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HOSPITAL—COUNTY—TRUSTEES:

1. HAVE ENTIRE CONTROL AND MANAGEMENT OF SUCH HOSPITAL—AUTHORITY TO MAKE SUCH RULES AS THEY DEEM EXPEDIENT—SECTION 3137 G.C.
2. TRUSTEES TO SECURE PROPERLY QUALIFIED PHYSICIANS, NURSES AND OTHER EMPLOYES TO OPERATE HOSPITAL MAY PAY FROM FUNDS APPROPRIATED THE COST TO ADVERTISE FOR EMPLOYES—TRAVELING EXPENSES—MAY BE PAID TO MEMBERS OF BOARD OR THEIR EMPLOYES OR PERSONS INVITED BY BOARD TO COME FOR INTERVIEW.
3. RULE MAY BE ADOPTED TO GIVE TWO WEEKS NOTICE TO PERSON IN UNCLASSIFIED SERVICE IF SERVICES ARE TO BE TERMINATED—IF EMPLOYEE PEREMPTORILY DISMISSED, TWO WEEKS SALARY MAY BE PAID IN LIEU OF NOTICE.
4. BUDGET COMMISSION OF COUNTY—NO CONTROL OVER MONEYS APPROPRIATED BY COUNTY COMMISSIONERS TO OPERATE COUNTY HOSPITAL—CONTROL VESTED SOLELY IN HOSPITAL TRUSTEES—SECTIONS 5625-29, 3137 G.C.

SYLLABUS:

1. The trustees of a county hospital have, under the provisions of Section 3137, General Code, the entire control and management of such hospital, and authority to make such rules for the government thereof as they deem expedient.

2. Such trustees, if they deem it necessary in securing properly qualified physicians, nurses and other employes required for the operation of the hospital, may pay from the funds appropriated for their use the cost of advertising for help and necessary traveling expenses incurred in interviewing prospective employes, whether such traveling is by the members of the board or their employes, or by persons invited by the board to come for interview.

3. Such trustees may adopt a rule providing that in case the board desires to terminate the service of an employe in the unclassified service, it shall give him two weeks notice, and providing that in the event the board considers it necessary to dismiss such an employe peremptorily, it may do so and pay him two weeks salary in lieu of such notice.

4. The budget commission of a county has no control over moneys appropriated by the county commissioners pursuant to Section 5625-29, General Code, for the operation of a county hospital, such control being vested by the terms of Section 3137, General Code, solely in the hospital trustees.

Columbus, Ohio, February 6, 1952

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir :

I have your request for my opinion, reading in part, as follows :

“The Board of Operating Trustees of Greene County Memorial Hospital have requested that I obtain your Opinion regarding the following matters :

“G. C. 3137 provides, in part, as follows : ‘Such board shall have the entire management and control of the hospital and shall establish such rules of government thereof and admission of persons thereto as it deems expedient. * * * Such board shall employ an administrator and upon nomination of such administrator shall confirm the employment of such physicians, nurses and other employees as may be necessary for the proper care, control, and management of such hospital and its patients ; and shall fix their respective salaries and compensation.’

“This being a comparatively small county, the board has found it necessary, in order to fill certain positions which require specialized training, to advertise in other localities and because of the distance involved, it is often necessary either to go to these people, or have the people interviewed here and pay their expenses. (It has been contended) that the Board has no authority to expend money either for advertising or for the traveling expenses of obtaining the necessary interviews.

“The Board has established as one of its rules of procedure that in the hiring of certain classifications of employees, a two weeks notice be required before resigning, and in order to reciprocate in the matter the Board has agreed to give such employees two weeks notice before discharging them. This, as I said, is all in the contract of hire.

“In some instances the Board has found it necessary after hiring a person under these conditions, to discharge said individual and rather than have the person on hand causing further difficulties, during the two weeks notice period, they have merely advanced said two weeks salary at the time of discharge. To this procedure also (it has been contended), that it is unlawful expenditure of county money. * * *

"In addition to the above, G. C. 3137 provides that the Board shall deposit all monies received by it through the operation of said hospital with the County Treasurer to the credit of the Operating Fund and the same shall be paid out only for the maintenance and operation of such hospital on the warrant of the County Auditor, issued pursuant to the orders of such trustees.

"(It has been contended) that after such money is deposited by the Board with the Treasurer, the money cannot be drawn upon by the Board in accordance with the wording of said statute until the Budget Commission has met and made an appropriation of these deposited monies to the various operating accounts of the hospital. The statute, of course, does not state that this is necessary and, therefore, again friction is created between these offices.

"Therefore, I am asking your Opinion specifically to the following questions:

"1. Can the Board, under authority of G.C. 3137, pay the expenses of advertising for the necessary personnel to operate said hospital?

"2. Can the Board expend county money for the payment of the expenses of interviewing applicants for county hospital positions?

"3. Can the Board provide in their contracts of employment for the giving of two weeks notice upon vacating such positions and then pay to a discharged employee his two weeks salary immediately upon discharge, in lieu of his two weeks notice?

"4. Can the Board, in accordance with the provisions of G. C. 3137, draw on the money deposited with the County Treasurer to the credit of the Operating Fund without an appropriation for same from the Budget Commission?

"5. I feel further that a general clarification is necessary of the powers and duties of the Board of Operating Trustees.

"A hospital is a peculiar type of organization that doesn't fit into the usual practice of governmental procedures in so far as efficient and practical operation is concerned. Whether or not the legislature intended to give the Board complete freedom in management and control in order to alleviate these situations is of paramount concern, both locally and I feel, throughout the State.

"Therefore, your opinion is requested in regard to this phase as well as to the specific questions enumerated above."

The pertinent portion of Section 3137, General Code, to which you refer, reads as follows:

“Such board shall, upon completion of construction and equipping of said hospital, assume and continue the operation of such hospital. It shall have the *entire management and control* of the hospital and shall *establish such rules for the government thereof* and the admission of persons thereto *as it deems expedient*; it shall have control of the property of the hospital and deposit all monies thereof with the county treasurer to the credit of the hospital operating fund; and the same shall be paid out only for the maintenance and operation of such hospital, on the warrant of the county auditor issued pursuant to the orders of the trustees.

“Such board shall employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses and other employees as may be necessary for the proper care, control and management of such hospital and its patients; and shall fix their respective salaries and compensation; and any such person including the administrator may be removed by such trustees at any time when, in their judgment, the welfare of such institution may so warrant. * * *.”
(Emphasis added.)

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 employes 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 employes 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 employes are not common laborers but are persons who are specially trained and may have to 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.

Incidental to this process, it would appear that in some cases an advertisement might be a useful means of making contacts, especially when there is a scarcity of applicants.

There have been many decisions relative to the right to pay the expenses of public employes for traveling and otherwise, and it has been laid down as a general rule that such expenses are not authorized when they are calculated merely to extend the general knowledge and increase the fitness of the employe. This rule has been frequently applied in forbidding such allowances for employes attending conventions in the absence of specific statutory provision authorizing the payment of such expense. It was so held in the case of *Clark v. Commissioners*, 58 Ohio St., 107; also in *Richardson v. State*, 66 Ohio St., 108.

A considerable number of opinions of this office have dealt with the allowance of such expenses of employes. It has repeatedly been held that expenses of travel when designed merely for the better education of the employe or for the purpose of enabling him to become acquainted with certain new processes or procedures, are not allowable as expenses to be paid from the public treasury. However, these opinions quite generally express an opposite conclusion when the expense is incurred in connection with the investigation of some definite project then under way or definitely contemplated. An example of this distinction may be found in Opinion No. 2082, Opinions of the Attorney General for 1930, page 1091, where it was held:

“2. The traveling expenses of a salaried police officer, incurred in investigating finger print systems, may or may not lawfully be paid from city funds, depending on whether or not such investigation is merely for the purpose of acquiring general information with respect to finger print systems, or whether it is for the purpose of determining the actual working of a system, with a view to its installation in the city department which the police officer serves.”

Another opinion to like effect is Opinion No. 266, Opinions of the Attorney General for 1939, page 326, where it was held:

“1. County commissioners can not authorize payment of expenses incurred by a county engineer for purposes of attending a meeting of the Ohio Good Roads Federation.

“2. A county engineer can only be paid for expenses on trips where it is definitely shown that he was performing a duty enjoined by law, or where it is shown that said trips were necessary and in the performance of a duty in which the county had a definite, direct and beneficial interest.”

In Opinion No. 4122, Opinions of the Attorney General for 1948, page 586, the then Attorney General had under consideration Section 7630, General Code, which defines the powers of library trustees. That section provided in part as follows :

“The boards of library trustees appointed pursuant to the provisions of sections 2454-1, 3405, 4004, 4840-1 and 7643-2 of the General Code shall have the following general powers to wit: * * *

“2. To expend for library purposes, subject to the limitations of law, all monies credited to the free public library under their jurisdiction and generally do all things they may deem necessary and proper for the establishment, maintenance and improvement of the public library under their jurisdiction; * * *

A part of the syllabus of that opinion reads as follows :

“3. Under such authority said trustees may if they deem it necessary and proper in the conduct of such library, send a member or employe of such board to a library meeting or conference relative to library affairs, and pay his expenses out of library funds.”

In the course of the opinion it was said :

“The language used as to the authorized expenditure of the library funds to ‘generally do all things they may deem necessary and proper’ certainly manifests an intention on the part of the legislature to give these library boards very wide discretion.”

Of course, we do not find in Section 3137 supra, quite as liberal language relative to the expenditure of their funds by the trustees of the hospital as appears in Section 7630, referred to in the 1948 opinion, defining the powers of library trustees. However, it appears to me that the general intention as to the management of a hospital is not greatly different from that contemplated in the statute relative to the management of a library. Considering the functions of the two institutions, it appears to me that the purposes of a hospital are more important and the processes of management far more intricate than those involved in the maintenance

of a library, and should call for a larger amount of discretion on the part of the hospital trustees than those exercised by a board of library trustees.

In Opinion No. 2628, Opinions of the Attorney General for 1925, page 463, one of my predecessors was called upon to construe Section 3137, General Code, which then as now, gave the board broad powers to manage and control the hospital and to make rules, etc. He said:

“These provisions of the General Code are evidence of an intention on the part of the General Assembly to confer upon these trustees a broad power with references to the management of the county hospital. This power is restricted only by the principle that they shall incur only such expenses as are reasonably necessary for the proper conduct and efficient use of the hospital.”

“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.”

I am accordingly of the opinion that the board of trustees of a county hospital, proceeding under Section 3137, General Code, is authorized to incur the necessary expense of interviewing applicants for county hospital positions, including traveling expenses involved in necessary interviews and including advertising for persons to fill the several positions.

Your third question is as to the right of the board to provide in its contracts of employment for the giving of two weeks notice of its intentions to discharge an employe, and its right to pay such an employe two weeks pay in the event that he is given an immediate discharge. I assume this might involve payment to another appointee of a salary or compensation for the same period. In Section 3137, General Code, which I have quoted, it is provided that the board may employ an administrator and shall confirm the employment of such other employes as may be nomi-

nated by the administrator, and shall fix their respective salaries and compensation. Then follows the following provision:

“Any such person, including the administrator may be removed by such trustees at any time when, in their judgment, the welfare of such institution may so warrant.”

In Opinion No. 854, which I rendered August 23, 1951, to the State Civil Service Commission of Ohio, it was held:

“Except for such employes as your Commission may find to be in the unclassified service because of the impracticability of determining their fitness by competitive examination, all of the employes of a county hospital referred to in Section 3137, General Code, are in the classified service of the civil service, and are subject to appointment as provided by Section 486-13, General Code, and to removal only for causes and in the manner prescribed by Section 486-17a, General Code.”

That opinion held, in effect, that the provisions of the civil service law override those of Section 3137 *supra*, as to appointment and dismissal of employes of a county hospital.

It would follow from that opinion that all of the employes of the hospital who are found by the Civil Service Commission to be in the unclassified service of the civil service would be subject to dismissal at any time that the board of trustees considers that the welfare of the institution so warranted. I can see no objection to your board adopting a rule as to those employes on the unclassified list, to the effect that a two weeks notice should be given to any employe whose dismissal is contemplated; nor can I discover any reason why the board might not terminate the actual service of such an employe at the beginning of *the two weeks period* of notice, if the welfare of the institution so demanded, and allow him two weeks pay in lieu of the notice specified in the rule.

As to those employes of the hospital who are in the classified service, their dismissal, as stated in the opinion above referred to, should be in the manner prescribed by Section 486-17a of the General Code, to-wit, by formal charges served on the employe, an opportunity to refute the same, and a right of appeal to the Civil Service Commission. Coupled with this, is the right of the trustees, given by Section 486-17, General Code, to suspend such employes for disciplinary purposes. It is my opinion that a rule which provided that these employes should be paid two weeks

salary in the case of suspension or dismissal would conflict with the rights and obligations of the respective parties under the Civil Service Law. The right to suspend is absolute in the trustees, and they could not properly dilute that right by agreeing to pay an employe's salary during a suspension period. Similarly, in the case of dismissal, the rights of the parties are governed by the law as interpreted by the Civil Service Commission and the courts and can not properly be altered by a rule of the trustees.

Your fourth question relates to the necessity of an appropriation by the budget commission of the operating fund of the hospital, before it can be used by the hospital trustees. I am unable to find that the budget commission has any power or duty relative to appropriations of funds for the operation of a county hospital. The duty of the budget commission as to tax moneys available for any county department or institution ends with its certification to the county commissioners, as required by Section 5625-25, General Code, of the amount of taxes to be levied for the several county funds; and the levy is then made by the county commissioners.

Section 5625-29, General Code, provides in part:

"On or about the first day of each year, the taxing authority of each subdivision or other taxing unit shall pass an annual appropriation measure and thereafter during the year may pass such supplemental appropriation measures as it finds necessary, based on the revised tax budget and the official certificate of estimated resources or amendments thereof. * * * Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; * * *."

The "taxing authority" in the case of a county is the board of county commissioners, Section 5625-1, General Code. It will be observed that except for setting forth the amount appropriated for "personal services," the county commissioners have no authority to divide the appropriation or otherwise specify its use. Section 3137, *supra*, provides that the board "shall deposit all monies thereof with the county treasurer to the credit of the hospital operating fund; and the same shall be paid out only for the maintenance and operation of such hospital, on the warrant of the county auditor issued pursuant to the order of the trustees." There is nothing in the statute, so far as I can find, that gives the budget commission any right whatsoever as to such moneys after their deposit with the county treasurer.

Accordingly, in specific answer to the questions submitted, it is my opinion:

1. The trustees of a county hospital have, under the provisions of Section 3137, General Code, the entire control and management of such hospital, and authority to make such rules for the government thereof as they deem expedient.

2. Such trustees, if they deem it necessary in securing properly qualified physicians, nurses and other employes required for the operation of the hospital, may pay from the funds appropriated for their use the cost of advertising for help and necessary traveling expenses incurred in interviewing prospective employes, whether such traveling is by the members of the board or their employes, or by persons invited by the board to come for interview.

3. Such trustees may adopt a rule providing that in case the board desires to terminate the service of an employe in the unclassified service, it shall give him two weeks notice, and providing that in the event the board considers it necessary to dismiss such an employe peremptorily, it may do so and pay him two weeks salary in lieu of such notice.

4. The budget commission of a county has no control over moneys appropriated by the county commissioners pursuant to Section 5625-29, General Code, for the operation of a county hospital, such control being vested by the terms of Section 3137, General Code, solely in the hospital trustees.

Respectfully,

C. WILLIAM O'NEILL

Attorney General