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HOSPITAL, COUNTY — BOARD OF COUNTY COMMISSIONERS—HAS AUTHORITY TO ENLARGE, IMPROVE AND REBUILD EXISTING COUNTY HOSPITAL—BOARD SHOULD ACT DIRECTLY—FUNDS NOT AVAILABLE TO BOARD OF TRUSTEES OF HOSPITAL—SECTION 339.01 RC.

SYLLABUS:

A board of county commissioners has authority under the provisions of Section 339.01, Revised Code, to "enlarge, improve, and rebuild" an existing county hospital, and in exercising such power such board should act directly rather than by making funds for such purpose available to the board of trustees of such hospital.

Columbus, Ohio, July 1, 1954

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Operating Trustees of Greene Memorial Hospital has requested that I obtain your opinion regarding the following matter :

“Greene Memorial Hospital is a county hospital established and operated under the laws of the State of Ohio relating to county hospitals.

“Since the establishment of this hospital it has become necessary, in some respects, to make additions to it and to make general permanent improvements to the building and also to build sidewalks and construct parking areas for the patrons and employees of the hospital.

“While your office has quite ably defined the powers and duties of the Operating Trustees of County Hospitals, I can find nothing in the existing statutes which would throw any light on the question of who has authority to make permanent improvements to the existing hospital facilities.

“Unquestionably care, maintenance and upkeep, of course, all come under the Operating Board. However, the only thing I can find relating to permanent construction or permanent improvement relates only to the Board created by law at the beginning of the proceedings for the initial construction of the hospital, and, of course, in our case, this Board has long since gone out of existence.

“The specific question, therefore, would seem to be whether the Board of Operating Trustees of Greene Memorial Hospital has authority to make permanent improvements to said hospital in addition to maintenance, care and upkeep, or whether all matters pertaining to permanent improvement and new construction would be within the authority of the Green County Commissioners.”

Authority for the original construction, the improvement or enlargement, and the operation of county hospital facilities is found in Chapter 339., Revised Code, formerly Section 3127, et seq., General Code. The initial section in this chapter is as follows :

Section 339.01, Revised Code :

“The board of county commissioners may purchase, appropriate, construct, enlarge, improve, and rebuild a county hospital or hospital buildings. No money shall be expended for the original purchase, appropriation, or construction of such hospital or buildings until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them. Such hospital may be designated as a monument to commemorate the

services of the soldiers, sailors, marines and pioneers of the county.”

In exercising such authority, however, the commissioners are required by the provisions of succeeding sections in this chapter to act through a board of hospital trustees both in the matter of the original construction and equipment of the hospital, and in the operation of the facility when completed. See Sections 339.03 and 339.06, Revised Code.

Prior to the enactment of House Bill No. 392 by the 99th General Assembly, effective June 13, 1951, it was provided in Sections 3131 et seq., General Code, that the original construction of a county hospital should be accomplished by a special board of trustees appointed by the governor; and that the actual operation of the hospital when completed was to be the responsibility of an operating board of trustees appointed by the county commissioners. It appears from your inquiry that this procedure was followed in the instant case.

By the 1951 amendment both the original construction and the operation is made the responsibility of a single board appointed by the county commissioners, the probate judge and the senior common pleas judge.

That it was the legislative intent that boards of operating trustees in existence at the time of enactment of the 1951 amendment were to continue in the exercise of their powers is indicated by the following provision in Section 3131, General Code:

“* * * Provided, however, that within sixty days after the effective date of this act the county commissioners together with the probate judge and the common pleas judge senior in point of service in any county wherein trustees of a county hospital have heretofore been appointed under the provisions of Section 3136 of the Ohio General Code shall appoint two additional trustees, one from each of the two political parties casting the highest number of votes in such county for their respective candidates for governor at the next preceding gubernatorial election.” * * *

This provision is fairly indicative also of an intent that a board so continued in existence is to exercise the powers enumerated in the succeeding sections, particularly Section 3137, General Code, as amended in House Bill 392, supra. This section has since been recodified as Section 339.06, Revised Code, and afterward was again amended effective October 13, 1953. As so amended this section provides in pertinent part:

“The board of county hospital trustees shall, upon completion of construction and equipping of the county hospital, assume and continue the operation of such hospital. The board of county hospital trustees shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

“The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation. The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. Such banks or trust companies shall give the board of county hospital trustees a bond in an amount equal to the funds so deposited. The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees for the uses and purposes of such hospital, on a voucher signed by the administrator, provided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees. All moneys appropriated by the board of county commissioners or from special levies by the board of county commissioners for the operation of the hospital, when collected shall be paid to the board of county hospital trustees on a warrant of the county auditor and approved by the board of county commissioners. * * *

“The board of county hospital trustees shall annually on the first day of March, file with the board of county commissioners a statement of its receipts and expenditures for the preceding year and shall submit to such board of county commissioners an estimate of the financial requirements of such hospital for the ensuing year.”

It will be observed that the powers thus provided for relate solely to the operation of the hospital and to the use of funds appropriated by the commissioners “for the operation of the hospital.” Neither in this nor in other sections of Chapter 339, Revised Code, is there any suggestion of the authority of the board of trustees to use funds appropriated by the county commissioners to “enlarge, improve, and rebuild a county hospital” although the authority of the commissioners in making such enlargement and improvement is clearly set out in Section 339.01. *supra*.

In this situation it necessarily follows that in exercising their powers in this regard the county commissioners are authorized and required to act directly rather than through the board of trustees of the hospital concerned.

It is appropriate to point out in passing the following provision in Section 339.08, Revised Code:

“The board of county hospital trustees may receive any gift, bequest, or devise of real or personal property in trust for the erection, improvement, or support of the county hospital, and administer the said property and the proceeds thereof in the manner required by law or the instrument creating such trust. Before receiving such trust property, the board shall give additional bond in such amount as the board of county commissioners or a court requires.” * * *

This provision would appear to be sufficient to authorize the hospital trustees to utilize the proceeds of trust property in accordance with the terms of the trust in the “improvement” of the hospital, but it would not appear sufficient to comprehend public funds made available to such trustees by appropriations made by the county commissioners.

Accordingly, in specific answer to your inquiry, it is my opinion that a board of county commissioners has authority under the provisions of Section 339.01, Revised Code, to “enlarge, improve, and rebuild” an existing county hospital, and in exercising such power such board should act directly rather than by making funds for such purpose available to the board of trustees of such hospital.

Respectfully,
C. WILLIAM O'NEILL
Attorney General