

1311.

COUNTY COMMISSIONERS, BOARD—MAY NOT CONTRACT  
WITH HOSPITAL IN FOREIGN STATE FOR CARE OF IN-  
DIGENT SICK—SECTION 3138-1, G. C.

*SYLLABUS:*

*Under the provisions of Section 3138-1 of the General Code, a board of county commissioners may not contract with a hospital outside the State of Ohio for the treatment of the indigent sick.*

COLUMBUS, OHIO, October 18, 1939.

HON. HUGH A. STALEY, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR: Your recent request for my opinion reads as follows:

“Darke County is located on the western border of the State of Ohio. Directly on the state line is the city of Union City, a portion of which is in Indiana and a portion of which is in Ohio. On the Indiana side there is maintained and operated a non-sectarian hospital, and the County Commissioners desire to enter into a contract for the care of the indigent sick with this hospital.

I should like your opinion at your very earliest convenience as to whether or not, by reason of Section 3138-1 of the General Code, it would be possible for the Commissioners to enter into a contract with a hospital outside of the state, or must this contract be with some hospital in the state?”

Section 3138-1 of the General Code provides in part as follows:

“That the board of county commissioners of any county may enter an agreement with one or more corporations or associations, organized for charitable purposes, or with one or more corporations or associations organized for the purpose of maintaining and operating a hospital in any county where such hospital has been established, for the care of the indigent sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms and conditions as may be agreed upon between said commissioners, and such corporations or associations, and said commissioners, shall provide for the payment of the amount agreed upon, either in one payment, or installments, or so much from year to year, as the parties stipulate. \* \* \*”

The present wording of Section 3138-1, *supra*, has existed in substantially the same form since 1913. However, the former Section 3138-1, General Code, read as follows:

“That the board of county commissioners of any county may enter into an agreement with a corporation or association organized for charitable purposes in such county where a hospital has been established or may hereafter be established for the sick and disabled upon such terms and conditions as may be agreed upon between said commissioners and such corporation or association, and said commissioners shall provide for the payment of the amount agreed upon, either in one payment or installments, or so much from year to year as the parties stipulate.”

In Vol. I of the 1927 Opinions of the Attorney General, at page 310 is found the following discussion of the history of Section 3138-1, General Code:

“It will be noted that the terms of this statute as originally enacted in 1910, limited the county commissioners to the making of an agreement with a corporation or association organized for charitable purposes in such county, where a hospital had been established or might thereafter be established for the sick and disabled. The change which was made in this statute at the time of its amendment in 1913, was to the effect that the authority of the county commissioners to make an agreement for the care of the indigent sick and disabled was extended so that if there were not within the county a corporation organized for charitable purposes, they might make an agreement with any corporation or association organized for the purpose of maintaining and operating a hospital whether it be a charitable hospital or not, and instead of using the words ‘in such county’ which appear in the original statute as enacted in 1910, the wording was changed to ‘in any county.’”

Obviously, the General Assembly in amending the above section in 1913 intended to extend the authority of county commissioners to enter into contracts with hospitals outside of their own counties, for the purpose of caring for the indigent sick and disabled. In order to determine whether or not such authority was extended by that body to permit county commissioners to contract with hospitals outside of Ohio, it of course becomes necessary to ascertain the meaning of the words “any county”.

A consideration of the status and functions of counties appears to be helpful in a search for the answer to the above question.

Counties are subdivisions of the state for governmental purposes and

in this respect are nothing more than certain portions of territory into which the state is divided for more convenient exercise of the powers of government. They form together *one political body*. In 11 O. J., page 240, it is stated:

“A county is a subdivision of the state, organized by itself for judicial and political purposes. In other words, it is a mere political organization of certain of the territory within the state, particularly defined by geographical limits. It is not a legal person. *Neither is it a separate political entity*. Nor is it invested with any of the attributes of sovereignty. It is rather a constituent part of the plan of permanent organization of the state government—a wholly subordinate political division or instrumentality, created and existing almost exclusively with a view to the policy of the state at large, and serving as a mere agency of the state for certain specified purposes.” (Italics the writer’s.)

The state, therefore, being the political entity and the county nothing more than a territorial part of the state and a mere agency of state government to be in no sense regarded as a separate political unit, it would seem that the Legislature, if it intended to authorize county commissioners to contract with any county located in a foreign state, would necessarily have said “in any state”, rather than that which it did say.

Statutory phraseology should at no time be given an unnatural, unusual or forced meaning and all doubtful provisions of the statute should be given a reasonable and intelligent construction.

Considering, then, a county as nothing more than a portion of territory of the state, the words “in any county” would certainly impel the conclusion that it was the intention of the Legislature to authorize county commissioners to contract with hospitals in any part of the state. To ascribe such meaning to the words in question would give to the language used a reasonable construction.

Therefore, in specific answer to your question, it is my opinion that county commissioners, under the provisions of section 3138-1 of the General Code, may not contract with a hospital outside of the state of Ohio for the treatment of the indigent sick.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*