

OPINION NO. 86-053**Syllabus:**

1. A board of county commissioners has no authority to contribute county funds to a private, nonprofit organization formed for the purpose of coordinating health care and other support services for persons who are terminally ill but who are no longer in need of hospitalization.
2. Pursuant to R.C. 339.11, a board of county commissioners may enter into an agreement with one or more corporations or associations described therein, whereby such corporations or associations will care for terminally ill persons who are indigent.
3. A county may provide assistance to persons who are terminally ill through the services of the county hospital, the county tuberculosis hospital, the county home, and the county nursing home, within the limitations set forth in the statutory provisions governing such institutions.

To: Joseph H. Niemeyer, Hancock County Prosecuting Attorney, Findlay, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, July 29, 1986

I have before me your request for my opinion concerning whether the board of county commissioners may levy a tax outside the ten mill limitation to fund and support a hospice or whether the board may use proceeds from a tax levy within the ten mill limitation for the benefit of a hospice. You would also like to know whether it would be necessary for the hospice to become an arm of county government if it accepted funds from the county. It is my understanding that your questions arise due to the county commissioners' interest in

granting funds to a private, nonprofit organization formed for the purpose of coordinating health care and other support services for persons who are terminally ill but who are no longer in need of hospitalization.

I begin my discussion of your first question by noting that a board of county commissioners is a creature of statute, and as such, has only those powers which are expressly granted by statute, or which may be necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Further, the Ohio Supreme Court stated in State ex rel. Locher v. Menning, 95 Ohio St. 97, 99, 115 N.E. 571, 571-72 (1916):

The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.

Thus, a board of county commissioners may grant county funds to an organization such as you have described only if it is empowered by statute to do so.

There are instances in which a board of county commissioners has been authorized to grant funds or other resources to a particular type of entity or for a certain purpose. See, e.g., R.C. 307.092 (the board of county commissioners may "sell, lease, or transfer any real property belonging to the county and not needed for public use to a nonprofit senior citizens' organization to be used for public purposes..."); R.C. 307.22 (the board of county commissioners may receive property and money to promote and advance the cause of education in the county and may use such property and money for payment to "any incorporated institution of learning in the county" or, in part, "to defray the expenses of the teachers institute"); R.C. 307.23 (the board of county commissioners may appropriate funds to be paid to the historical society of such county to be used for historical work); R.C. 307.27 (the board of county commissioners may make contributions "of money, supplies, equipment, office facilities, and other property or services, which will be of value or use to organized soil conservation districts" if the board determines that the work of the conservation districts "will be of value to the general welfare and benefit of such county"); R.C. 307.281 (the board of county commissioners may make contributions of "moneys, supplies, equipment, office facilities, and other personal property or services to any board of park commissioners...for the expenses of park planning, acquisition, management, and improvement"); R.C. 307.78 (the board of county commissioners may contribute "moneys, supplies, equipment, office facilities, and other personal property or services to any community improvement corporation...to defray the administrative expenses of the corporation"). There is no statutory provision, however, which authorizes a board of county commissioners to contribute county funds or other resources to an organization, the purpose of which is to coordinate services for terminally ill persons. I conclude, therefore, that a board of county commissioners may not contribute county moneys to an organization formed for the purpose of assisting persons who

are terminally ill, regardless of whether such moneys are derived from a tax levied within or outside the ten mill limitation.¹ See generally R.C. 5705.03-.05 (providing for general levy for current expenses within the ten-mill limitation); R.C. 5705.19 (purposes for which tax may be levied outside the ten mill limitation).

In light of my response to your first question, you ask that I consider whether there is an arm of county government which may spend county funds for the purpose of assisting persons who are terminally ill but no longer in need of hospitalization. Such assistance would take the form of providing out-patient health care and support services, such as psychological counseling and in-home nursing care, as well as providing shelter with supervised care for persons who are unable to care for themselves at home. I have set forth below various alternatives the county may wish to consider in this regard. These alternatives are not intended to constitute an all-inclusive list of options available to the county, but provide only possible means whereby the county may, through various agencies of county government, assist terminally ill persons.

I note first that, pursuant to R.C. 339.11, the board of county commissioners has the authority to:

enter into an agreement with one or more [nonsectarian] corporations or associations organized for charitable purposes or for the purpose of maintaining and operating a hospital in any county in which such hospital has been established, for the care of the indigent sick and disabled...upon such terms as are agreed upon between the board and such corporations or associations.

Thus, R.C. 339.11 authorizes the board of county commissioners to contract with a corporation or association specified in R.C. 339.11 whereby the association will care for terminally ill persons who are indigent. The board may pay an amount agreed upon by the parties for such care. Id.

R.C. Chapter 339 provides for the establishment and operation of a county hospital in each county. A county hospital is under the charge of the board of county hospital trustees, see R.C. 339.02, which "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," R.C. 339.06. The board of trustees "has control of the property of the hospital...and has control of all funds used in the hospital's operation." R.C. 339.06. The General Assembly has vested the board of trustees with broad

¹ I note that, as discussed above, a county generally has only those powers which are expressly granted by statute, or necessarily implied therefrom. Ohio Const. art. X, §3, however, empowers the people of any county to adopt a charter under which the county may exercise all or any of the powers vested in municipalities. See generally 1985 Op. Att'y Gen. No. 85-039. I express no opinion as to whether a county which has adopted a charter form of government would have the power to authorize payment of county funds to an organization formed for the purpose of assisting terminally ill persons.

powers in managing the hospital and a large amount of discretion in operating and governing the institution. See 1952 Op. Att'y Gen. No. 1126, p. 97. Thus, it appears to be within the board's discretion to establish a program for the care and support of terminally ill persons. The board of trustees could, for example, establish an outpatient clinic to serve such persons. See 1966 Op. Att'y Gen. No. 66-127 (the board of trustees of a county hospital may acquire a permanent improvement to provide outpatient facilities for the treatment of specific types of illnesses or patients). See also R.C. 339.01 (a board of county hospital trustees may provide an outpatient health facility in another county; an "outpatient health facility" is defined as, "a facility where medical care and preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services are provided to outpatients by or under the direction of a physician..."). See generally 1956 Op. Att'y Gen. No. 7100, p. 651 (although there is only one county hospital for each county and only one board of county hospital trustees, the county hospital may consist of several branches providing hospital facilities in different parts of the county). In light of the broad authority granted the board of county hospital trustees, I believe the board may provide facilities and services for the care of terminally ill persons.

R.C. 339.20-.47 provide for the establishment and operation of tuberculosis hospitals. Pursuant to R.C. 339.31 and R.C. 339.32, a board of county commissioners may construct, equip, and maintain a county hospital for tuberculosis patients. See also R.C. 339.34. The management and control of a county tuberculosis hospital is vested in a board of trustees. R.C. 339.33. A county may, instead, join with other contiguous counties to form a district hospital for tuberculosis patients. See R.C. 339.21; R.C. 339.22. The joint board of county commissioners shall appoint a board of trustees to manage and control the district hospital. R.C. 339.23.

R.C. 339.45 provides that:

The board of trustees of a county or a district tuberculosis hospital may admit patients to such hospital for the maintenance, care, and treatment of disabilities and diseases other than tuberculosis, and for the care of the aged, under such terms and conditions as prescribed by the trustees and approved by the department of health, under the authority conferred by section 339.20 of the Revised Code.

Costs of hospitalization for non-tuberculosis diseases and disabilities, and the care of the aged shall not be a charge upon public funds appropriated or levied for the care, treatment, and maintenance of tuberculosis patients whether in hospitals or clinics.

The administrator of a county or district tuberculosis hospital providing for the care, treatment, and maintenance of tuberculosis patients and patients with other illnesses shall have the entire charge and control of the hospital.

Thus, the board of trustees of a tuberculosis hospital may, as approved by the Department of Health, admit, maintain, and care for patients other than those who have tuberculosis. See 1982 Op. Att'y Gen. No. 82-107 (syllabus)("[a] facility which has been validly created and operated pursuant to the statutes governing tuberculosis hospitals, now R.C. 339.20-.47, may, under R.C. 339.45, provide maintenance, care, and treatment for the aged, the infirm, and mentally retarded children, provided

that it has the approval of the State Department of Health"); 1961 Op. Att'y Gen. No. 2312, p. 337 (discussing the manner of funding for the care, treatment and maintenance of patients admitted to a tuberculosis hospital with illnesses other than tuberculosis). Thus, I believe it is clearly within the scope of authority of the board of trustees of a tuberculosis hospital to admit, maintain, and care for persons with illnesses other than tuberculosis, including terminal illness. Such action must, however, be approved by the Department of Health.

I note further, that under R.C. Chapter 5155, the board of county commissioners may manage a county home. See R.C. 5155.01. Persons are admitted to the county home by the superintendent or administrator of the home. R.C. 5155.22. Pursuant to R.C. 5155.27, the board of county commissioners "may contract with one or more competent physicians to furnish medical relief and medicines necessary for the residents of the county home...." This express authority, in addition to the general authority to provide for residents, has been construed as empowering the board of county commissioners to operate a hospital, as part of the home, for the benefit of the home's residents. See 1960 Op. Att'y Gen. No. 1230, p. 201; 1956 Op. Att'y Gen. No. 6274, p. 121. As was stated in 1956 Op. No. 6274 at 123-24:

There is no explicit provision...for the erection of a hospital, but it is clearly implied that such institution may be a necessary part of the home, since many of the inmates are in the institution by reason of advanced age and mental or physical disability making it impossible to care for them in their own homes. In my opinion, such hospital facilities could be provided either by a separate building or in a portion of the main building. (Emphasis added.)

Accord 1960 Op. No. 1230 at 203. See also 1970 Op. Att'y Gen. No. 70-138 at 2-271 ("a person may be able to pay for his care at a county home, but still be financially unable to pay for his care at a nursing home or other private institution for himself...[A] county home superintendent may admit persons who are able to pay for their own care at a county home"). See generally 1974 Op. Att'y Gen. No. 74-008; 1970 Op. Att'y Gen. No. 70-164.

Thus, it appears that the county may admit to the county home persons who, by reason of their physical disabilities, are unable to care for themselves in their own homes, and provide such persons with any necessary medical care and supervision. But see R.C. 5155.27 ("[n]o medical relief shall be furnished by the county to persons in their own homes," with various exceptions).

In some instances, a county may operate a county nursing home. See R.C. 5155.31(A) (defining "county nursing home," for purposes of that section, as "a facility that is owned and operated by the county and used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal assistance, as 'mental impairment,' 'skilled nursing care,' and 'personal assistance' are defined in [R.C.

3721.01]").² County nursing homes are "established as facilities separate and distinct from the county homes and yet are, in fact, a part thereof." Op. No. 70-164 at 2-326. See Op. No. 74-008. While a county home provides medical and nursing aid as one part of the services rendered to residents, the purpose of a county nursing home is specifically to care for persons in need of nursing care and personal assistance. See Op. No. 74-008; Op. No. 70-164. The care of terminally ill persons seems to fall squarely within the purpose of a county nursing home.

In conclusion, it is my opinion, and you are advised, that:

1. A board of county commissioners has no authority to contribute county funds to a private, nonprofit organization formed for the purpose of coordinating health care and other support services for persons who are terminally ill but who are no longer in need of hospitalization.
2. Pursuant to R.C. 339.11, a board of county commissioners may enter into an agreement with one or more corporations or associations described therein, whereby such corporations or associations will care for terminally ill persons who are indigent.
3. A county may provide assistance to persons who are terminally ill through the services of the county hospital, the county tuberculosis hospital, the county home, and the county nursing home, within the limitations set forth in the statutory provisions governing such institutions.

² R.C. 3721.01(D) defines "skilled nursing care" as:

procedures that require technical skills and knowledge beyond those the untrained person possesses and that are commonly employed in providing for the physical, mental, and emotional needs of the ill or otherwise incapacitated, including, without limitation, procedures such as:

(1) Irrigations, catheterizations, application of dressings, and supervision of special diets;

(2) Objective observation of changes in the patient's condition as a means of analyzing and determining the nursing care required and the need for further medical diagnosis and treatment;

(3) Special procedures contributing to rehabilitation;

(4) Administration of medication by any method ordered by a physician such as hypodermically, rectally, or orally;

(5) Carrying out other treatments prescribed by the physician that involve a similar level of complexity and skill in administration.

"Personal assistance" is defined in R.C. 3721.01(E) as, "supervision as required and services including help in walking, bathing, dressing, feeding, or getting in and out of bed."