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1. HOSPITAL BOARD, JOINT TOWNSHIP—WHERE COUNSEL EMPLOYED, NOT A PROSECUTING ATTORNEY—TAXPAYERS' ACTION TO CONTEST SALE OF BONDS OF JOINT TOWNSHIP HOSPITAL DISTRICT—COUNSEL FEES MAY BE PAID FROM PROCEEDS OF SPECIAL TAX LEVY—SECTION 3414-3 G. C.—UNRESTRICTED CONTRIBUTIONS RECEIVED BY HOSPITAL BOARD—SECTION 3414-5 G. C.
2. UNIFORM DEPOSITORY ACT—PROCEEDS FROM SALE OF BONDS ISSUED BY JOINT TOWNSHIP HOSPITAL DISTRICT—MUST BE DEPOSITED IN PUBLIC DEPOSITORY—SECTION 2296-1 ET SEQ., G. C.—EXCESS FUNDS—SHORT TERM GOVERNMENT SECURITIES—SECTION 2296-12 G. C.
3. BOND FOR FAITHFUL PERFORMANCE OF DUTIES—NO PROVISION OF LAW FOR OFFICERS OR MEMBERS OF JOINT TOWNSHIP HOSPITAL BOARD TO FURNISH BOND.

## SYLLABUS:

1. Where it is necessary for a joint township hospital board to retain the services of counsel, other than the prosecuting attorney, to defend a taxpayer's action contesting the sale of bonds of the joint township hospital district, the fees of such counsel may be paid from the proceeds of the special tax levied pursuant to Section 3414-3, General Code, or from unrestricted contributions received by the hospital board pursuant to Section 3414-5, General Code.

2. The proceeds from the sale of bonds issued by a joint township hospital district must be deposited in a public depository in accordance with the provisions of the Uniform Depository Act, Section 2296-1, et seq., General Code, except that excess funds which cannot be deposited in the public depositories of the subdivision because of the limitations which the act places upon the amount of funds which can be deposited therein may be invested in short term government securities as prescribed in the third paragraph of Section 2296-12, General Code.

3. There is no provision of law making it necessary for any officers or other members of the joint township hospital board to furnish bond for the faithful performance of their duties.

Columbus, Ohio, April 11, 1950

Hon. George M. Monahan, Prosecuting Attorney  
Auglaize County, Wapakoneta, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion which reads as follows :

“The Joint Township Hospital District of Auglaize County, Ohio, was organized under Sec. 3414-1 of the General Code of Ohio, et seq. consisting of Jackson, German, Noble and St. Marys townships, the township trustees of said four townships comprising the hospital board.

A taxpayer's suit contesting the sale of the bonds was instituted June 29, 1949, the Supreme Court of Ohio upheld the bond issue and decided all issues in favor of the Hospital District. The case was defended by the then Prosecuting Attorney of Auglaize County, who with the hospital board and trustees engaged a Cleveland law firm to join with the then prosecutor in litigating the issues before the Common Pleas Court of Auglaize County, the Court of Appeals of said county and the Supreme Court of Ohio, to whom they are now indebted for services. The only funds the hospital board has is that derived from the sale of bonds in an amount of some \$514,000.00.

Your opinion is requested upon the following :

1. May the Hospital Board, who are also Township trustees, and acted as such before the formation of the Hospital Board, pay the fees of counsel, other than the Prosecutor, out of township funds.

2. If not, then how does the fee for the successful defense of the suit brought against them become paid.

3. Where may the hospital board invest the proceeds from the sale of bonds in the amount of some \$514,000.00.

4. Is it necessary for the President and/or the Secretary-Treasurer, or other officers who distribute said fund, to be bonded and if so in what amount; also is this expense allowable from the proceeds of the bond sale? If not from what fund is the premium allowable?"

For the purpose of establishing a basic premise from which the answers to your questions may be reasoned, I deem it advisable to consider first the nature of the entity established pursuant to Section 3414-1 of the General Code. Said section of the Code reads as follows:

"The trustees of any two or more contiguous townships in any county may by a two-thirds favorable vote of each of said board of trustees, form themselves into a joint township hospital board for the purpose of establishing, constructing and maintaining a joint township district general hospital, and aforesaid contiguous townships wherein said two-thirds favorable votes shall have been taken, shall become and be a part of a joint township hospital district.

Said joint township district hospital board shall organize within thirty days after the favorable vote shall have been taken by the last board of trustees joining themselves into said joint township district hospital board, and the president of the board of township trustees of the most populous township participating shall give notice of the time and place of organization, to each of the members of the boards of trustees of each and every township comprising said joint township hospital district, which notice shall be signed by the president of the board of trustees of said most populous township comprising the hospital district, and be sent by registered mail to each and every member of the boards of trustees of the townships affected, at least five days prior to said organization meeting, and said meeting shall be held in one of the townships participating. All members of the boards of township trustees of all the townships so participating, shall comprise the joint district hospital board. For the purpose of this act two-thirds of all the duly elected township trustees of the townships constituting said joint township hospital district shall constitute a quorum for the transaction of any and all business. Said members of the respective boards of township trustees shall proceed at said organization meeting with the election of a president, secretary and treasurer, and such other officers as they deem proper and necessary, and shall transact such other business as may properly come before said board."

In Opinion No. 1161, Opinions of the Attorney General for the year

1946, at page 617 of the reported opinions, my predecessor in office considered a question of whether the issuance of bonds by a joint township hospital district should be determined by the voters of the district voting as a whole on the basis of the total votes cast in the entire district or by the total votes cast in the various subdivisions comprising the district. One of the conclusions reached in that opinion, after a consideration of the above quoted section, was expressed in the first branch of the syllabus as follows:

“1. A joint township hospital district established under Section 3414-1, General Code, is a subdivision separate and distinct from the other subdivision whose territory may be included within its boundary.”

Being in agreement with this conclusion it follows that the hospital board may not pay fees of counsel out of township funds.

The joint township district hospital board, being a creature of statute, has only such powers as are specifically conferred upon it by statute or which may be necessarily implied therefrom. The sections of the General Code pertinent to the power of said board to obtain and expend money in the furtherance of their duties are sections 3414-2, 3414-3 and 3414-5, General Code.

Section 3414-2, General Code, reads:

“Upon the establishment of such township hospital district and after the organization of said township district hospital board, as aforesaid, the joint township hospital board of the joint township hospital district shall determine the amount of bonds to be issued, and such other matters as pertain thereto, and shall issue and sell said bonds to the extent and in the amount so determined when approved by the vote of the electorate of said hospital district voting as a subdivision, for the purchase of a site and for the constructing and equipping of a hospital building thereon. Such bonds shall be issued and sold under the same manner and conditions and within the limitations prescribed by the uniform bond act, sections 2293-1 to 2293-86, inclusive, of the General Code of Ohio.

All necessary expenses for the operation of such general hospital may be paid out of any moneys derived from the special levy approved for such purposes by the voters of said joint township hospital district, voting as a subdivision, or out of any other moneys received from hospital income or services rendered, or from any unencumbered funds from any other source. The

board of trustees of the several townships participating in said hospital district are hereby authorized to appropriate and pay over to said joint township hospital board any unencumbered funds that they may have, for maintenance of said hospital.

Such necessary expenses as may be incurred by the township trustees in meeting with the trustees of other townships for the consideration of proposals to proceed under the provisions of this act shall be paid from the general fund of the township incurring such expenses. Provided, however, that when said joint township hospital board has funds of its own derived from the special levy approved by the electors of the joint township hospital district, as herein provided, or unencumbered funds from any other source, then the expenses incidental to said hospital shall be paid by said joint township hospital board."

Section 3414-3 is as follows :

"Upon request of such joint township district hospital board, by resolution approved by a two-thirds vote of the joint membership thereof, the board of elections of the county in which such district lies, shall place upon the ballot for submission to the electorate of said joint township hospital district, at the primary or general election, occurring not less than thirty days nor more than ninety days after request is received from said joint board, the question of levying a tax not to exceed one (1) mill outside the ten (10) mill limitation, for a period not to exceed five (5) years, for the purpose of providing funds for the payment of necessary expenses incurred in the operation of said district hospital. If sixty-five percent of the electors in said joint hospital district voting on the proposition, vote in favor thereof, the county auditor shall annually place on the tax duplicate against the property in said hospital district, a levy in the amount required by the joint board of trustees of the joint township hospital district, but not to exceed one mill."

Section 3414-5 reads as follows :

"The ownership of such joint township district hospital, including all right, title and interest in and to all property, both real and personal, pertaining thereto, shall vest in said joint township general hospital board. In the selection and requirement of a site for such general hospital the joint board shall have the same powers for the appropriation of lands as are conferred upon state departments, institutions, boards or commissions. They may receive and hold in trust for the benefit of such hospital, any grant or devise of land, any donation or bequest of money or other personal property that may be made for the establishment or support thereof."

From the foregoing statutes it will be noted that the funds of the board must be derived from the issuance of bonds, a special tax levy, appropriations from unencumbered funds which the several townships participating in the hospital district may have and from bequests or donations for the benefit of the hospital.

While Section 3414-2, General Code, provides for the issuance of bonds there is no direct authorization therein or in the related sections of the Code which directs the purposes for which the proceeds of the sale of such bonds may be expended. Other sections of the General Code, however, would limit the expenditure of such proceeds so as to prevent their use in payment of the fees of counsel. (See Opinions of the Attorney General for 1949, No. 701.) The second paragraph of Section 3414-2 and Section 3414-3 mention "necessary expenses for the operation of" the hospital and provide for their payment out of the special tax levy. The last sentence of the second paragraph of Section 3414-2 relates to appropriations of unencumbered funds of the participating townships and provides that such funds may be used "for maintenance of said hospital." The last paragraph provides for the method of payment of the expenses of the township trustees in meeting with those of other townships for consideration of proposals to proceed under the provisions of the act. Section 3414-5 makes no specific provision for the expenditure of funds received under its authority other than to authorize such property to be held in trust for the benefit of such hospital.

It will thus be seen that no specific provision has been made for the payment of counsel fees and other expenses incident to the issuance of bonds for the establishment of a joint township hospital. The question then arises whether the payment of such expenses may be necessarily implied from the language used in said sections. As pointed out above, the proceeds of the bond issue may not be so used. May such expenses be paid from appropriations to the hospital board of unencumbered funds of the participating townships? These moneys are to be used "for maintenance of" the district hospital. Maintenance in its common and ordinary meaning denotes a holding or keeping in a particular state or condition. It also means the supporting, upholding or repair of an object, person or thing. In short, it connotes the existence of the object to be maintained. It would not warrant a construction which would permit the funds derived

from such source to be used for expenses preliminary to the existence of the hospital.

One fairly obvious source of revenue from which such expenses could be paid is that of bequests and donations provided such bequests and donations were not made subject to specified restrictions or uses for other designated purposes. Such voluntary contributions are, by the terms of Section 3414-5, held in trust by the hospital board and would be subject to the conditions imposed thereon by the donor. In the absence of such restrictions the statute provides that such property as may be so contributed for the "establishment or support" thereof may be held "for the benefit of such hospital." The wording therein used is sufficiently broad to authorize such moneys, not otherwise restricted, to be used for expenses connected with the establishment of such a hospital. It is recognized that payment of such expense from this source would be uncertain and improbable, for most donees to institutions of this nature place restrictions upon the use of their contributions for personal or other reasons. This then leaves the moneys derived from a special tax levy as the only other possible source from which such expense might be paid. The question remains whether authority for such payments may be implied from the words "necessary expenses for the operation of such general hospital." That the expenses incurred in the defense of the taxpayer's suit were necessary cannot be disputed. Is, then, the word "operation" sufficiently broad to include expenses preliminary to the existence of the hospital which were incurred in the course of the establishment of such institution? The word "operate" is defined in Webster's New International Dictionary, Second Edition, to include the following:

"To put into, or to continue in, operation or activity; to manage; to conduct; to carry out or through; to work; \* \* \*"

From the foregoing definition the word "operation" would include within its meaning an act or acts of putting into activity an object or instrumentality. I am of the opinion that the services of counsel in connection with the issuance of bonds for the purpose of establishing a hospital would be one of many acts required to put such hospital into activity and that the payment of the fees for such service from the proceeds of the special tax levy could be necessarily implied from the authority granted to pay the necessary expenses for the operation of such hospital.

With reference to your third question your attention is called to the provisions of the Uniform Depository Act, Section 2296-1, et seq., General Code. This act as amended in 118 Ohio Laws, 241 and 121 Ohio Laws, 766, governs the deposit of public funds. The only authority to invest the proceeds of the bond issue, other than by depositing them in a public depository in accordance with the provisions of said act, is contained in Section 2296-12, General Code. This section as amended in 121 Ohio Laws, 766, is one of the sections of said act. It is quite lengthy, and since you have access to it, it will not be quoted here.

This statute, you will observe, only authorizes the investment of excess funds, that is, the funds which cannot be deposited in the public depositories of the subdivision because of the limitations which the act places upon the amount of funds which can be deposited therein. *A priori*, if the joint township hospital boards finds that it is unable, because of the limitations prescribed by the act, to place the funds in depositories designated by it in accordance with the provisions of the act, such excess funds may be invested in short term government securities as prescribed in the third paragraph of said Section 2296-12, General Code, but not otherwise.

When a statute requires the giving of a bond by a public officer for the faithful performance of his official duties it is necessary that such bond be given as a prerequisite to qualification for the particular office. I am apprised of no requirement of law which would necessitate every public official or public officials generally giving bonds for the faithful performance of their duties. On the contrary, whenever a bond is required to be given by any official or fiduciary the nature and extent thereof is specifically set forth in statutes pertaining to the particular official or fiduciary from whom such bond is required. An examination of the statutes pertaining to joint township hospital districts reveals that no provision is contained therein requiring the members of the joint township district hospital board to furnish bond for the faithful performance of the duties imposed upon them.

It is my opinion, therefore, that:

1. Where it is necessary for a joint township hospital board to retain the services of counsel, other than the prosecuting attorney, to defend a taxpayer's action contesting the sale of bonds of the joint



township hospital district, the fees of such counsel may be paid from the proceeds of the special tax levied pursuant to Section 3414-3, General Code, or from unrestricted contributions received by the hospital board pursuant to Section 3414-5, General Code.

2. The proceeds from the sale of bonds issued by a joint township hospital district must be deposited in a public depository in accordance with the provisions of the Uniform Depository Act, Section 2296-1, et seq., General Code, except that excess funds which cannot be deposited in the public depositories of the subdivision because of the limitations which the act places upon the amount of funds which can be deposited therein may be invested in short term government securities as prescribed in the third paragraph of Section 2296-12, General Code.

3. There is no provision of law making it necessary for any officers or other members of the joint township hospital board to furnish bond for the faithful performance of their duties.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.