

**OPINION NO. 79-052****Syllabus:**

A board of county hospital trustees, with the approval of the board of county commissioners, may construct an addition to the county hospital or acquire an existing structure for the purpose of leasing office space to local physicians, if the board of county hospital trustees determines that such purpose is reasonably related to the proper operation of a county hospital. (1969 Op. Att'y Gen. No. 69-062 modified.)

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**To: The Honorable R. Larry Schneider, Union County Prosecuting Attorney,  
Marysville, Ohio**  
**By: William J. Brown, Attorney General, August 8, 1979**

I have before me your predecessor's request for my opinion regarding the authority of a board of county hospital trustees to acquire or construct additional facilities for the purpose of leasing office space to physicians. Your specific questions are as follows:

1. May a board of county hospital trustees, in an effort to attract physicians to the general community, contract for the construction of an addition to the hospital for the purpose of leasing office space in that addition to physicians?
2. May a board of county hospital trustees, in an effort to attract physicians to the general community, acquire an existing structure for the purpose of leasing space in that building to physicians?

R.C. Chapter 339 provides for the establishment and operation of county hospital facilities. Pursuant to R.C. 339.01, "[a] board of county commissioners may purchase, acquire, lease, appropriate, construct, enlarge, improve, and rebuild a county hospital, or hospital buildings, or hospital facilities as defined in section 140.01 of the Revised Code." Once a board of county commissioners determines to establish a county hospital, a board of county hospital trustees must be created in the manner set forth in R.C.339.02.

The powers and duties of a board of county hospital trustees with respect to the acquisition or construction of a county hospital are set forth in R.C. 339.03, which provides in part as follows:

The board of county hospital trustees shall have complete charge of the selection and purchase or lease of a site for a county hospital, taking title or leasehold interest 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.

With respect to the operation of the hospital, the following powers are conferred upon the board of trustees by R.C. 339.06:

The board of county hospital trustees shall, upon completion of construction or leasing and equipping of the county hospital, assume and continue the operation of such hospital. The board 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 has control of the property of the hospital, and all funds used in its operation. The board 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 operation 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 necessary equipment, or for the acquiring of, leasing, or construction of permanent improvements to county hospital property. . . .

It is clear that under these statutes a board of trustees has been given general authority to manage and control the county hospital and has the express power to acquire, lease or construct permanent improvements to county hospital property. Your specific question is, however, whether the board of trustees may exercise these powers for the purpose of providing office space to local physicians.

Initially, it should be noted that there is no express limitation that would prohibit the trustees from exercising their general power to manage county hospital property for this purpose. In particular, Ohio Const. art. VIII, §6, which prohibits a county agency from lending aid or credit to a private association, is not at issue, since the physicians will be required to compensate the county for the use of the facilities. See, 1977 Op. Att'y Gen. No. 77-047. (Ohio Const. art. VIII, §6 does not prohibit a board of county commissioners from leasing county owned lands to a private developer pursuant to R.C. 307.02.)

In the absence of an express limitation to the contrary, it is my opinion that a board of county hospital trustees may exercise its general authority to improve and manage county hospital property for the purpose of providing office space to local physicians, if the board has determined that the provision of such office space is reasonably related to the proper operation of the county hospital. The authority of the board of trustees to expend funds for such purpose is, however, conditioned upon the approval of the board of county commissioners. See, R.C. 339.06

This situation is, in my opinion, analogous to that presented in Long v. Board of Trustees of Ohio State University, 24 Ohio App. 261 (Franklin Co., 1926). Asked to decide whether the university's board of trustees had the power to establish and operate a bookstore, the court concluded at 266 as follows:

The State University, by its board of trustees, has been given general authority by statute to maintain a University and to provide for the control and government thereof, and that authority would include an enterprise reasonably incidental to the main purpose of the University. There are no such limitations with respect to the board of trustees of the Ohio State University as to interfere with or prevent the incidental enterprise under consideration.

See also, 1970 Op. Att'y Gen. No. 70-018 (A board of county hospital trustees is empowered by R.C. 339.06 to contract for the construction of intern and resident housing); 1952 Op. Att'y Gen. No. 1126, p. 97 (In order to secure properly qualified physicians, nurses and employees, a board of county hospital trustees may use funds appropriated for their uses to pay advertising and travel expenses incurred in interviewing prospective employees).

In your research pertaining to this issue, you may have noted that in 1969 Op. Att'y Gen. No. 69-062 my predecessor concluded that neither a board of county commissioners nor a board of county hospital trustees had the authority to construct an addition to a county hospital where the use of such addition would be for other than general hospital purposes. The particular proposal under consideration was a lease of space to the county board of health and to the

community mental health and mental retardation board. Subsequent to my predecessor's opinion, however, R.C. 339.01, which is the primary enabling statute with respect to county hospitals, was amended to expand the types of facilities that may be constructed or acquired.

Prior to 1971, R.C. 339.01 only empowered the board of county commissioners to construct or acquire "a county hospital, or hospital buildings." In 1971, the General Assembly enacted Am. S.B. No. 343 to amend R.C. 339.01 to permit the acquisition or construction of "hospital facilities as defined in section 140.01 of the Revised Code." R.C. 140.01 defines "hospital facilities" as follows:

(E) "Hospital facilities" means buildings structures and other improvements, additions thereto and extensions thereof, furnishings, equipment, and real estate and interests in real estate, used or to be used for or in connection with hospitals, emergency, intensive, intermediate, extended, long-term, or self care facilities, diagnostic and treatment and out-patient facilities, facilities related to programs for home health services, clinics, laboratories, public health centers, research facilities, and rehabilitation facilities, for or pertaining to diagnosis, treatment, care, or rehabilitation of sick, ill, injured, infirm, impaired, disabled, or handicapped persons, or the prevention, detection, and control of disease, and also includes education, training, and food service facilities for health professions personnel, housing facilities for such personnel and their families, and parking and service facilities in connection with any of the foregoing; and includes any one, part of, or any combination of the foregoing; and further includes site improvements, utilities, machinery, facilities, furnishings, and any separate or connected buildings, structures, improvements, sites, utilities, facilities, or equipment to be used in, or in connection with the operation or maintenance of or supplementing or otherwise related to the services or facilities to be provided by, any one or more of such hospital facilities. (Emphasis added.)

Thus, by virtue of the 1971 amendment to R.C. 339.01, a board of county commissioners has the authority to acquire or construct any building or facility which is to be used in connection with the operation of a county hospital or which is otherwise related to the services or facilities provided by a county hospital. Moreover, since a board of county commissioners may only exercise the powers conferred upon it by R.C. 339.01 through a board of county hospital trustees, it would appear that the power of a board of trustees to acquire or construct permanent improvements under R.C. 339.06 must include the power to construct or acquire any building or facility permitted under R.C. 339.01.

It is, therefore, my opinion, and you are advised, that a board of county hospital trustees, with the approval of the board of county commissioners, may construct an addition to the county hospital or acquire an existing structure for the purpose of leasing office space to local physicians, if the board of county hospital trustees determines that such purpose is reasonably related to the proper operation of a county hospital.