the contract for such improvements does not exceed one thousand dollars, thereby manifesting an intent by the legislature to subject such contracts which exceed that sum, to the statutory requirements of notice and competitive bidding.

“4. A contract for the improvement of a public

building awarded by county commissioners in disregard of statutory requirements, creates no legal obligation, and is void.”

Chapter 153, Revised Code, pertains to the letting of contracts and bidding procedures for the construction or repair of public buildings generally. Sections 153.21 to 153.49, *et seq.*, Revised Code, are applicable to county buildings and bridges.

While admittedly Sections 153.31 and 153.46, Revised Code, are not made specifically applicable to contracts by county hospital trustees under Section 339.05, *supra*, I am, nevertheless, of the opinion that the trustees are bound by the provisions of these statutes.

I am persuaded, first, because the requirement that the county hospital trustees before making a contract “shall advertise according to law,” loses meaning unless there is first made, as required by Section 153.31, *supra*, full and accurate plans of the proposed construction, full and complete specifications of the work to be performed, and a full and accurate estimate of each item of expense. Secondly, I think it clear that Sections 153.21 to 153.99, *et seq.*, Revised Code, relate to the construction of all county buildings irrespective of the contracting authority. In this regard Section 153.46, Revised Code, provides in material part:

“No contract shall be made for a public building, bridge, or bridge substructure, or for any addition to, or change, improvement, or repair thereof; or for any construction, improvement, or alteration of any nature by a county or any board, commission, or agency thereof, or for labor and materials, at a price in excess of the estimates required to be made by sections 153.21 to 153.45, inclusive, of the Revised Code.”

I am of the opinion that a board of county hospital trustees is a “board, commission or agency” of the county within the meaning of this section.

On the basis of the foregoing you are, therefore, advised that a board of trustees of a county hospital, when in the process of entering into contracts for constructing an addition to an existing hospital, are bound by the provisions of Section 153.31(D), Revised Code, requiring an accurate estimate of the aggregate cost, and

Section 153.46, Revised Code, prohibiting a contract in excess of such estimates.

Respectfully,
WILLIAM B. SAXBE
Attorney General