

principal and interest upon a mortgage which is so insured is directly guaranteed by the United States. There is no question but that in many instances in event of default followed by the issuance of debentures by the Administrator, the ultimate result would be the same as though the United States had guaranteed the payment of the mortgagor's obligation. However, before such a situation arises the mortgagee has the obligation, first, to meet the regulations of the Administrator in the acquisition of the property mortgaged and within the time determined by the Administrator, and, second, to promptly convey to the Administrator title to such property satisfactory to him and to assign to the Administrator all claims of the mortgagee against the mortgagor arising out of the mortgage transaction or foreclosure proceedings. Upon such conveyance to the Administrator the value of the mortgage shall be determined in accordance with rules and regulations of the Administrator as provided in paragraph (a) of Section 1710, supra. Before any debenture may be issued by the Administrator, it would seem that an insured mortgage hypothecated to the Treasurer of State would have to be surrendered by the Treasurer. In other words, the interest bearing obligation, for the payment of the principal and interest of which the faith of the United States is pledged, is not the insured mortgage but the debentures authorized to be issued by the Federal Housing Administrator under Section 1710, supra. It accordingly follows that your question must be answered in the negative.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5494.

DISTRICT TUBERCULOSIS HOSPITAL — MAY PURCHASE
AUTOMOBILE FOR USE IN CONNECTION WITH PROPER
ADMINISTRATION OF HOSPITAL.

SYLLABUS:

Although there is no express authority for a board of trustees of a district tuberculosis hospital to purchase an automobile for use in connection with the work of the hospital, where conditions are such that the successful, economical and efficient performance of the board's duties in the maintenance of the hospital require the use of an automobile, the board may in its discretion, lawfully purchase the same. The discretion of the board in determining whether or not such conditions exist, is limited only by its abuse.

COLUMBUS, OHIO, May 9, 1936.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your request for my opinion in answer to the following question:

“May the trustees of a Joint Tuberculosis Hospital purchase an automobile for the use of the institution?”

You further state in your letter:

“In connection with the above, we are enclosing herewith copy of a letter received from the secretary of the institution in question.”

The letter referred to is from the Secretary of Stillwater Sanatorium, located in Montgomery County. This sanatorium is the District Tuberculosis Hospital of Montgomery and Preble Counties. In the Secretary's letter he states:

“Stillwater Sanatorium is located upwards of ten miles north of the city of Dayton on the Covington Pike, and there is no means of communication between that institution and the City of Dayton except a small bus that operates as a common carrier on the pike at considerable intervals, stopping at the main entrance to the Sanatorium grounds, which is probably a quarter of a mile from the buildings where the patients are housed.

The Sanatorium has an average of approximately one hundred tuberculosis patients at all times, including many who are in a very serious physical condition, and a number of children. In connection with the treatment of these patients, it is necessary almost daily and on some occasions several times daily, that very sick patients be transported by some means from the sanatorium to the operating rooms of one or the other of the hospitals in Dayton, and, for that purpose, but for the purchase of the automobile in question, an ambulance would have to be hired to come out from Dayton, take the patient to Dayton, bring the patient back to the hospital and then return to Dayton without a load. You can readily visualize the unnecessary expense of this. In addition, it is often necessary for patients, both adults and children, to be taken to Dayton for some peculiar X-Ray examination or for some minor operation on the eye, ear, nose or throat, and then there are, in as large an institution as ours, many trips

to Dayton which must be made in some sort of conveyance, as the time wasted in trying to go in by the bus-line would be prohibitive.

Frankly, for some years, the Superintendent has been imposed upon and her automobile used without expense to the institution for all these trips. The situation in this regard finally reached a point where it was absolutely unjust and unfair that we should wear out the Superintendent's car in this absolutely essential public service, and the automobile complained of was purchased."

Authority to establish district tuberculosis hospitals by the joint action of the boards of county commissioners of two or more counties not exceeding ten, is found in Section 3148, General Code. Section 3150, General Code, provides for the appointment of a board of trustees to erect and furnish necessary buildings for such a hospital when created by a joint board of county commissioners as provided by the statute, and to manage and maintain the same. The powers and duties of a board of trustees for a district tuberculosis hospital are set forth in the statutes in a very general way. So far as details are concerned, with respect to the management and maintenance of such a hospital, the statutes are practically silent. This class of hospitals was first authorized by Act of the Legislature in 1909 (100 O. L., 86). Section 1 of this Act consisted of amendments to former provisions of law providing for the establishment and maintenance of county tuberculosis hospitals. It provided with respect thereto, that provision should be made in such hospitals for "the treatment, care and maintenance of patients received at said county hospitals, and for necessary nurses and attendants." Section 2 of the Act, wherein provision was made for district tuberculosis hospitals provided specifically :

"In accordance with the purposes, provisions and regulations of the foregoing section, except as herein provided, the commissioners of any two or more counties not to exceed five, may form themselves into a joint board for the purpose of establishing and maintaining a district hospital for the care and treatment of persons suffering from tuberculosis, and may provide the necessary funds for the purchase of a site and the erection of necessary buildings thereon, in the manner and for the purposes hereinbefore set forth."

The above section of law which has been amended in some respects from time to time, is now Section 3148, General Code, which is even less

specific as to the purposes of said hospital and the powers and duties of public officials with respect thereto than was the original section.

In Section 3151, General Code, it is provided that the trustees of a district tuberculosis hospital shall appoint a medical superintendent and upon his recommendation, such nurses and other employes as may be necessary for the proper conduct of the hospital. It is further provided in said section:

“Subject to the rules and regulations prescribed by the board of trustees, the superintendent shall have entire charge and conduct of the hospital.”

At no place in the statutes are there any definite or forthright provisions that set forth in detail the powers and duties of the trustees or the superintendent, so far as the management of the hospital is concerned, nor are the things which must necessarily be supplied for the proper conduct of such hospital detailed or listed in any manner in the statutes. It seems to be assumed that such care and treatment is to be given the patients as is reasonably necessary and the manner of providing that care or treatment is left to the discretion of the trustees and the medical superintendent under rules and regulations prescribed by the trustees.

The expressions “proper conduct of the hospital” as used in Section 3151, General Code, and “care and treatment of persons suffering from tuberculosis” as used in Section 3148, General Code, are the extent of statutory direction as to the powers and duties of the trustees in the maintenance of the hospital. The power to provide such care and treatment and to properly conduct the hospital, of course, carries with it the power to expend money for those purposes. Many of these institutions are located some considerable distance from the built up portion of cities and some distance from other public buildings and residences, and no doubt advisedly so. This fact necessitates traveling some distance to reach the institution and requires some method of transportation if patients are to be taken to other hospitals for special treatment, as well as for marketing for supplies and for many other purposes. No express provision is made by statute for the paying of the cost of such transportation, but it cannot for that reason be said that such transportation cannot be paid. In many instances such transportation is as necessary as is any other course of conduct in carrying out the purposes for which the institution was established and is maintained. Such, for instance, as the purchasing of medical supplies or bedding, or coal for heating, or dozens of other things that might be mentioned. Inasmuch as the manner of providing the means of accomplishing the purposes for which the institution is created and maintained is left to the discretion of the trustees, it cannot

be said, in my opinion, that the purchasing of an automobile by means of which to provide necessary transportation is an abuse of discretion reposed in the trustees, where it is determined that by such means the purposes of the institution may be best carried out.

It is true that no express provision of law authorizes an expenditure of the funds of the hospital for the purchase of an automobile. Neither is there any express provision of law authorizing an expenditure of funds for the removal of a patient suffering from appendicitis or other ailment to another hospital for an operation or for treatment, nor for the employment of a specialist to perform the operation, nor for payment for transportation of a patient suffering from toothache, to a dentist for treatment. It could not be said, however, in reason, that such expenditures are not justified and impliedly authorized as being within the authority to maintain the hospital.

It could hardly be expected that a hospital maintained primarily for the treatment of tuberculosis patients would be equipped for surgical treatment although it is a certainty that such treatment sometimes becomes necessary, nor would it be expected that a medical superintendent of such an institution would feel justified in performing emergency surgical operations that require the services of a specialist. Patients in public institutions are entitled to the same consideration that we would expect for ourselves or for one of our own family, and should not be asked to submit to treatment that is not generally considered to be as good as can reasonably be obtained.

So far as the statutes are concerned, there is as much authority for the purchase of an automobile by the trustees of a district tuberculosis hospital when circumstances justify such a purchase, as there is for the purchase of any other necessary supplies for the proper maintenance of the hospital. The entire matter is left by the statutes to the discretion of the board of trustees. It is a well recognized principle of law that where discretion is reposed by statute in an administrative board, that discretion will not be interfered with by the courts unless it is abused. In the case of *Brannon v. Board of Education*, 99 O. S., 369, Judge Donahue, in applying this principle of law to a board of education, said on page 373:

“A court has no authority to control the discretion vested in a board of education by the statutes of this state or to substitute its judgment for the judgment of such board on any question it is authorized by law to determine. Nor will the court restrain such board from carrying into effect its determination of any question within its jurisdiction except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority.”

An analogous situation as applied to a district board of health, was considered by this office in an opinion found in Opinions of the Attorney General for 1925, at page 761. It was there held :

“There is no express authority authorizing a district board of health to purchase an automobile for the use of its employes. However, where conditions are such that the successful, economical and efficient performance of the board’s duties, which are expressly imposed by statute, requires such a purchase, the authority is reasonably implied. Whether or not such a condition exists is a question of fact to be determined in each case, in the discretion of the board.”

In the course of the opinion it is said :

“It will be observed upon consideration of the statutes hereinbefore set forth that the district board of health is charged with a great responsibility in the carrying out, of the provisions of the health laws. It is apparent also that the health commissioner, physicians and nurses cannot perform efficient services without some practical means of transportation to and from places where their services are required. The statutes do not expressly make any provision for any kind of transportation. However, to take the position that the work of the board of health could not be performed on account of no provision having been made relative to the transportation of employes of the board would be an absurdity in derogation of the decisions of the Ohio Courts relating to statutory construction. It cannot be denied that a board of this character has such incidental powers as are necessary to enable it to perform the duties expressly imposed. It should be further mentioned in this connection that the courts have frequently held that in view of the public interest confided in boards of health, laws relating to their powers should be liberally construed in favor of the board.

From the sections heretofore quoted it will be clearly seen that it was contemplated by the legislature that there would be current expenses which the board would have, and for the payment of such provision has been made. The legislature has not attempted to define what would be proper expenses of this character. Therefore, it will be seen that your question must be decided upon the facts. What is a proper expenditure in one case may be wholly improper in another. In a general health district in which the duties of the board of health and its employes are such as make it more economical to purchase an auto-

mobile than to rely upon other means of transportation, and the efficiency of the board, in view of conditions, requires such, it is believed that by implication sufficient authority may be found. On the other hand, if the work of the board is such that the purchase and maintenance of an automobile is not necessary to the successful, economical and efficient conduct of its work, such an expenditure would not be justified.

It may be borne in mind that the object of the law is to provide for the public health and welfare, one of the most important functions of government. It is believed to be proper to consider the universal custom relative to the general use of automobiles as a means of transportation in existence at the time the present health legislation was enacted. I am compelled to the conclusion that it was the legislative intent that such incidental powers were to be exercised by boards of health as would enable them to accomplish their main purpose in a practical and businesslike manner.

Therefore, as above suggested, it is my opinion that where conditions are such as to require the board of health to purchase an automobile in order to render the proper service to the public in the performance of its duty, expressly imposed, such power will be reasonably implied. Whether or not such a condition exists must be determined in the discretion of the board. On the other hand, in those cases wherein the duties of such a board can be performed in a satisfactory and efficient manner without such an expenditure such a purchase undoubtedly would be an abuse of its power."

By applying the same principle which was applied by the Attorney General in the 1925 opinion, *supra*, to the powers and duties of the trustees of a district tuberculosis hospital it is my conclusion that where conditions are such that the successful, economical and efficient performance of the trustees' duties in carrying out the purposes for which the hospital was established and is maintained requires the use of an automobile, the trustees may, in their discretion legally purchase the same. Whether or not such conditions exist is a question of fact, to be determined in each case by the board of trustees.

Respectfully,

JOHN W. BRICKER,
Attorney General.