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WHEN A HOSPITAL HAS BEEN LEASED TO A CORPORATION NOT FOR PROFIT, THERE IS NO AUTHORITY FOR THE CASH ON HAND AND ACCOUNTS RECEIVABLE TO BE TURNED OVER TO THE CORPORATION, NOR IS THERE ANY AUTHORITY FOR BOARD OF COUNTY COMMISSIONERS TO ISSUE BONDS FOR CAPITAL IMPROVEMENTS OF SUCH A HOSPITAL—§749.16, R.C., 749.35, R.C.

SYLLABUS:

Where a hospital organized pursuant to Section 749.16, Revised Code, has been leased to a corporation not for profit pursuant to Section 749.35, Revised Code, there is no authority for the cash on hand and accounts receivable of such hospital to be turned over to such corporation not for profit, nor is there any authority for the board of county commissioners to issue bonds for furthering capital improvements of such a leased hospital.

Columbus, Ohio, April 14, 1961

Hon. Robert O. Stout, Prosecuting Attorney  
Marion County, Marion, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Your early opinion is sought upon the following factual situation:

“Marion General Hospital is a joint city-county hospital, under the management of the City of Marion. Consideration is being given to the changing of the operations of said hospital from a governmental unit to a nonprofit community corporation hospital.

“Presently the accounts receivables and cash on hand in the hospital funds would total approximately two hundred thousand dollars. This roughly is an estimated amount to offset operating expenses for a period of two to three months.

“Our first query deals with these accumulated accounts receivables and cash on hand. Can the joint city-county hospital turn over such existing accounts receivables and cash on hand to a nonprofit corporation in the event the city-county hospital leases the facilities and operations of the hospital to a nonprofit corporation? In the event of such transfer or leasing of the facilities, it would be imperative that some means be provided for the operations for a period of two or three months.

“The second query is as to whether, assuming the city-county hospital having been leased to a nonprofit corporation, would the county be permitted to issue taxable income bonds; the money from which would be used for further capital improvements of the then existing physical facilities, and in turn, also lease the new facilities to the nonprofit corporation.

“If further detailed information is necessary, please advise.”

Your subsequent communication indicates that the Marion General Hospital was organized under the provisions of Section 749.16, Revised Code, and that the consideration which is being given to the changing of the operations of said hospital is pursuant to Section 749.35, Revised Code.

Section 749.16, *supra*, provides as follows:

“The legislative authority of a municipal corporation may, under agreement with a joint township hospital district board,

or with the board of county commissioners, accept participation by such district or county in the erection or enlargement of a municipal hospital, or in the maintenance and operation of such a hospital, or both. Such agreement may provide for the amounts to be contributed by such district or county, as the case may be, for the construction and enlargement of such hospital, for its maintenance and operation, the rights and privileges to be enjoyed by the district and its inhabitants, or by the county and its inhabitants, by virtue of such contributions, and its rights of representation upon the municipal corporation's board of hospital commissioners or board of governors."

Section 749.35, *supra*, provides as follows:

"In lieu of the provisions of sections 749.04 to 749.34, inclusive, of the Revised Code, regarding any general hospital owned by a municipal corporation, *or any general hospital in which a joint township hospital district board or a board of county commissioners is participating with a municipal corporation under the provisions of sections 513.08 or 749.16 of the Revised Code*, the council of such municipal corporation may, upon such terms as are agreed between the council and a constituted and empowered nonsectarian Ohio corporation, organized for charitable purposes and not for profit, a majority of whose members reside in the county in which said municipal corporation is located, lease for use as a general hospital, the lands, buildings, and equipment of any such general hospital. *Provided, that if a joint township hospital district board or a board of county commissioners is participating with a municipal corporation under the provisions of sections 513.08 or 749.16 of the Revised Code, the joint township hospital district board or the board of county commissioners must approve said lease and if said lease is being renewed, the joint township hospital district board or the board of county commissioners must approve said renewal.*

"Such *leasing* agreement shall provide for a term of not more than ten years, or may be from year to year, and shall be subject to renewal. In the event that said nonprofit corporation fails to faithfully and efficiently administer, maintain, and operate such hospital as a public general hospital, admitting patients without regard to race, creed, or color, then after an opportunity is given to be heard upon written charges, said agreement may be terminated and the control and management of said hospital, together with all additions, improvements, and equipment, shall revert to and become the property of the municipal corporation *or municipal corporation and joint township hospital district board, or municipal corporation and board of county commissioners*, to be operated as provided by law."

(Emphasis denotes new matter added by 1959 amendment. 128 Ohio Laws 303)

Regarding your first query, I have been unable to find any authority permitting a city or county to turn over existing accounts receivable and cash on hand of a hospital organized under the provisions of Section 749.16, *supra*, to a corporation not for profit in the event such hospital is leased to such corporation pursuant to Section 749.35, *supra*. It should be noted that such cash is public money (See Opinion No. 3151, Opinions of the Attorney General for 1953, page 538), and in this regard the first paragraph of the syllabus in *The State, ex rel. Smith v. Maharry*, 97 Ohio St., 272 (1918) provides as follows :

“1. All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with hte knowledge of that fact. Said trust fund can be disbursed only by clear authority of law.”

There being no clear authority of law permitting a city or county to turn over existing accounts receivable and cash on hand of a hospital such as here considered to a corporation not for profit, I must answer your first query in the negative.

Regarding your second question, I have been unable to find any authority permitting a board of county commissioners to issue bonds for the purpose of furthering capital improvements of a hospital *which has been leased* to a corporation not for profit pursuant to Section 749.35, *supra*. It is well settled that a board of county commissioners has only such powers as are conferred by statute. 14 Ohio Jurisprudence, 2d, Counties, Sec. 82, page 259. I must, therefore, answer your second query in the negative.

Nothing contained herein is intended to imply that the board of county commissioners may not enter into an agreement with the legislative authority of the municipal corporation for participation by the county in the enlargement of such hospital *before it is leased* to a corporation not for profit. Section 749.16, *supra*; see also Section 513.08, Revised Code. The board of county commissioners could also construct a new hospital pursuant to Section 339.01, Revised Code, and then lease it to a corporation not for profit pursuant to Section 339.09, Revised Code.

Accordingly, it is my opinion and you are advised that where a hospital organized pursuant to Section 749.16, Revised Code, has been leased to a corporation not for profit pursuant to Section 749.35, Revised Code, there is no authority for the cash on hand and accounts receivable of such hospital to be turned over to such corporation not for profit, nor is there any authority for the board of county commissioners to issue bonds for furthering capital improvements of such a leased hospital.

Respectfully,

MARK McELROY

Attorney General