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HOSPITAL—DESIGNED TO CARE FOR AND TREAT CONTAGIOUS OR INFECTIOUS DISEASES, INCLUDING TUBERCULOSIS—GENERAL HOSPITAL—SUBJECT TO APPROVAL OF STATE DEPARTMENT OF HEALTH—COUNTY COMMISSIONERS OF COUNTY WHERE NO COUNTY HOSPITAL FOR TUBERCULOSIS HAS BEEN PROVIDED AND NO JOINT TUBERCULOSIS HOSPITAL DISTRICT, MAY CONTRACT WITH GENERAL HOSPITAL FOR CARE AND TREATMENT OF RESIDENTS OF COUNTY SUFFERING FROM TUBERCULOSIS—SECTION 3139-18 G. C.

SYLLABUS:

A hospital which is designed for the care and treatment of persons suffering from all contagious or infectious diseases, including tuberculosis, is a general hospital within the terms of Section 3139-18, General Code, and subject to the approval of the state department of health, the county commissioners of a county which has not provided a county hospital for tuberculosis and has not joined in a tuberculosis hospital district, may contract with such hospital for the care and treatment of residents of the county suffering from tuberculosis.

Columbus, Ohio, July 25, 1947

Hon. Paul A. Baden, Prosecuting Attorney, Butler County
Hamilton, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“About six or seven years ago one Eugene H. Hughes died testate and a copy of his will is herewith enclosed. The trustees

named in the will have consulted with a firm of architects and are now making plans to build the hospital. A copy of the first survey and report of the architect is also enclosed.

The estate is of the value of approximately \$1,600,000.00 and it is estimated that it will take close to \$300,000 per annum to maintain. You can readily see that such a hospital would not be practical unless it can be used to take care of tubercular patients. You will note from the terms of the will that it will not be a public hospital and the only opportunity for sizeable revenue will be the ability to contract with the county commissioners for the care of those afflicted with tuberculosis.

Under Section 3139-18, effective September 5, 1941, the county commissioners are empowered to contract with a general hospital, properly equipped both as to personnel and facilities, for the care and treatment of the tuberculous, or with an association operating a hospital exclusively for the care and treatment of the tuberculous. The Eugene H. Hughes Memorial Hospital, as it will be set up, does not come specifically within either of these two classifications, that is, it is not a general hospital, as we ordinarily think of that term; neither is it a hospital operated exclusively for the care and treatment of the tuberculous.

Before the committee directs the architect to draw the plans for the hospital, we would like to secure your opinion and answer to the following questions:

First: If the hospital is built as is presently intended, that is, a hospital with facilities for taking care of all persons suffering from contagious or infectious diseases, including tuberculosis, can the county commissioners contract, under Section 3139-18, for the care and treatment of the tuberculous of the county?

Second: If your answer to the above question is 'no', can the hospital be built in such a manner that it could be said to be used exclusively for the treatment of the tuberculous? Our thought is that a separate wing or building might be built exclusively for the tuberculous, or one or more floors could be set aside exclusively for the tuberculous. Under these circumstances, can the county commissioners contract under Section 3139-18?"

Section 3139-18, General Code, to which you refer, provides:

"Where a county has not provided a county hospital for tuberculosis or has not joined in a tuberculosis hospital district, or where a county tuberculosis hospital is not sufficiently large to provide proper care for all patients who should be hospitalized, the county commissioners may contract with the board of trustees of a county or district tuberculosis hospital, or with the proper

officer or a municipal tuberculosis hospital, for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis. The commissioners of the county in which such patients reside shall pay to the board of trustees of such county or district hospital, or into the proper fund of the municipality caring for such patients, the amount provided for in the contract. They shall also pay for the transportation of patients and attendants. The county commissioners of such county may also contract for the care and treatment of residents of the county suffering from tuberculosis with a general hospital *properly equipped both as to personnel and facilities for the care and treatment of the tuberculous*, or with a person, firm, association or corporation operating a *hospital exclusively for the care and treatment of the tuberculous*; but no contract shall be made unless such general hospital or private hospital has been inspected and approved by the state department of health. Such approval may be withdrawn and such contract shall be cancelled, if, in the judgment of the state department of health, such general hospital or private hospital is not properly managed. If such approval is withdrawn, the person, firm, association, or corporation operating such institution shall have the right to appeal to the public health council for a decision.” (Emphasis added.)

This section forms part of an act which became effective in 1941 (119 O. L., 721). This act repealed former statutes relating to county tuberculosis hospitals and the treatment of persons afflicted with tuberculosis for whose care the county is responsible. Former Section 3143, General Code, contained a provision very similar to that found in the statute which I have quoted, authorizing the county commissioners of a county to contract for the care of the tuberculous. The only important difference between the old statute and the new is, that formerly such contract could be made only with “an association or corporation incorporated under the laws of Ohio, for the exclusive purpose of caring for and treating persons suffering from tuberculosis,” whereas in the new enactment the General Assembly broadened this authority by permitting such contract to be made with “a general hospital properly equipped both as to personnel and facilities for the care and treatment of the tuberculous.”

The words “general hospital” do not appear to have any defined meaning so far as the statutes are concerned. They do have in the medical world a fairly well understood meaning, to wit, a hospital equipped to take care of injuries and diseases of a wide variety.

The purpose in the change in the law was obviously to give the county

commissioners more latitude in contracting for the care of its tuberculous dependents, in order that they might have assurance of better care and treatment. In my opinion the accomplishment of that purpose did not depend primarily on the alternative hospital being a *general* hospital where injuries and all types of diseases could be treated and major surgical operations performed, but did depend more upon the presence of adequate equipment as to "personnel and facilities for the care and treatment of the tuberculous". In other words, the General Assembly manifestly desired that the county, in making a contract for the care of its tuberculous dependents, should place them either in a hospital that was exclusively designed for the care of such patients or in a hospital of such general character that it would have equipment and personnel adequate to give equally efficient or perhaps more efficient treatment to those afflicted with tuberculosis.

The hospital to which you make reference is by the terms of the will to be designed and equipped for the treatment and care of contagious or infectious diseases generally, which certainly covers a wide field. It appears to me that the sum of money provided by the testator for that purpose, may well be presumed to provide more complete facilities for the care of tubercular patients, than if it were extended over the whole sphere of a so-called "general hospital."

Attention should be called to the other provisions of Section 3139-18, General Code, to the effect that no contract shall be made unless such general hospital or private hospital has been inspected and approved by the department of health. This provision seems to me to lodge a certain discretion in the director of health to determine after careful inspection that the hospital in question will have the equipment both as to personnel and facilities for the care and treatment of the tuberculous, which will entitle it to approval.

It is my opinion that the words "general hospital" used in this connection, considering the manifest purpose which I have pointed out, need not be too rigidly construed, but rather are entitled to a construction that would carry out the evident purpose sought to be accomplished by the legislation.

If we assume that the General Assembly should enact a law authorizing a contract to be made with a "general hospital" for the treatment of

persons injured in traffic accidents, would anyone contend that such "general hospital", in order to qualify, must have facilities for the care and treatment of contagious and infectious diseases, or maintain a maternity ward? The absurdity of such a suggestion only illustrates my conclusion that the words used by the statute must be given a reasonable construction, having in mind the main purpose of the enactment.

Accordingly, in specific answer to your question it is my opinion that a hospital which is designed for the care and treatment of persons suffering from all contagious or infectious diseases, including tuberculosis, is a general hospital within the terms of Section 3139-18, General Code, and that subject to the approval of the state department of health, the county commissioners of a county which has not provided a county hospital for tuberculosis and has not joined in a tuberculosis hospital district, may contract with such hospital for the care and treatment of residents of the county suffering from tuberculosis.

Respectfully,

HUGH S. JENKINS,
Attorney General.