

3055.

COUNTY TUBERCULOSIS HOSPITALS—ERECTION GOVERNED BY
COUNTY BUILDING STATUTES—SECTION 2333, GENERAL CODE,
APPLICABLE.

SYLLABUS:

The erection of county tuberculosis hospitals is governed by general statutes relating to county buildings, including Section 2333, General Code, providing for a building commission composed of the county commissioners and four freeholders appointed by the Common Pleas Judge of the county.

COLUMBUS, OHIO, December 21, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication which reads as follows:

“We respectfully request your written opinion upon the following:

In a county in this state at the recent election, a proposition to issue bonds and levy a tax for the purpose of erecting a county tuberculosis hospital was submitted to the electors of the county and the proposition carried. The bonds will be issued and the question now arises as to how the building is to be constructed.

Question: Is a building commission to be appointed under the provisions of Section 2333 of the General Code, or is a commission or a board of trustees to be appointed by the Governor as provided by Section 3131 of the General Code, as amended in 112 O. L. 381, or may the boards of trustees authorized by Sections 3141-2 and 3148-2, to be appointed, act in connection with the construction of the hospital?”

The sections of the General Code concerning the application of which you inquire, are as follows:

Sec. 2333. “When county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative within thirty days thereafter, the county commissioners shall apply to the judge of a court of common pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party.”

Sec. 3131 (112 v. 381). “If a tax levy or bond issue for such purpose is approved by vote of the electors in the manner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the governor of the state; whereupon the governor shall, within ten days after the receipt of such certification, appoint a board of county hospital trustees, composed of four freeholders of such county.

* * *

Sec. 3148-2. "The management and control of such tuberculosis hospital shall be vested in a board of trustees, which board of trustees, shall have all the powers conferred by law upon the board of trustees of district hospitals for the case of persons suffering from tuberculosis, and all laws applicable to the levy of taxes for the erection, maintenance and operation of said district hospitals shall apply to the leasing, erection, operation and maintenance of said county hospital for the treatment of persons suffering from tuberculosis."

Section 2333, General Code, *supra*, appears under the title "County Buildings and Bridges" in Chapter 1, entitled "Building Regulations", under Title IX, "Public Buildings".

Section 3131, General Code, *supra*, appears under the title "Hospitals" in Chapter 4, of Division 4, "County Institutions", of Title X, "Counties".

Section 3148-2, General Code, *supra*, appears in the same chapter, division and title, as Section 3131, General Code, but is entitled "District Tuberculosis Hospitals".

The answer to your question has twice been assumed in opinions of this department. The first occasion appears in Opinions, Attorney General, 1926, page 215. The second appears in Opinions, Attorney General, 1927, Vol. II, page 1576, which is directed primarily to the question of the compensation of the Building Commissioners, who were appointed by the Common Pleas Judge of Trumbull County in connection with the construction of a county tuberculosis hospital. It is therein stated on page 1577 that:

"The erection of a county tuberculosis hospital is governed by all of the rules applicable to the construction of other county buildings."

In view of the apparent conflict among these sections of the statute, however, it may be advisable at this time to discuss in somewhat greater detail the reasons for the two opinions heretofore announced, with which I agree.

Section 2333, General Code, is, of course, of general application and antedates the enactment of the other sections relating to "hospitals", "county hospitals", "county tuberculosis hospitals" and "district tuberculosis hospitals".

The acts relating to county hospitals and tuberculosis hospitals were both originally enacted in 1908. They appear in 99 O. L. 486, and 99 O. L. 62, with the following respective titles:

"An Act—To provide for county hospitals for the care and treatment of inmates of county infirmaries and other residents of the county suffering from tuberculosis."

"An Act—To provide for county hospitals."

The act providing for "county hospitals" originally provided for the appointment of "trustees", by the county commissioners, upon whom the duty was imposed of providing for the erection of county hospitals. Subsequently, the act was amended to provide for the election of such "trustees" at general elections for county officers. As above noted, Section 3131, General Code, now provides for the appointment of the original board of hospital trustees by the governor. Section 3132, General Code, provides that such trustees shall perform the functions in connection with the erection of county hospitals, which are performed by the building commission, designated pursuant to Section 2333, General Code, in connection with other county buildings.

The act providing for tuberculosis hospitals originally imposed a mandatory duty upon county commissioners to provide for tuberculosis hospitals in each county "separate and apart from infirmary buildings". No provision was made for the appointment of trustees to act in lieu of a building commission, but the "supervision and control" of the hospital, after its erection, were confided to the infirmary trustees. Subsequently provision was made for district tuberculosis hospitals to be constructed and maintained by two or more counties. These hospitals are required, by Section 3148, General Code, to be erected under the supervision of a board of trustees, consisting of one member from each county composing the district, appointed by the boards of county commissioners of the several counties. At the time provision was made for "district tuberculosis hospitals", what is now Section 3140, General Code, was amended to eliminate the mandatory requirement of a tuberculosis hospital in each county. Subsequently, Section 3140, General Code, was further amended so as to eliminate therefrom any authority for the construction of a county tuberculosis hospital. Such authority to construct and maintain county tuberculosis hospitals now appears in Section 3141-1, General Code, which provides for the withdrawal of a county from a tuberculosis hospital district, and the erection by it of a county tuberculosis hospital, and Section 3148-1, General Code, which provides for the acquisition or construction of county tuberculosis hospitals by counties having more than fifty thousand population. It does not appear from your inquiry under which of these sections the commissioners in your case are proceeding, but, in my opinion, the answer to your inquiry is the same in either event.

I am inclined to believe that Section 3148-1, General Code, should have been given General Code Section number 3140-1, which would place it under the title "County Tuberculosis Hospitals". Section 3148-2 and Section 3148-3, General Code, relating to the same subject, should also have been placed under the same title.

It is to be noted that the board of trustees, provided for in Section 3148-2, General Code, is given only the "management and control" of such tuberculosis hospital and "shall have all the powers conferred by law upon the board of trustees of district hospitals *for the care of persons suffering from tuberculosis.*"

No specific provision is made by statute for the appointment of this board of trustees. However, Section 3148-3, General Code, provides that "the county commissioners *may* constitute the board of trustees of such hospital." This section, as originally enacted, provided that the commissioners "shall" constitute such board. It may be presumed that the Legislature intended that in the event the county commissioners do not see fit to constitute such board themselves, they shall have the power to appoint such board to act in their stead, as in the case of the board of trustees for district tuberculosis hospitals, discharging similar functions.

From the foregoing synopsis of the history of these sections, it sufficiently appears that county tuberculosis hospitals were originally provided for as an incident to county infirmaries. In fact the first section of the title (Section 3139, General Code), provides that "on and after January 1, 1914, no person suffering from pulmonary tuberculosis, commonly known as consumption, shall be kept in any county infirmary," and the next section (3140) provides for the transfer of such persons to tuberculosis hospitals.

The provisions in regard to county and district tuberculosis hospitals were apparently placed in the chapter relating to "hospitals" by the codifying commission merely for convenience and there was no intent on the part of the Legislature to make the provisions relating to the erection of "hospitals" apply to "tuberculosis hospitals".

I think that additional significance is to be attached to the following language appearing in Section 3141, General Code, applying to county tuberculosis hospitals: "When it shall become necessary to enlarge, repair or improve a county hospital for tuberculosis, the county commissioners shall proceed in the same manner as provided for other county buildings."

Having reached the conclusion that the erection of tuberculosis hospitals is governed by the general provisions relating to other county buildings, we are confronted with a further question, not suggested in your letter, which arises from the recent amendment of Section 2433, General Code, as part of the Uniform Bond Act (112 v. 381), to read as follows:

"The taxing authority of any county in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, equip and furnish a court house, county offices, jail, county infirmary, detention home, public market houses, county children's home and other necessary buildings, and sites therefor; also, such real estate adjoining an existing site as such taxing authority may deem necessary for any of the purposes aforesaid, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress and egress."

The language of this section, as amended, purports to enlarge the powers of the "county taxing authority". Before such amendment, the section merely included authority to the commissioners to purchase real estate as follows:

"When in their opinion, it is necessary, the commissioners may purchase a site for a court house, or jail, or land for an infirmary or a detention home, public market place, or market house, or additional land for an infirmary or county children's home at such price and upon such terms of payment, as are agreed upon between them and the owner or owners of the property. The title to such real estate shall be conveyed in fee simple to the county."

The amending act does not specifically repeal Section 2333, General Code, providing for the building commission and in my opinion a repeal is not effected by implication. The purpose of the Uniform Bond Act, containing the amendment of said Section 2433, General Code, is:

"To revise and codify the laws relating to the issuance of bonds by political subdivisions, by enacting supplemental sections * * *, amending sections * * * and repealing (certain) sections * * * of the General Code."

There is no plain intention to remove from the authority, therein conferred upon the taxing authority, the restrictions imposed by Section 2333, requiring submission of the question of issuing of bonds for the improvement to the electors and the creation of a building commission.

In fact in the same act, in immediately succeeding sections, the Legislature re-enacted provisions authorizing county commissioners to purchase, contract, etc., county hospitals and retained the provision for the appointment of trustees by the

Governor to discharge the functions of a building commission in such cases. The continuance of such a provision relating to county hospitals certainly precludes any presumption of an intention to repeal by implication the similar provision contained in Section 2333, General Code, relating generally to county buildings.

In specific answer to your question, therefore, you are advised that, in the proposed erection of a county tuberculosis hospital, the county commissioners should proceed in accordance with the provisions of Section 2333, General Code.

Respectfully,

EDWARD C. TURNER,

Attorney General.

3056.

APPROVAL, BONDS OF SENECA COUNTY, OHIO—\$48,000.00.

COLUMBUS, OHIO, December 22, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

3057.

APPROVAL, BONDS OF TUSCARAWAS COUNTY—\$37,000.00.

COLUMBUS, OHIO, December 24, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3058.

APPROVAL, BONDS OF TUSCARAWAS COUNTY—\$48,000.00.

COLUMBUS, OHIO, December 24, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.