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SYLLABUS:

1. County hospital patient-medical records are not "records" within the meaning of Section 149.40, Revised Code, and need not be disposed of in accordance with the procedure specified in Section 149.38, Revised Code.

2. A board of county hospital trustees organized under Section 339.02, Revised Code, has the authority to dispose of patient-medical records with its determination that such records no longer serve a useful purpose.

Columbus, Ohio, August 12, 1963

Hon. John T. Corrigan
Prosecuting Attorney
Cuyahoga County
Cleveland, Ohio

Dear Sir:

I have your request for my opinion wherein you pose the following questions:

1) Are the county hospital medical records of individual patients such records as are included, wholly or partly within the statutory definition in Chapter 149 of the Revised Code of public records which must be retained or destroyed in accordance with the statutes contained in the said chapter?

2) May the county hospital entirely destroy medical records of individual patients without resorting to the county records commission procedure?

3) If the answer to the second question is negative, may the county hospital destroy such parts of such medical records as constitute privileged communication without resorting to the county records commission?

4) For what period of time is the county hospital required to retain the medical records of individual patients?

In answer to question number one above, I direct your attention to Section 149.40, Revised Code, which section defines records as follows:

“Any document, device, or item created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions which serves to document the organization, functions, policies, or other activities of the office, or which contains historical information, is a record within the meaning of sections 149.31 to 149.42, inclusive, of the Revised Code. When such records are of long term or permanent administrative, legal, fiscal, or historical value they shall be deemed to be archives within the meaning of these sections.” (Emphasis added)

Under Section 149.38, Revised Code, there is created in each county a county records commission, the functions of which are to provide rules and regulations for the retention and disposal of public records of the county and to review records disposal lists submitted by county officials. Such section also provides that the disposal lists submitted shall contain records which have *been micro-filmed or records which no longer have administrative, legal or fiscal value to the county or citizens thereof.*

Authority is found in Chapter 339, Revised Code, for the construction, purchase and maintenance of a county hospital.

Pursuant to the provisions of Sections 339.03 and 339.06, Re-

vised Code, the operation, management and control of such hospital is vested in a board of county hospital trustees.

It has been determined that one serving as a member of a board of county hospital trustees is a public officer. See Opinion No. 580, Opinions of the Attorney General for 1951, at page 346, wherein it was stated:

“In view of the statutory provisions relative to the matter of appointment, tenure of office, and the responsible duties imposed on such board of trustees, I conclude that membership on such board constitutes a public office.”

Section 339.06, *supra*, also provides for the employment of a hospital administrator as follows:

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“The board of county hospital trustees shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees as are necessary for the proper care, control, and management of such hospital and its patients, and the board of county hospital trustees shall fix their respective salaries and compensation. Any person, including the administrator, may be removed by the board of county hospital trustees at any time when the welfare of such institution warrants removal. * * *”

The functions and duties of the administrator, who is acting under and responsible to the board of hospital trustees, are set forth in Section 339.07, Revised Code, as follows:

“The administrator of a county hospital shall act in an advisory capacity to the board of county hospital trustees during the construction and equipping of said hospital, and after the hospital is completed he shall carry out the administration of the hospital according to the policies set forth by the board charged with the operation of such hospital.

“The administrator shall keep an account of the funds credited to the board upon such forms as are prescribed or approved by it. Such administrator shall render a statement to the board monthly showing the revenues and receipts from whatever sources derived, the disbursements, the purposes of the disbursements, the assets and liabilities of the board and shall keep such other records and make such reports thereof as are required by the board.

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It becomes necessary, therefore, to determine whether individual patient-medical records under the control of an administrator of a county hospital are records within the meaning of Section 149.40, *supra*.

There can be no doubt that such medical records are documents, devices or items as described in Section 149.40, *supra*. Nor can it be disputed that such records, whether created or received by the administrator or employees of the county hospital, come under the jurisdiction of a public office of the county. As noted above, the board of county hospital trustees has been determined to be a public office. Further, it has been seen that the county hospital is a public institution supported in whole or in part by public funds under the exclusive control and management of the board of trustees.

The question remains whether the hospital patient-medical records serve to document the organization, functions, policies, or other activities of the public office, *viz.*, board of county hospital trustees. I think they do not.

The word “document” in this context is variously defined to mean “to evidence by documents”; “to equip with exact references to authoritative supporting information”; “to furnish documentary evidence of.” (Webster’s Third New International Dictionary.) While hospital patient-medical records may be items or documents upon which, in some part, the functions or policies of the county board of hospital trustees operate, they do not furnish documentary evidence of these functions, policies or other activities.

Nor have they any visible historical value.

The apparent purpose of the creation of a county records commission through Section 149.38, Revised Code, is to preserve those public documents or instruments which are organizationally or functionally definitive of county public office or which contain information of historical, legal, or fiscal significance to the county or to the citizens of the county. County hospital patient-medical records fall in neither category.

Under Section 339.06, Revised Code, a board of county hospital trustees has “the entire management and control of the hospital,

and shall establish such rules for its government and the admission of persons as are expedient." I am of the opinion that, under this authority, a board of county hospital trustees has implied authority to dispose of hospital patient-medical records without resorting to the county records commission procedure.

Obviously, a fixed time can not be implied for the retention of hospital patient-medical records. These records may be disposed of any time after they have served their useful purpose as determined by the board of trustees.

In summary, then, it is my opinion and you are advised:

1. County hospital patient-medical records are not "records" within the meaning of Section 149.40, Revised Code, and need not be disposed of in accordance with the procedure specified in Section 149.38, Revised Code.

2. A board of county hospital trustees organized under Section 339.02, Revised Code, has the authority to dispose of patient-medical records with its determination that such records no longer serve a useful purpose.

Respectfully,
WILLIAM B. SAXBE
Attorney General