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A SIX MEMBER BOARD OF COUNTY HOSPITAL TRUSTEES APPOINTED PURSUANT TO §339.02, R.C., SHOULD BE BIPARTISAN, MADE UP OF THREE MEMBERS OF EACH OF THE TWO POLITICAL PARTIES—§339.02, R.C.

SYLLABUS:

A six member board of county hospital trustees appointed pursuant to Section 339.02, Revised Code, should be bipartisan, and made up of three members of each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election.

Columbus, Ohio, September 27, 1960

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The County Commissioners of Union County, Ohio, have asked for an opinion on the required number of Democrats and Republicans on the Board of Trustees of the County Hospital.

“Six Trustees were appointed in November, 1951, under Section 3131 of the General Code, now 339.02 of the Revised Code of Ohio.

“At the present time there is a vacancy caused by the death of a Trustee. The question has been raised whether the Board should be composed of an equal number, three and three, of Republicans and Democrats.

“The second paragraph of Section 339.02 of the Revised Code reads as follows:

“ ‘Such Board of County Hospital Trustees shall be bipartisan with two members from each of the two political parties casting the highest number of votes in such County.’

“In reading the first two paragraphs together, I feel that the requirement is that there be at least two from each political party, and that the remaining two members may be Republican, Democratic, or Independent. The question has arisen because the statute in force when hospital boards were composed of four

trustees also required that there be two Democrats and two Republicans.”

Chapter 339., Revised Code, provides for the establishment of a county hospital in a county. Under the procedure, a tax levy or bond issue is submitted to the electors of the county for their approval. If approved, a board of county hospital trustees is appointed pursuant to Section 339.02, Revised Code, which reads, in part, as follows :

“If a tax levy or bond issue, provided by section 339.01 of the Revised Code, is approved by vote of the electors, the board of elections for such county shall certify the result of such election to the board of county commissioners. The board of county commissioners together with the probate judge of said county and the judge of the court of common pleas of said county senior in point of service shall, within ten days after such certification, appoint a board of county hospital trustees, *composed of six electors of such county* as follows: one for one year, one for two years, one for three years, one for four years, one for five years, and one for six years from the first Monday of March thereafter. Annually, thereafter, on the first Monday of March, the board of county commissioners together with the probate judge of said county and the judge of the court of common pleas of said county in senior in point of service shall appoint one such trustee who shall hold his office for the term of six years. Within sixty days after June 13, 1951, the board of county commissioners together with the probate judge and the judge of the court of common pleas senior in point of service in any county *wherein a board of county hospital trustees has been appointed prior to such date pursuant to volume 108, Part I, Ohio Laws, page 257, section 1 at ‘Sec. 3136,’ shall appoint two additional trustees, one from each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election.* The term of one such additional trustee shall be for a period of five years, and of the other for a period of six years from March 1, 1952. Thereafter, upon the expiration of the term of office of each trustee, his successor shall be appointed for a term of six years.

“*Such board of county hospital trustees shall be bipartisan, with two members from each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election.* The persons so selected shall forthwith be notified, by mail, of their appointment as such trustees. Said notice shall state a time, not more than ten days later, when such board of county hospital trustees shall meet at the county seat of such county to organize such board.

* * *

“A board of county hospital trustees appointed under this section prior to June 13, 1951, shall continue in office and have all of the powers and duties in relation to the construction and equipping of such hospital as provided in sections 339.02 to 339.04, inclusive, of the Revised Code. Upon completion of construction and equipping of said hospital, the powers of said board shall cease.

“* * *”

(Emphasis added)

As you note in your request, Section 339.02, *supra*, has conflicting provisions as to its political make-up. The section states that the board “shall be bipartisan” but then further states that the board shall have “two members from each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election.” Two members of each party, of course, only adds up to a four member board, and the law now provides for a six member board.

The word “bipartisan” is defined in Webster’s New International Dictionary, Second Edition, page 271, as “representing or composed of members of, two parties.” The words “bipartisan board” are defined in Ballentine’s Law Dictionary, Second Edition, page 156, as:

“A municipal board composed of an even number of officers selected equally from the two leading political parties. The purpose of the system is to prevent partisan politics from controlling the affairs of the municipality.”

In view of the generally recognized meaning of the word “bipartisan” I am of the opinion that such word as used in Section 339.02, *supra*, contemplates a board made up of members of the two leading parties, the membership from each of the parties being equal. Thus, in the instant case, considering only the reference to a bipartisan board, the board would be made up of three Democrats and three Republicans (assuming that these are the two leading parties). To fully determine the question, however, the importance of the reference to “two members from each of the two political parties” must be considered.

The provision relating to two members from each of the two leading political parties is a hold over from the law as existing prior to June 13, 1951. Section 339.02, *supra*, (then Section 3131, General Code), provided prior to that date for a *four* member bipartisan board, with two members

from each of the two leading political parties (112 Ohio Laws, 281). The section was later amended by Amended Substitute House Bill No. 392 of the 99th General Assembly, effective June 13, 1951, 124 Ohio Laws, 795, and a six member board was provided as set forth earlier.

While the 1951 amendment failed to change the specific language pertaining to the membership from each political party, I believe that the intent of the legislature to provide a "bi-partisan" board is clearly evident. First of all, the board prior to June 13, 1951, was undoubtedly bi-partisan since it was a four-man board with two members of each of the two leading political parties. In changing the law, the reference to a "bi-partisan" board was retained and the failure to amend the remainder of the statute to allow for the increased membership of the board must be attributed to inadvertance on the part of the legislative draftsman. Secondly, the recognized definition of "bipartisan board" contemplates a board made up of members of two parties, with an equal number from each.

Of further significance in determining the intent of the legislature in this regard, is that where two additional trustees are appointed pursuant to Section 339.02, *supra*, they are to be appointed, one from each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election. This provision was inserted in the 1951 legislation and further demonstrates the intention of the legislature to retain a bipartisan board.

Regarding the purpose of the legislature in enacting a statute, it is stated in 37 Ohio Jurisprudence, Section 361 at page 656:

"The presumption is that the general assembly had a definite purpose in each and every enactment and all its provisions. Moreover, judicial notice may be taken of the purpose of enacting a particular statute where such purpose is a matter of sufficient common knowledge."

In Section 362 of the same volume, starting at page 659, it is stated:

"* * * If the words and language are susceptible of two constructions, one of which will carry out, and the other defeat, such manifest object and purpose, they should receive the former construction. Accordingly, it is not surprising to find the courts frequently referring to the legislature's purpose, or plan, or aim, or end, or motive."

And, in Section 363 of the same volume, starting at page 663, it is stated:

“* * * When the real design of a legislature, in ordaining a statute, although it is not precisely expressed, is yet plainly perceivable or ascertainable with reasonable certainty, the language of the statute should be given such a construction as will carry that design into effect.”

Having concluded that the intention of the legislature was to retain a bipartisan board under Section 339.02, *supra*, and in view of the general rule of law noted above, I am constrained to the belief that a six member board of hospital trustees appointed pursuant to said section should be made up of three members of each of the two leading political parties in the county.

Accordingly, it is my opinion and you are advised that a six member board of county hospital trustees appointed pursuant to Section 339.02, Revised Code, should be bipartisan, and made up of three members of each of the two political parties casting the highest number of votes in such county for its respective candidate for governor at the next preceding gubernatorial election.

Respectfully,
MARK McELROY
Attorney General