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INSURANCE PREMIUM — COUNTY COMMISSIONERS — BOARD HAS NO RIGHT TO CHARGE COUNTY TUBERCULOSIS HOSPITAL FOR PROPORTIONATE SHARE OF INSURANCE PREMIUM — CAPITAL INVESTMENT FOR SEVERAL COUNTY INSTITUTIONS.

SYLLABUS:

The board of county commissioners does not have the right to charge the board of trustees of the county tuberculosis hospital for its proportionate share of an insurance premium after the board of county commissioners has contracted for a blanket insurance premium covering the capital investment for several county institutions.

Columbus, Ohio, December 21, 1951

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

I have before me your request for my opinion, which reads in part as follows:

“Where a county tuberculosis hospital is operated by a Board of Trustees and a portion of the money which is used to maintain and operate said hospital is provided by a tax levy under the auspices of the Board of County Commissioners, does such Board have the right to bill the Board of Trustees of said hospital for payment of its proportionate share of an insurance premium when such insurance is in a blanket form covering the capital investment for several county institutions which insurance is contracted for by the Board of County Commissioners.”

It is clear that under existing statutes all taxes collected pursuant to the levy made by the county commissioners for the purpose of providing funds for the management and control of a county tuberculosis hospital are to be paid over to the trustees of such hospital and deposited and expended by them in the manner provided as to taxes collected for and paid over to the trustees of a district tuberculosis hospital under the provisions of Section 3139-6, General Code. Prior to the amendment of Section 3139-13, General Code, by the 95th General Assembly, effective August 19, 1943, it was held by one of my predecessors, in

Opinion No. 5584, Opinions of the Attorney General for 1942, page 783, that the custody of such funds remained in the county treasurer. The amendment of Section 3139-13 in 1943 specifically provided that the custody of such funds should be in the board of trustees of the county tuberculosis hospital and the effect of this amendment was discussed in Opinion No. 2704, Opinions of the Attorney General for 1948, page 73.

The custody of this money being in the board of trustees of the hospital, the question remains as to whether such money may be used for the purchase of insurance on the hospital buildings. By your reference to "capital investment" I presume that you include the hospital building, together with all major installations.

Concomitant with purchasing insurance is the desire to mitigate loss or apportion such loss over a series of installments. Obviously, the payment for such insurance is a proper expenditure of that board charged with the duty of building the hospital and would not be a proper expenditure for that board which is not charged with such duty. Your basic question, therefore, may be said to be whether it is the duty of the county commissioners or of the board of trustees of the county tuberculosis hospital to build or replace such hospital, together with the major installations thereof.

Section 3139-12, General Code, provides as follows:

"In any county where a county hospital for tuberculosis has been purchased, leased or erected, such county hospital for tuberculosis shall be maintained by the county commissioners, for the purpose of maintaining such hospital the county commissioners shall annually appropriate and set aside the sum necessary for such maintenance. Such sum shall not be used for any other purpose. *When it shall become necessary to enlarge, repair or improve a county hospital for tuberculosis, the county commissioners shall proceed in the same manner as provided for other county buildings.*" (Emphasis added.)

Section 3139-13, General Code, places the "management and control" of a county tuberculosis hospital in a board of trustees. Commenting upon these statutes, it was held in the 1942 opinion, *supra*, that the duty of building, enlarging, repairing and improving a county tuberculosis hospital is placed upon the county commissioners and not on the board of trustees, whose duties are confined to the management and control of

such institution. The same opinion was expressed in the 1948 opinion, *supra*.

Section 2402, General Code, provides that a board of county commissioners is authorized to insure public buildings. Since it is the duty of the county commissioners to build, enlarge, repair or improve the buildings of such hospitals, it would appear clear that such hospitals are public buildings within the purview of Section 2402. Inasmuch as replacement and repair are responsibilities of the board of county commissioners, the cost of insuring against loss where these responsibilities are concerned necessarily must be borne by the board of county commissioners and not by the board of trustees of the county tuberculosis hospital.

In answer to your inquiry, therefore, it is my opinion that the board of county commissioners does not have the right to charge the board of trustees of the county tuberculosis hospital for its proportionate share of an insurance premium after the board of county commissioners has contracted for a blanket insurance premium covering the capital investment for several county institutions.

Respectfully,

C. WILLIAM O'NEILL

Attorney General