

OPINION NO. 72-084

Syllabus:

Under the provisions of Section 339.06, Revised Code, a board of trustees of a county hospital may contract for the services of a firm of certified public accountants and/or financial specialists in order to review, revise, and supervise all aspects of the hospital's record-keeping procedures, fiscal control, and day-to-day financial operations.

To: John T. Corrigan, Pros. Atty., Cuyahoga County, Cleveland, Ohio
By: William J. Brown, Attorney General, September 28, 1972

I have before me your request for an opinion, which reads as follows:

"The Board of Trustees of Cuyahoga County Hospital has advised me that the successful efficient operation of the county hospital system depends upon the assistance of professional financial specialists. Neither the Trustees nor the newly appointed Administrator possess the specialized skills needed in order to cope with current and prospective inefficient operations, and it is not economically feasible to retain on a permanent employee basis the professional financial specialists needed in order to rectify this situation. The Board has further advised me that the private business sector is relying increasingly upon professional services in order to streamline operations.

"Therefore, it has been requested that I seek your opinion with respect to the following question:

"May the Trustees contract for the services of a firm of certified public accountants and/or professional financial specialists to review, revise, and supervise all aspects of

the hospital's record keeping procedures, fiscal control, and day-to-day financial operations?'"

Section 339.06, Revised Code, which relates to the management of a county hospital by the board of county hospital trustees, reads, in part, as follows:

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 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 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. Such banks or trust companies shall furnish security for every such deposit to the extent and in the manner provided in section 135.18 of the Revised Code, but no such deposit shall otherwise be subject to the provisions of sections 135.01 to 135.21, inclusive, of the Revised Code. 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, on a voucher signed by the administrator, provided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees. All moneys appropriated by the board of county commissioners or from special levies by the board of county commissioners for the operation of the hospital, when collected shall be paid to the board of county hospital trustees on a warrant of the county auditor and approved by the board of county commissioners.

"The board of county hospital trustees shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees as are necessary for the proper care, control, and

management of such hospital and its patients, and the board of county hospital trustees shall fix their respective salaries and compensation. Any person, including the administrator, may be removed by the board of county hospital trustees at any time when the welfare of such institution warrants removal. The administrator and such other employees as the board of county hospital trustees deems necessary shall be bonded in amounts established by the board of county hospital trustees, the expense of which shall be paid out of hospital operating funds.

* * * * *

"The board of county hospital trustees shall, annually on the first day of March, file with the board of county commissioners a statement of its receipts and expenditures for the preceding year and shall submit to such board of county commissioners an estimate of the financial requirements of such hospital for the ensuing year."

(Emphasis added.)

One of my predecessors, in Opinion No. 1126, Opinions of the Attorney General for 1952, which concerned the control and management of a county hospital by county hospital trustees and their power to pay for the cost of advertising for prospective employees, said, at page 100:

"It is evident that the General Assembly has intended to give the board of trustees of a county hospital very broad powers in the management of the hospital, including the authority to 'establish such rules for the government thereof as the board deems expedient.' Entire discretion is left to the board to determine the number of physicians, nurses, and other employees who are necessary for the proper care, control and management of such hospital and its patients, together with authority to fix their salaries and compensation. The duty of selecting and nominating such employees is placed upon the administrator, subject to confirmation by the board of trustees. Other provisions of the section above quoted further enlarge the power and discretion of the board.

"In considering the expenses to which you refer in your first and second questions, in connection with the employment of the necessary staff, I am mindful of the fact that many of these employees are not common laborers but are persons who are specially trained and may be secured from a considerable distance and after very careful investigation. Obviously, in some cases this could only be accomplished by personal interviews which might necessitate traveling expense either on the part of the superintendent or some member of the board, or on the part of the person who is under consideration for employment and who is invited in by the board for an interview." (Emphasis added.)

In the same opinion, referring to State, ex rel. The A. Bentley & Sons Co., v. Pierce, 96 Ohio St. 44 (1917), my predecessor said, at page 103:

"I am not unmindful of the general rule which limits the powers of public officers and boards created by statute quite strictly to the powers set forth in the statutes relative thereto and to those powers that are necessarily implied therefrom, but I also recognize the principle that where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be vested in such trustees, and that the statute can not undertake to enumerate in detail every movement that they may make. In this case the statute not only gives the board of trustees 'the entire management and control of the hospital,' but gives it also the power to 'establish such rules for the government thereof as it deems expedient.'"

The situation involved in Opinion No. 7307, Opinions of the Attorney General for 1956, is also similar to the problem at hand. There, my predecessor held that a board of county hospital trustees is authorized under Section 339.06 to join a credit bureau for the purpose of obtaining credit information and to pay a reasonable fee therefor, and to pay 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. The Opinion states:

"* * * [I]t 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."

However, Opinion No. 3287, Opinions of the Attorney General for 1962, held that the trustees of a county hospital were not authorized under any provision of the Revised Code to join and pay dues to a hospital planning association composed of private hospitals in the area because it was not stated or shown that such membership was necessary to the uses and purposes of the hospital. Similarly, Opinion No. 2188, Opinions of the Attorney General for 1961, decided that the trustees were not authorized to contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over a specified period of 10 to 15 years. And, in a related Opinion, Opinion No. 2397, Opinions of the Attorney General for 1961, my predecessor held that a board of trustees of a county hospital

is without authority to contract with a private consulting firm to survey the needs and future development of that hospital.

The three Opinions mentioned in the preceding paragraph can be distinguished from the two cited earlier and the facts of the present request. The three Opinions mentioned in the preceding paragraph did not involve a question of the management and control of the hospital; rather they concerned community-wide health and hospital studies and membership in a planning association. The two Opinions cited earlier herein, as well as this particular opinion request, involves the efficiency of the business operation of the hospital. And, like any other business, a hospital must use appropriate business methods to secure the most competent employees, to secure credit information on those to whom it offers its service, and to secure accounting skills and financial procedures which will allow it to operate in an efficient and businesslike manner. Contracting with a firm of certified public accountants, or other professional financial specialists, seems thoroughly consistent with the underlying principle which lies at the base of all these Opinions. See Scott, The Law of Trusts, Section 188.3 (3rd ed. 1967).

It appears that the provisions of Section 339.06, which grant to the trustees "entire management and control of the hospital", must be read to grant the trustees power to contract for such vital and necessary business services as those rendered by a firm of certified public accountants and/or professional financial specialists.

In specific answer to your question it is my opinion, and you are so advised, that under the provisions of Section 339.06, Revised Code, a board of trustees of a county hospital may contract for the services of a firm of certified public accountants and/or financial specialists in order to review, revise, and supervise all aspects of the hospital's record-keeping procedures, fiscal control, and day-to-day financial operations.