

## OPINION NO. 70-153

## Syllabus:

A board of trustees of county hospitals may establish a program for controlling, collecting and utilizing all charges for attending physician and dental services provided to patients at the hospital by physicians and dentists employed by the hospital whereby (1) the fees would be billed against third party sources such as Medicare Part B, Blue Shield, workmen's compensation and insurance companies; (2) costs and expenses of billing would be paid out of receipts therefrom; (3) net revenues would be used (a) for supplementing salaries of physicians and dentists, and (b) for funding of programs in the various clinical departments of the hospital; (4) the physicians and dentists rather than the hospital would charge the fee; and (5) the physicians and dentists would authorize the collection and the use of the same by the hospital. Opinion No. 3197, Opinions of the Attorney General for 1962, overruled.

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To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio  
By: Paul W. Brown, Attorney General, November 6, 1970

I have your request for my opinion with respect to the question:

"\* \* \*May the board of trustees of Cuyahoga County Hospitals establish a program for controlling, collecting and utilizing all charges for attending physicians and dental services provided to patients at the hospital by physicians and dentists employed by the hospital whereby

"1. The fees would be billed against third party sources such as Medicare Part B, Blue Shield, Workmen's Compensation and insurance companies.

"2. Costs and expenses of billing would be paid out of receipts therefrom.

"3. Net revenues would be used,  
a) for supplementing salaries of physicians and dentists  
b) for funding of programs in the various clinical departments of the hospital.

"4. The physicians and dentists rather than the hospital would charge the fee.

"5. The physicians and dentists would authorize the collection and the use of the same by the hospital."

Section 339.06 of the Ohio Revised Code sets forth the authority and duties of a board of county hospital trustees and provides in pertinent part:

"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.

\* \* \* \* \*

"The board of county hospital trustees shall fix the compensation to be paid by or for all patients for all services and treatment rendered by the county hospital."

Research indicates that there is a dearth of case law regarding the foregoing section and its application to the question which you pose. Various attorneys general have dealt with similar problems and opinions rendered have been predicated upon various of the following considerations:

1. " \* \* [A] corporation, whether or not organized for profit, may not lawfully engage in the practice of medicine in this state. Such institution may not share in the fees charged by a physician for his professional services." Opinion No. 1751, Opinions of the Attorney General for 1952, page 608.
2. "The board of directors of a county tuberculosis hospital, alone, are authorized to make charges of patients for the services of the hospital, and as provided in Section 339.20, Revised Code, such hospital services include medical and surgical treatment." Opinion No. 1177, Opinions of the Attorney General for 1957, page 586.
3. "The determination of whether the employment of a licensed dentist by a hospital corporation causes such corporation to be practicing dentistry is based upon whether the arrangement is one in which a profit or gain is a moving factor causing such employment." Opinion No. 3031, Opinions of the Attorney General for 1962, page 414.

The foregoing opinions would appear to create no problem, as, in the present instance, we are not confronted with a corporation, but rather with a county hospital board of trustees, and, with respect to such board, I cannot visualize profit or gain being a moving factor. Further, the 1957 opinion, which is merely in consonance with the pertinent statute, together with the statute itself, would appear to support the present proposed arrangement.

However, Opinion No. 3197, Opinions of the Attorney General for 1962, page 622, seems to ignore both the statute and the 1957 opinion in saying that a county hospital is improperly engaged in the practice of medicine when it charges a fee for the professional services of a licensed physician and said physician is paid a salary by the hospital for his services, and further that such physician, because of the division of fees charged for his services, would be guilty of grossly unprofessional and dishonest conduct.

This latter opinion also disregards the basic philosophy,

previously mentioned, of whether a profit motive is involved. The profit versus non-profit differentiation was dealt with in People, ex rel. State Board of Medical Examiners v. Pacific Health Corporation, Inc., 12 C (2d) 156, 82 P. (2d) 429 (1938) (Cert. denied, 306 U.S. 633), in which it was held that a stock company operated for profit, which in consideration of a premium undertakes to bear the expense of medical or surgical services rendered to a contract holder by a physician on its approved list, is illegally engaged in the practice of medicine. The argument was made that a decision against the company would outlaw all fraternal, religious, hospital, labor and similar benevolent organizations furnishing medical service to members. The court commented:

"\* \* \*But a most obvious and, to us, a fundamental distinction must be made between defendant and these other institutions.\* \* \*Such activities are not comparable to those of private corporations operated for profit, and, since the principal evils attendant upon corporate practice of medicine spring from the conflict between the professional standards and obligations of the doctors and the profit motive of the corporation employer, it may well be concluded that the objections of policy do not apply to non-profit institutions."

The principle involved is illustrated in another context in branch one of the syllabus of Opinion No. 2235, Opinions of the Attorney General for 1947, page 467:

"A company which maintains on its premises a place for performing dental operations which is operated or conducted by a licensed dentist as a salaried employee of said company, but wherein dental services are performed gratuitously for company employees is not engaged in the practice of dentistry within the meaning of Section 1329, General Code [Section 4715.01 of the Revised Code]."

With your request was enclosed a "Resolution of the Board of Trustees of Cuyahoga County Hospitals" which recites that the objectives of the proposed plan are in connection with the employment of members of the faculty of Case Western Reserve University Medical School to control all funds used in the operation of the hospitals and to fix the compensation to be paid by or for all patients of the hospitals as well as the salaries and compensation of each physician and dentist employed at the hospitals. This would appear to be in consonance with Section 339.06, supra, and, absent a profit motive, would appear to be violative of neither the principles of medical ethics of the American Medical Association nor of the principles of professional conduct enunciated in Title 47 of the Revised Code of Ohio.

A question similar to the one now presented was involved in Opinion No. 69-085, Opinions of the Attorney General for 1969, page 182, in which the syllabus stated:

"A board of trustees of a county hospital may not make expenditures of hospital funds to pay the premium upon policies of professional malpractice insurance for interns and residents."

However, in Jeffrey v. Johnson, 23 Ohio Misc. 338 (1970), the

Common Pleas Court of Paulding County disapproved the foregoing opinion insofar as it appears to conflict with the opinion of the court and stated in headnote 2:

"The authority which R.C. 339.06 grants to a board of county hospital trustees to 'designate the amounts and forms of insurance protection to be provided' together with its statement that the board 'shall have the entire management and control of the hospital' and the language directing that the board of county commissioners 'shall secure such protection' is sufficient for such a board to designate that a policy of professional liability insurance be obtained for the hospital."

This is illustrative of the principle previously advanced that the pronouncements of a statute are to be accepted for what they clearly say rather than being diluted by tenuous interpretations.

I am not unmindful of Opinion No. 1751, Opinions of the Attorney General for 1952, page 608, and Opinion No. 3031, Opinions of the Attorney General for 1962, page 414, which at first blush, might appear to be at variance with my present conclusions. However, each of those opinions deals with a corporation, which corporations do not have the authority of a county hospital board of trustees which is given by Section 339.06, supra, and consequently, each such opinion is readily distinguishable.

It is, therefore, my opinion that a board of trustees of county hospitals may establish a program for controlling, collecting and utilizing all charges for attending physician and dental services provided to patients at the hospital by physicians and dentists employed by the hospital whereby (1) the fees would be billed against third party sources such as Medicare Part B, Blue Shield, workmen's compensation and insurance companies; (2) costs and expenses of billing would be paid out of receipts therefrom; (3) net revenues would be used (a) for supplementing salaries of physicians and dentists, and (b) for funding of programs in the various clinical departments of the hospital; (4) the physicians and dentists rather than the hospital would charge the fee; and (5) the physicians and dentists would authorize the collection and the use of the same by the hospital. Opinion No. 3197, Opinions of the Attorney General for 1962, overruled.