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HOSPITAL, TUBERCULOSIS — COUNTY — SURPLUS FUND,
INVESTMENT—NO AUTHORITY TO INVEST IN BONDS OR
INTEREST BEARING OBLIGATIONS.

SYLLABUS:

The board of trustees of a county tuberculosis hospital has no authority to invest any surplus funds in their control and custody in any bonds or other interest bearing obligations.

Columbus, Ohio, August 22, 1957

Hon. Harry Friberg, Prosecuting Attorney
Lucas County, Toledo, Ohio

Dear Sir:

I have before me your request for my opinion in which you have made inquiry concerning the authority of a board of trustees of a county tuberculosis hospital to invest surplus funds in obligations of the United

States. You have specifically asked whether the board of trustees may make investments similar to those made by county commissioners under authority of Section 321.44, Revised Code. That section authorizes county commissioners to invest so much of the funds received by the county as are not required to meet current expenses in bonds of the United States, provided the maturity of the bonds is not later than three years, after the date of the investment.

Section 339.33, Revised Code, provides in part as follows :

“The management and control of a county tuberculosis hospital shall be vested in a board of trustees, consisting of three members, * * * Such board of trustees shall have all the powers conferred by Sections 339.21 to 339.30, inclusive, of the Revised Code, upon the board of trustees of a district hospital for the care of persons suffering from tuberculosis. * * *

“All laws applicable to the levy of taxes for the purchase, lease, erection, maintenance, betterment, repairs and operation of a district tuberculosis hospital shall apply to such county hospital. All taxes collected pursuant to such levy, and all appropriations made for the maintenance and operation of such hospital, may be paid over to the board of trustees of the county hospital, and deposited and expended by such board of trustees in the manner provided by Section 339.26 of the Revised Code. An accurate account shall be kept of all moneys received from patients or from other sources, which shall be applied toward the cost of maintaining the tuberculosis hospital. * * *

Section 339.26, Revised Code, provides in part as follows :

“All taxes levied by the board of county commissioners under section 339.25 of the Revised Code shall, when collected, be paid over to the board of trustees of the district tuberculosis hospital, upon the warrant of the county auditor, at the same time that school and township moneys are paid to the respective treasurers. The board of trustees shall give a receipt for such funds and deposit them to its credit in banks or trust companies designated by it. Such banks or trust companies shall furnish security for every such deposit to the extent and the manner provided in section 135.16 of the Revised Code, but no such deposit shall otherwise be subject to the provisions of Sections 135.01 to 135.23, inclusive of the Revised Code. Thereupon, such funds may be disbursed by the board of trustees for the uses and purposes of such hospital, and shall be accounted for as provided in Section 339.23 of the Revised Code. * * ”

In Opinion No. 2704, Opinions of the Attorney General for 1948, page 73, it was held that under the provisions of Section 339.33, *supra*, all taxes collected pursuant to levy made by the county commissioners for the purposes of providing funds and for the management and control of a county tuberculosis hospital must be paid over to the trustees of such hospital.

The board of trustees of a county tuberculosis hospital receive funds from two sources. One source is from funds appropriated by the board of county commissioners for maintenance and operation of the hospital. In addition, the trustees may require payment, not to exceed the actual cost of care and treatment, from any patient admitted to the hospital. These funds are under the complete control of the trustees and are to be disbursed by the trustees for the uses and purposes of the hospital.

In Opinion No. 2770, Opinions of the Attorney General for 1953, page 290, my predecessor in office held that the board of trustees of a county tuberculosis hospital has no authority to employ a collection agency to collect unpaid charges against former patients of the hospital. In that opinion it was stated that :

“It will be observed that county hospitals are supported in large part by public funds raised by taxation and are staffed by public officers and employees. They are created by the action of public officers, or by vote of the electors, under authority of a state statute. They must therefore be regarded as purely public organizations and any revenues realized from their operation must be regarded as public funds.”

Accordingly, any investment of excess funds by the trustees would be an investment of public funds. It is well settled that any expenditure or investment of public funds can be made only when there is specific statutory authorization to do so, or when it is necessary to imply such authority in order to carry into effect such powers as are expressly delegated by statute.

In the statutes relating to district tuberculosis hospitals, Section 339.26, *supra*, which deals with funds paid to the trustees by the board of county commissioners, provides that such funds may be disbursed for the “uses and purposes” of the hospital. Section 339.30, Revised Code, provides that an account shall be kept of moneys received from patients or from other sources, which moneys shall be applied toward the payment of the “cost of maintaining” the hospital.

Section 339.33, *supra*, which provides for the control and management of a county hospital, refers to Section 339.26, *supra*, concerning the authority of the trustees to deposit and expend money. The phrase "uses and purposes" as used in Section 339.26, *supra*, obviously refers to the maintenance of the hospital and the care and treatment of the patients. The authority for investment of surplus funds cannot in my opinion be implied from the authority to expend money for the "uses and purposes" of the hospital. Similarly, I am of the opinion that the authority to use these funds for "costs of maintaining" the hospital does not imply the authority to make such investments. It is apparent that the legislative intent was to give to the trustees the necessary authority to maintain a hospital for persons afflicted with tuberculosis. It is, in my opinion, equally apparent that the authority to invest surplus funds is not necessary to carry out the obvious intent of the legislature.

I am not unaware that Section 135.12, Revised Code, which is part of the Uniform Depository Act, does provide for the investment of excess public moneys in certain obligations of the United States or the State of Ohio. However, Section 339.26, *supra*, specifically removes deposits made by the board of trustees of a tuberculosis hospital from the provisions of Sections 135.01 to 135.23, inclusive, of the Revised Code, with the single exception of Section 135.16, Revised Code. That section provides for security to be pledged by the depository upon the deposit of public money. If the legislature had intended to give the board of trustees the power to invest surplus funds, it would have been a simple matter to provide that Section 135.12, Revised Code, did apply to funds held by the board. By specifically removing the funds held by the board of trustees from the provisions of Section 135.12, Revised Code, the legislature has clearly indicated that such board shall not have the power to invest surplus funds.

Accordingly, in specific answer to your inquiry, it is my opinion that the board of trustees of a county tuberculosis hospital has no authority to invest any surplus funds in their control and custody in any bonds or other interest bearing obligations.

Respectfully,
WILLIAM SAXBE
Attorney General