

Note from the Attorney General's Office:

1953 Op. Att'y Gen. No. 53-2770 was overruled by 1983
Op. Att'y Gen. No. 83-040.

2770

TUBERCULOSIS HOSPITAL — COUNTY — BOARD OF TRUSTEES—NO AUTHORITY TO EMPLOY COLLECTION AGENCY TO COLLECT UNPAID CHARGES AGAINST PATIENTS AND FORMER PATIENTS IN HOSPITAL — CLAIMS NOT COLLECTED BY ORDINARY ADMINISTRATIVE MEANS SHOULD BE COLLECTED BY PROSECUTING ATTORNEY—SECTIONS 292, 3139-13 GC.

SYLLABUS:

The board of trustees of a county tuberculosis hospital operated, managed and controlled as provided in Section 3139-13, General Code, is without authority to employ a collection agency to collect unpaid charges against patients and former patients in such hospital, but any such claims as cannot be collected by the board by ordinary administrative means should be collected by the prosecuting attorney of the county concerned, as provided in Section 2921, General Code.

Columbus, Ohio, June 30, 1953

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I have been requested by the Board of Trustees of the Lorain County Tuberculosis Hospital to give them an opinion as to the legality of employing a collection agency to collect unpaid charges of former patients of aforesaid hospital.

“I have consulted General Code Sections 3439-10 and 3139-13, which are referable but do not find any statutory authority for such employment. Will you kindly advise our office.”

Provision for the management and control of a county tuberculosis hospital is found in Section 3139-13, General Code, by which section all laws applicable to the operation of district tuberculosis hospitals are made applicable to such county hospitals. The only reference in this section to the payments made by patients is the following:

“ * * * 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. The board of trustees shall, on the first Monday in February of each year, file with the county commissioners and with the state department of health an annual report of the operation of the county tuberculosis hospital including a statement of receipts and disbursements during the past calendar year."

In Section 3139-10, General Code, provision is made for the designation by the hospital board of trustees of an operating staff to consist of a superintendent, physicians, nurses, and other employees. In the matter of payments to be made by patients, this section provides:

"* * * The medical superintendent shall investigate all applicants for admission to the hospital for tuberculosis and shall require satisfactory proof that they have tuberculosis and are in need of hospital care. The board of trustees may require from any applicant admitted from the county or counties maintaining the hospital, payment not exceeding the actual cost of care and treatment, including the cost of transportation, if any. If, after investigation, it shall be found that any such applicant or patient or any person legally responsible for his support is unable to pay the full cost of his care and treatment in the district hospital, the board of trustees may determine the amount, if any, said applicant, or patient or any such person legally responsible for his support, shall pay. The difference between such amount, if any, and the actual cost of care and treatment shall be paid by the county in which such applicant or patient has a legal residence. The amount so determined shall be paid on the order of the county commissioners. An accurate account shall be kept of moneys received from patients, or from other sources, which shall be applied toward the payment of maintaining the district tuberculosis hospital."

These provisions refer only to the "receipt" of payments from patients and make no reference to collection. It may be conceded that the statutory duty to administer a public facility, the operation of which gives rise to claims against the beneficiaries of such operation, will include by necessary implication a duty on the part of the administrator to make a reasonable effort to collect such claims. However, the expenditure of public funds to employ a private collection agency to make such collections is distinctly another matter.

It will be observed that county hospitals are supported in large part by public funds raised by taxation and are staffed by public officers and employees. They are created by the action of public officers, or by vote of the electors, under authority of a state statute. They must, therefore,

be regarded as purely public organizations and any revenues realized from their operations must be regarded as public funds. This being so, it follows that claims against patients in favor of a county hospital constitute public property, and when such claims are paid, the moneys so received become public funds. Accordingly any arrangement whereby a percentage allowance is made to a collection agency for the collection of such claims would be an expenditure of public funds.

The authority to make such expenditure, however, must be provided by statute in terms that are free of doubt. In *State ex rel A. Bentley Co. v. Pierce*, 96 Ohio St., 44, the third paragraph of the syllabus is as follows:

“3. In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

In the instant case the language of the pertinent statutes is such as to raise a serious doubt, to say the least, as to the authority of the board of trustees of a county tuberculosis hospital to expend public funds in the employment of a private collection agency, and such doubt under the rule in the Bentley case must be resolved against the grant of power.

This view is further supported by consideration of the provision found in Section 2921, General Code, as follows:

“Upon being satisfied that * * * money is due the county, the prosecuting attorneys of the several counties of the state may apply, by civil action in the name of the state, to a court of competent jurisdiction * * * to recover such money due the county.”

This provision appears to be the only means provided by statute, in addition to the administrative efforts of the executive officers concerned, for the collection of funds due the county, its several departments and institutions. In this situation it is to be presumed that the express provision of this means of collection and the failure to mention any other means, is indicative of intent to make such express provisions exclusive.

Accordingly, in specific answer to your inquiry, it is my opinion that the board of trustees of a county tuberculosis hospital operated, managed, and controlled as provided in Section 3139-13, General Code, is without authority to employ a collection agency to collect unpaid charges against patients and former patients in such hospital, but any such claims as

cannot be collected by the board by ordinary administrative means should be collected by the prosecuting attorney of the county concerned, as provided in Section 2921, General Code.

Respectfully,

C. WILLIAM O'NEILL
Attorney General