

2684.

DISTRICT TUBERCULOSIS HOSPITAL—TRUSTEE WHO IS A SURGEON—MAY BE EMPLOYED ELSEWHERE, INCLUDING COUNTIES OF LEGAL SETTLEMENT OF INDIGENT PATIENTS—COMPENSATION.

SYLLABUS:

A trustee of a district tuberculosis hospital who is a surgeon is not prohibited from accepting employment from outside sources, including counties of legal settlement of indigent patients, for the performance of operations upon patients of such hospital and being compensated therefor from such outside sources.

COLUMBUS, OHIO, July 11, 1938.

HON. ROBERT F. JONES, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

"I have been requested by the Superintendent of the Lima District Tuberculosis Hospital to obtain your opinion based on the following facts:

Dr. A came to the hospital in 1925 as consulting surgeon and since that time had been performing tuberculosis surgery. For some years he received no remuneration for such service and paid the expenses incident thereto personally. Later an arrangement was made whereby each county paid the sum of \$75.00 per patient for each resident of the respective counties upon whom an operation was performed. When an operation is necessary the Superintendent informs the Board of County Commissioners of the county from which the patient comes and the Board of County Commissioners then may employ a surgeon to perform such operation, and in many instances employ Dr. A. There is nothing compulsory about the employment however. The County Commissioners pay for the operation out of Poor Relief Funds. About five years ago Dr. A was appointed to act as one of the Trustees of said hospital.

Question: Is it legal for Dr. A to collect fees for his services when same are paid by the County Commissioners of the various counties from which the patients come?"

Your inquiry apparently arises as a result of an opinion of this office rendered to your predecessor in the year 1934 appearing in

Opinions of the Attorney General for that year, Vol. I, page 266, the syllabus of which is as follows:

“A doctor who is a trustee of a District Tuberculosis Hospital may not be appointed by the Board of Trustees to serve as consulting surgeon of such hospital.”

The inquiry presented to my predecessor was as to whether or not it would be proper for the member of the board of trustees who was a physician and acting as consulting surgeon of the hospital to collect fees for operations performed at the hospital where same are paid from the county in which the patient has a legal settlement. The then Attorney General, following an opinion appearing in the opinions of this office for 1918, Vol. II, page 1676, held that it was against public policy for a member of a collective appointing body to receive an appointment from such body. In the body of the opinion, it is said at page 268:

“Dr. E is now serving as consulting surgeon and was evidently appointed by the trustees of this District Tuberculosis Hospital even though he is now a member of such Board of Trustees. Although he receives no regular salary, and his bills for personal and professional services rendered are not paid by the hospital, but by the separate counties comprising the district, still it is against the settled public policy of this state to allow an appointing officer or members of an appointing body to appoint a member of that body for the performance of personal or professional services.”

It is perfectly apparent that the sole matter under consideration in the foregoing opinion was the power of the board to appoint one of its own members as consulting surgeon and the authority for such physician to receive fees in his capacity as consulting surgeon.

Upon the facts submitted in your letter there is nothing whatsoever to indicate the fact that the member of the board who is a surgeon is in any way employed by the board to perform surgical operations, but on the contrary, instead of performing such operations as consulting surgeon, it is clear that the board of county commissioners of the county in which the patient has a legal settlement makes its own selection of a surgeon. Under these circumstances, to say that such board of county commissioners would be precluded from selecting the trustee in question to perform a surgical operation in the hospital administered by the board of which he is a member would be to say that a physician member of a board of trustees

of such hospital would be precluded from engaging in private surgical practice in that hospital even though all other surgeons of course have the right so to do. I know of no statutory provision nor of any provision of law which would support such a position.

It is accordingly my opinion, in specific answer to your inquiry, that a trustee of a district tuberculosis hospital who is a surgeon is not prohibited from accepting employment from outside sources, including counties of legal settlement of indigent patients, for the performance of operations upon patients of such hospital and being compensated therefor from such outside sources.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2685.

APPROVAL—CONTRACT AND BOND, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, WITH JOHN C. CASHMAN, SPRINGFIELD, OHIO, CONSTRUCTION UNDERGROUND TUNNEL, PROJECT, NEW UNDERGROUND TUNNEL AND DINING ROOM TABLES AND SEATS, OHIO STATE REFORMATORY, MANSFIELD, OHIO, TOTAL EXPENDITURE, \$3,566.00.

COLUMBUS, OHIO, July 12, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my approval a contract by and between John C. Cashman, Springfield, Ohio, and the State of Ohio, acting by Carl G. Wahl, Director of Public Works, for the construction and completion of Contract for Underground Tunnel for a project known as New Underground Tunnel and Dining Room Tables and Seats for Ohio State Reformatory, Mansfield, Ohio, as set forth in Item 1 of the Form of Proposal dated June 13, 1938, which contract calls for the total expenditure of three thousand five hundred and sixty-six dollars (\$3,566.00).

You have also submitted the following papers and documents in this connection: Encumbrance record No. 44, dated June 20, 1938, the estimate of cost, the division of contract, the notice to bidders, the proof of publication, workmen's compensation certificate showing the con-