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BOARD OF TRUSTEES OF COUNTY HOSPITAL MAY NOT CONTRIBUTE AN ANNUAL SUM OF MONEY TO A PRIVATE HOSPITAL PLANNING ASSOCIATION TO MAKE A STUDY OF AREA HOSPITAL FACILITIES—§§339.02, 339.06 R.C.

SYLLABUS:

Under Sections 339.01 to 339.14, Revised Code, a board of trustees of a county hospital may not contribute an annual sum of money to a private hospital planning association, which association would make studies of hospital facilities in the area, including the facilities of the county hospital.

Columbus, Ohio, September 19, 1962

Hon. Harry Friberg, Prosecuting Attorney
Lucas County Toledo 2, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“May the Board of Hospital Trustees of Maumee Valley Hospital, a county hospital, legally contribute an annual sum of money to a hospital planning association composed of private hospitals in the area?”

“The Board advises us as follows as to the history and purposes of the association: it was organized in 1961; its budget is paid for by local industry, the hospitals of the area, Blue Cross and the Community Chest; at present it has a grant from the federal government to be used for long range continuous study of the uses and needs of hospital facilities in the area.

“The Board claims the advantages of being a member of the association are: 1) hospital cost per patient per day may ultimately be reduced, 2) possible retardation of increasing hospital costs in the community, 3) reduction of duplication of beds and equipment by hospitals in Toledo.”

Sections 339.01 and 339.02, provide for the establishment of a county hospital in a county. Under Section 339.02, *supra*, a board of county hospital trustees is appointed to establish the hospital. Section 339.02, Revised Code, dealing with the powers and duties of the board, provides:

“The board of county hospital trustees shall have complete charge of the selection and purchase of a site for a county hospital, taking title to such site in the name of the county, the selection of plans and specifications, the determination and erection of all necessary buildings on such site, and of the selection and installation of all necessary and proper furniture, fixtures, and equipment.

“The trustees shall serve without compensation, but shall be allowed their necessary and reasonable expenses incurred in the performance of their duties. Such expenses shall be paid out of the funds provided for such hospital. The board of county hospital trustees may employ such help as is necessary to perform its clerical work, superintend properly the construction of such hospital, and pay the expenses thereof, including the salary of the administrator as provided in section 339.06 of the Revised Code, out of the funds provided for such hospital.

“The board of county hospital trustees with the approval of the county commissioners may employ counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts.

“Each trustee shall give bond for the proper performance of his duties, in such sum as the board of county commissioners requires, with sureties to its approval.”

Section 339.06, Revised Code, reads in 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 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. * * * 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, for the replacement of permanent improvements to county hospital property. * * *.*

“* * * * * * * *”

(Emphasis added)

As public officers, the members of a board of county hospital trustees have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. 37 Ohio Jurisprudence, Section 74, pages 933, 934.

As to a board of county hospital trustees contributing money to a hospital association, or any other association for that matter, I have found no authority for such an action. Your request does, however, raise the question whether the hospital might contribute a sum on condition that it receive services therefor; which would amount to a contract for services.

Under Section 339.06, *supra*, the board may disburse hospital funds “for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquiring of or construction of permanent improvements to county hospital property.” There is no specific authority for the board to contribute to a hospital planning association as in the instant case, and, of the above purposes, only the one relating to “uses and purposes of such hospital” could be considered to be at all related. For such contribution to be valid, therefore, it must be considered to be necessarily implied for the uses and purposes of the hospital.

In my opinion No. 2188, issued on May 18, 1961, I held in the syllabus as follows:

“Under Sections 339.01 to 339.14, inclusive, Revised Code, dealing with county hospitals, a board of trustees of a county hospital is without authority to contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over a specified period.”

In that opinion I stated:

“* * * On reviewing the above-noted provisions of Sections 339.03 and 339.06, Revised Code, I am unable to find any specific authority for a board of hospital trustees to contract with a consulting firm to survey community-wide hospital facilities and needs projected over the next ten to fifteen years. Nor do I believe that such authority is necessarily implied for the board to effectuate its statutory duties. Also, I am unable to find such express or implied authority anywhere in Sections 339.01 to 339.14, inclu-

sive, Revised Code, which sections deal with county hospitals. In this regard, I might add that in my opinion the uses and purposes of such hospital as used in Section 339.06, *supra*, must necessarily refer only to those uses and purposes authorized by law.”

In said Opinion No. 2188 I referred to a ruling of one of my predecessors as found in Opinion No. 3063, Opinions of the Attorney General for 1953, page 462, in which the syllabus reads :

“Neither the director of the county department of welfare nor the commissioners of the county are authorized by law to contract with a person or organization outside of the staff of the welfare department or of the commissioners, for the purpose of making a survey of the welfare department.”

At page 464 of said Opinion No. 3063 it is stated :

“In ascertaining the powers that may be exercised by a county or by any of its boards or commissions, we are not permitted to indulge, in any degree, the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature, and the county commissioners and other officers of the county have only those powers which the legislature has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers granted. 11 Ohio Jurisprudence, page 332. This rule is particularly emphasized in matters involving the expenditure of public money. In 11 Ohio Jurisprudence, page 573, it is stated :

“The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.’

“State ex rel. Locher v. Manning, 95 Ohio St., 97. These principles are, I believe, too well settled and recognized to require extensive citation of authority.”

In my opinion No. 2397, issued on July 26, 1961, I followed the reasoning of the 1953 opinion in concluding as follows :

“Under Sections 339.01 to 339.14, inclusive, Revised Code, a board of trustees of a county hospital is without authority to contract with a private consulting firm for the furnishing of a survey on the needs and future development of the hospital.”

On the other hand, in Opinion No. 7307, Opinions of the Attorney General for 1956, page 757, the syllabus reads :

“Under the provisions of Section 339.06, Revised Code, a board of county hospital trustees is authorized to join a credit bureau for the purpose of obtaining credit information and to pay a reasonable fee therefor and to pay the reasonable expenses of obtaining credit reports on individual accounts in cases where the board deems such services necessary to the efficient operation of the hospital’s fiscal affairs.”

At page 760 of Opinion No. 7307, *supra*, it is stated:

“As you have observed in your request, it is incumbent upon boards of county hospital trustees to operate their hospitals in as efficient and businesslike a manner as possible. Section 339.06, *supra*, grants broad powers of management and control. In view of the complexities involved in the proper management of a modern business operation, particularly one involving a considerable volume of credit extension, I conclude that a statute which commits the ‘entire management and control of the hospital’ to the board of trustees may be deemed by implication to authorize them to avail themselves of commercial credit reports in cases where they deem such services necessary to the efficient operation of the hospital’s fiscal affairs.”

Your letter of request does not specifically state what services would be provided by the association in question, nor the amount of money which would be paid by the county hospital, although I assume that the county hospital would, upon payment, become a member of the association and be entitled to its services. From what you have submitted, however, it appears that the association would make a study of the uses and needs of hospital facilities in the area, including the county hospital, and the question is thus similar to that considered in the 1961 opinions above referred to, in which I held that the power to enter into the contract was neither expressly given nor necessarily implied.

Here I might note that, under the law, the board of hospital trustees is allowed a full complement of personnel to carry out the purposes of the hospital (Section 339.06, Revised Code), and is authorized to hire such regular assistants as might be necessary to obtain information as to the needs of the hospital. There is thus no reason to imply a necessity that the hospital contract with an outside association to obtain such information.

Accordingly, and in view of the rule that where doubt exists as to the expenditure of public funds the doubt should be resolved against the expenditure, I am of the opinion and you are advised that under Sections

339.01 to 339.14, Revised Code, a board of trustees of a county hospital may not contribute an annual sum of money to a private hospital planning association, which association would make studies of hospital facilities in the area, including the facilities of the county hospital.

Respectfully,

MARK MCELROY

Attorney General