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1. TUBERCULOSIS HOSPITAL, COUNTY, TRUSTEES—PAYMENT REQUIRED TO BE MADE BY STATE—TO BE RETAINED BY TRUSTEES AND USED BY THEM IN OPERATION, MAINTENANCE AND IMPROVEMENT OF SERVICE OF HOSPITAL—NO PORTION MAY BE PAID TO COUNTY COMMISSIONERS TO IMPROVE HOSPITAL BUILDINGS—SECTION 3139-23 G. C.
2. TAXES COLLECTED PURSUANT TO LEVY, COUNTY COMMISSIONERS—FUNDS, MANAGEMENT AND CONTROL, COUNTY TUBERCULOSIS HOSPITAL—PAID OVER TO HOSPITAL TRUSTEES—DEPOSITED AND EXPENDED BY THEM—TRUSTEES, DISTRICT TUBERCULOSIS HOSPITAL—SECTIONS 3139-6, 3139-13 G. C.

SYLLABUS:

1. The payment required to be made by the state to the trustees of a county tuberculosis hospital as provided in Section 3139-23, General Code, is to be retained by said trustees and used by them in the operation, maintenance and improvement of the service of such tuberculosis hospital, and no portion thereof is to be paid to the board of county commissioners for improvements to the buildings of such hospital.

2. Under the provisions of Section 3139-13, General Code, all taxes collected pursuant to the levy made by the county commissioners for the purpose of providing funds and 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.

Columbus, Ohio, February 5, 1948

Hon. William G. Wickens, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"I hereby respectfully solicit your opinion on the following question: Under the now existing laws is it the function and duty of the county commissioners or the trustees of a county tuberculosis hospital to provide for repairs, replacements, improvements and additions to such hospital?"

"I have carefully read the opinion of the Attorney General rendered on this question in 1942, which opinion is found in 1942 O.A.G. No. 5584, but hereby again present the problem in view of the enactment of Section 3139-23, General Code, effective September 15, 1947. That section provides for the payment of certain state funds to such hospital trustees to be expended for the 'operation, maintenance, or *improvement* of such tuberculosis hospital.' That section implies that the trustees may proceed with improvements to the hospital and yet Section 3139-12, General Code, provides that the hospital shall be maintained by the county commissioners and that '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.'

"The question is currently presented here, for our commissioners want to know whether the moneys they appropriate in the general fund for hospital repairs and improvements are to be retained in the county treasury for expenditure by them, or whether the moneys so appropriated are to be paid over to the hospital trustees pursuant to the authority of Section 3139-13, General Code and 3139-6, General Code."

Two questions are presented: (1) whether the enactment of Section 3139-23, General Code, has changed the respective powers and duties of the trustees and the county commissioners in respect to a county tuberculosis hospital, and (2) whether there have been changes in the law as to the custody and expenditure of moneys appropriated for such hospital.

The opinion of my immediate predecessor, to which you refer, is found in 1942 Opinions of the Attorney General, page 783. The second

and third branches of the syllabus of that opinion which appear to have some bearing upon the first of these questions, read as follows :

"2. Under the provisions of Sections 3139-11 and 3139-12, General Code, the county commissioners and not the trustees of a county tuberculosis hospital are authorized to provide for major replacements and additions to such hospital.

"3. The trustees of a county tuberculosis hospital have authority to apply money received from patients and other sources, in addition to the amount appropriated from the general fund by the county commissioners, toward the operation and maintenance of such hospital."

I do not deem it necessary to review at length the statutes which were under consideration in that opinion but I do concur in the findings as above stated. Attention, however, may properly be called to the provisions of Section 3139-12, General Code, which reads 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, and 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.)

The responsibility for improving a county hospital as imposed by this section, clearly relates to the improvement of the hospital buildings.

Over and against this, Section 3139-13, General Code, places the management and control of a county tuberculosis hospital in a board of trustees. That section provides in part, as follows :

"The management and control of such county tuberculosis hospital shall be vested in a board of trustees consisting of three members who shall be appointed by the county commissioners for a term of three years, * * * All laws applicable to the levy of taxes for the purchase, lease, erection, maintenance, betterments, repairs and operation of a district hospital shall apply to the leasing, erection, operation, maintenance, betterments and repairs of said county hospital for the care and treatment of persons suffering from tuberculosis, * * * An accurate account shall be kept of all moneys received from patients or from other sources, which shall be applied toward the payment of maintaining the tuberculosis hospital. * * *"

Some new matter was added to this section by amendment in 1943 (120 O. L., 245), which was subsequent to the opinion above referred to. Reference will be made to it later when we come to consider your question as to the custody of the funds appropriated to the hospital.

It appears, therefore, quite clear that the law places upon the county commissioners the duty to enlarge, repair or improve the buildings of such hospital but gives the trustees wide authority in the expenditure of money incident to the management and maintenance of the hospital.

The recent addition to these statutes to which you call attention, embodied in Section 3139-23, General Code, appears to me to make provision for additional funds to be placed at the disposal not of the county commissioners but of the trustees of the hospital. That section reads in part, as follows :

“On and after July 1, 1947, the state shall pay to the board of trustees, or the board of county commissioners serving as a board of trustees, of any county, district, or municipal tuberculosis hospital approved by the Ohio department of health the sum of two dollars and fifty cents (\$2.50) per day for each patient hospitalized for the treatment of tuberculosis in such hospital by any county for whose care and treatment the county was legally obligated to pay. One dollar and twenty-five cents (\$1.25) of such sum received by such trustees, or county commissioners serving as a board of trustees, shall be expended only for the care and treatment of tuberculosis, *or the operation, maintenance or improvement of such tuberculosis hospital*. The remaining one dollar and twenty-five cents (\$1.25) of such sum shall be retained by the said trustees, or board of county commissioners serving as a board of trustees, for the use and credit of the county in which the patient has legal residence to be applied as part of the per diem cost of the hospitalization of such patient.”

(Emphasis added.)

Some light may be thrown on the intended purpose of this statute by observing the title of the act by which it was enacted. It was known as House Bill No. 114, and the title of the act reads as follows :

“To provide for the distribution of state funds for the purpose of providing hospital care for persons suffering from tuberculosis.”

The fact that the word “improvement” used in this new section is a part of the phrase “operation, maintenance or improvement,” leads me

readily to the conclusion that the "improvement" here mentioned, was not intended to relate to such major structural improvements of the hospital buildings as are contemplated by Section 3139-12 supra, but rather to such improvements in the general facilities of the hospital as naturally belong to its proper maintenance and operation. Therefore, there would seem to be no ground for assuming that some portion of the moneys provided by this new section of the law was to be taken out and turned over to the county commissioners, to be used for the enlargement or improvement of the *buildings*. Clearly, this was intended as an addition to the funds available to the trustees, to be used by them in the better management and operation of the hospital and improving its usefulness.

The language used in the first sentence of the new Section 3139-23, General Code, to the effect that the payments by the state are to be to "the board of trustees, *or the board of county commissioners serving as a board of trustees,*" does not alter the conclusion, which seems to me to be clear, that this subsidy was intended to improve the service of the hospital and not to improve its buildings. The county commissioners have nothing to do with the operation of such a hospital except in the event that it has less than fifty beds, in which case, as provided by Section 3139-13 supra, the commissioners may serve as the board of trustees.

Your second question relates to the custody of the moneys appropriated for the operation of the hospital. In the first branch of the opinion of my predecessor to which you have referred, the question was presented whether the trustees of a county tuberculosis hospital had the right of custody of the funds appropriated for the maintenance and operation of the hospital or whether such funds must remain in the custody of the county treasurer. The holding on this subject is shown by the first branch of the syllabus, which reads as follows :

"The trustees of a county tuberculosis hospital do not have custody of the funds appropriated for the maintenance and operation of such hospital, but such funds remain in the custody of the county treasurer."

The then Attorney General gave especial consideration to the powers that were conferred by law upon the trustees of a district tuberculosis hospital, particularly Section 3139-6, where it was expressly provided

that such trustees should receive all taxes levied by the county commissioners for maintenance and operation of the hospital, and should deposit them in banks or trust companies which they might designate. This provision was accompanied by a requirement that each of said trustees should give bond for the faithful performance of his duties, in such sums as might be fixed by the county commissioners.

These provisions were considered in connection with that portion of Section 3139-13, General Code, which I have already quoted, which provided that in the management and control of a county hospital all laws applicable to the *levy of taxes* for such district hospital should apply to county hospitals. The Attorney General held, and correctly as I believe, that these statutes did not go far enough to authorize the payment of these taxes when collected, directly to the trustees of a county hospital.

At the next session of the General Assembly following the rendition of that opinion, Section 3139-13 was amended by adding the following:

“* * * and all taxes collected pursuant to levy made for such purpose, and all appropriations made for the maintenance and operation of such hospital may be paid over to the trustees of the county hospital and deposited and expended by them in the same manner as is provided by section 3139-6, as to taxes levied and collected for the use of the trustees of a district hospital. The provisions of section 3139-6 requiring trustees of district hospitals to give bond for the faithful performance of their duties and providing the manner in which such bond shall be given, shall be applicable to trustees of a county hospital. * * *”

Plainly, the General Assembly intended to, and did give to the trustees of a county hospital the right to have the custody of such funds and to provide their own depository, coupling with this authority the obligation that each of such trustees should give a bond. It will be noted that in the amendment just quoted, the phrase “may be turned over” is used instead of “shall be turned over,” which appears in Section 3139-6 as to the payment to the trustees of a district hospital of the taxes collected. It might be considered that the use of this language leaves it optional with the county auditor and treasurer to pay these funds over to the trustees or to leave them in the county treasury. In the light of all the circumstances and of the context, and particularly in view of the

mandatory provision that these trustees shall give bond, I am of the opinion that it was not intended to leave the matter to the discretion of the auditor or treasurer but that this amendment was intended to mean and did mean that the trustees have the right to the custody of these moneys which have been levied for the purpose of operation and maintenance that are committed to them. Accordingly, in view of the change of the law since the rendition of the opinion by my predecessor, to which you have made reference, it would appear that that opinion, while sound, as the law then stood, should now be modified to the extent of such change in the statute.

Specifically answering your questions, it is my opinion :

1. The payment required to be made by the state to the trustees of a county tuberculosis hospital as provided in Section 3139-23, General Code, is to be retained by said trustees and used by them in the operation, maintenance and improvement of the service of such tuberculosis hospital, and no portion thereof is to be paid to the board of county commissioners for improvements to the buildings of such hospital.

2. Under the provisions of Section 3139-13, General Code, all taxes collected pursuant to the levy made by the county commissioners for the purpose of providing funds and 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.

Respectfully,

HUGH S. JENKINS,
Attorney General.