

Note from the Attorney General's Office:

1957 Op. Att'y Gen. No. 57-1150 was reconciled with
1939 Op. Att'y Gen. No. 39-398 in 1982 Op. Att'y Gen.
No. 82-086.

1150

HOSPITALS—CITY, TRANSFER TO COUNTY

1. CITY OF CLEVELAND HAS AUTHORITY UNDER CONSTITUTION AND GENERAL LAW TO TRANSFER CERTAIN HOSPITAL FACILITIES AND CORRECTIONAL SCHOOLS TO THE COUNTY OF CUYAHOGA IN TRUST.
2. A BOARD OF COUNTY HOSPITAL TRUSTEES, A BOARD OF COUNTY TUBERCULOSIS HOSPITAL TRUSTEES AND A COUNTY DEPARTMENT OF WELFARE MAY, AS PROVIDED IN § 9.20 RC, ACCEPT PROPERTY IN TRUST PROVIDED THAT NO TERMS OF THE TRUST CALL UPON SUCH BOARD OR DEPARTMENT TO EXERCISE POWERS NOT OTHERWISE POSSESSED BY SUCH BOARD OR DEPARTMENT.
3. A CITY MAY CONTINUE TO RETIRE BONDS ON A PUBLIC FACILITY AFTER THE FACILITY HAS BEEN TRANSFERRED UNLESS THE INDENTURE UNDER WHICH THE BONDS WERE ISSUED FORBIDS SUCH TRANSFER.

SYLLABUS:

1. The City of Cleveland has the power under the constitution and laws of Ohio, and as provided in its charter, to transfer in trust to the Board of County Hospital Trustees of Cuyahoga County the municipal facility known as City Hospital excluding the tuberculosis hospital and mental hospital facilities thereof, to transfer in trust to the Board of County Tuberculosis Hospital Trustees of Cuyahoga County the municipal tuberculosis hospital facility known as Lowman Pavilion, and to transfer in trust to the Cuyahoga County Department of Welfare the municipal juvenile institutions known as Cleveland Boys School and Blossom Hill School for Girls.

2. A board of county hospital trustees, a board of county tuberculosis hospital trustees, and a county department of welfare may, under Section 9.20, Revised Code, accept real or personal property conveyed to them in trust and administer the same in accordance with the terms of the trust, *provided no such term requires such a board or department to exercise powers or perform duties and functions not accorded them by law.*

3. A city may continue to retire outstanding bonded indebtedness lawfully contracted for the purpose of acquiring or improving property, even though it has transferred away such property and is no longer the owner thereof, *provided such transfer is not prohibited by the terms of the indenture under which such bonds were issued.*

Columbus, Ohio, October 11, 1957

Hon. James A. Rhodes, Auditor of State
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“The City of Cleveland, Ohio, contemplates the transfer of certain institutions of the city, namely, Cleveland City Hospital, Blossom Hill School for Girls, and Cleveland Boys’ School, to the County of Cuyahoga. To this end, negotiations have been carried on for some time. During the course of negotiations two requests for opinions were submitted to your office, with respect to which you issued Opinions Nos. 788 and 789.

“The method by which it is now contemplated these institutions will be conveyed to the County of Cuyahoga, raises questions with which the municipal examiners will be concerned in the examination of the City of Cleveland. Your opinion is requested with respect to the following questions :

“1. Does the City of Cleveland have legal power to transfer the facility known as City Hospital, a general hospital, excluding the tuberculosis hospital (Lowman Pavilion) and the mental hospital (Hoover Pavilion, heretofore transferred to the State of Ohio), by the devise of the real and personal property used by the said facility to the Board of County Hospital Trustees of Cuyahoga County in trust, for the purpose of performing the obligation of the City of Cleveland for the hospital care of the indigent sick and aiding the county in rendering general hospital service to the citizens of Cuyahoga County, all without cost to the City of Cleveland other than the proceeds of any tax levied generally upon the taxpayers of Cuyahoga County or otherwise borne by all the taxpayers of the county?

“2. Does the Board of Trustees of the County Hospital (Highland View Hospital), a hospital maintained by the County of Cuyahoga, on property transferred to the county by the City of Cleveland for the consideration of one dollar and other valuable consideration for the reception and care of the chronically ill entitled to such care at county cost, have the legal power to accept such transfer by devise in trust and to administer such transferred property in the manner required by the instrument creating such trust? (Section 339.08,, Revised Code).

“3. Can such instrument or instruments contain provisions which will be binding upon the Board of County Hospital Trustees, which provisions are substantially as follows :

“The trustees shall maintain and operate upon the premises a County Hospital without expense to the city other than the levy and collection of a tax at a rate applicable to all the taxpayers of Cuyahoga County. The trustees shall exercise all powers and authority conferred by law subject only to the specific limitations of the trust instrument or instruments.

“The trustees shall also provide for the reception and care of the indigent sick or other persons whose hospital care shall be the responsibility of the city. In the operation of said hospital, no resident of Cuyahoga County shall be refused hospital care because of inability to pay, but each person admitted will be expected to pay all or such part of the cost of his hospitalization as he or his sponsor, is able to meet. Those who can pay in full will be billed at rates established by the trustees. Those who cannot pay the established rates will be expected, except for good cause shown, to apply to the appropriate public agency for assistance. (Section 339.02, Revised Code.)

“If the trustees without the written consent of the city cease to maintain and operate on the described premises a County Hospital and no similar alternative facilities are made available by the trustees, or if the trustees arbitrarily or unreasonably neglect or refuse to provide hospital care for persons whose hospital care is the responsibility of the city, then the trust instrument or instruments shall become void and the title and the estate of the trustees to the property hereinbefore described shall be determined and become void, and shall revert to and become absolutely vested in the city, or its successors, with the improvements thereon.

“In order to effect an orderly transition from City to County management of the transferred hospital facility, there shall be established for a period of at least three years an advisory board of not less than six citizens qualified to act in an advisory capacity who shall serve without compensation and shall be appointed in equal number by the Mayor of the City and the President of the Board of County Commissioners of Cuyahoga County, which Board shall consult and advise with the managing head of such institution, but shall have no power to direct or conduct such institution. All recommendations of such Board shall be advisory only and shall be in writing and become public records of the County Hospital.

“The trustees shall assume and discharge any and all obligations of the City to the State of Ohio incident to the transfer of Hoover Pavilion to the State of Ohio. The trustees shall receive all compensation paid by the State of Ohio for the rendition of services at Hoover Pavilion.

“4. Can the same procedure by way of devise in trust be used for the transfer of the tuberculosis hospital (Lowman

Pavilion) to the Board of Trustees of the County Tuberculosis Hospital? (Section 339.31, Revised Code).

“5. Can the same procedure by way of devise in trust be used for the transfer of the juvenile institutions (Cleveland Boys’ School and Blossom Hill School for Girls) to the Cuyahoga County Department of Welfare, subject to the approval of the Division of Social Administration? (Section 335.30, Revised Code.)

“6. Assuming transfer of the institutions by devise of trust as outlined above, does the City of Cleveland have legal power to retain responsibility for retirement of the bonded indebtedness outstanding at the date of transfer in accordance with the provisions of bonds already issued and in process of retirement?”

With regard to the power of the City of Cleveland to transfer to Cuyahoga County the real and personal property of those several institutions, I invite your attention initially to Opinion No. 787, Opinions of the Attorney General for 1957, p. 290, the syllabus of which reads as follows:

“A municipality which has not adopted a charter limiting its powers by adopting the provisions of the statutes relative to the sale of its property, has authority under the power of home rule provided by Section 3 of Article XVIII of the Constitution, acting in good faith, to dispose of property belonging to it in such manner and for such consideration as it deems proper, without compliance with any of the provisions of Chapter 721. of the Revised Code.”

The Cleveland City Charter does not contain provisions similar to Chapter 721., Revised Code.

Section 45 of the charter limits the alienation of water front lands. I assume that none of the real property of these institutions is water front land.

By Section 1 of its charter the City of Cleveland has made provision for the sale of any of its property and by Section 101 a procedure for so doing is outlined.

There is no mention in the charter relative to the disposal of property by gift. However, Section 2 provides:

“The enumeration of particular powers by this charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, *the city shall have, and may exercise all other*

powers which, under the constitution and laws of Ohio, it would be competent for this charter specifically to enumerate."

(Emphasis added.)

In the case of *Babin v. Ashland*, 160 Ohio St., 328 (1953), the Supreme Court of Ohio held, reading the sixth paragraph of the syllabus:

"The power to convey property owned by a municipal corporation and no longer needed by it for municipal purposes is included within the powers of local self-government conferred by Article XVIII of the Ohio Constitution and such power may be exercised to sell the land which is located in such municipal corporation and which was set forth and described as 'public ground' on a map or plat of such corporation or a subdivision thereof which was recorded under the Act of 1805."

As to whether this property is needed for public use, that determination must be made in the first instance, at least, by the municipal officials. It does seem, however, that a determination might properly be made that the property of these institutions is no longer needed for public use, since the terms of the conveyance provide for continuation by the grantees of the activities for which this property constituted facilities.

You understand, of course, that there is no statutory municipal duty to operate a hospital or juvenile correctional institution. The only such duty being performed in the operation of these institutions is the municipal duty to provide poor relief under the provisions of Chapter 5113., Revised Code, and the functions incident to that duty can readily be performed without maintaining any institution.

It is my opinion, then that the City of Cleveland may dispose of municipal property no longer needed for public use upon such terms and conditions as it sees fit, providing, of course, its officials act in good faith. The specific reply to your first question is accordingly in the affirmative.

Your second question is whether a board of county hospital trustees can accept a transfer of property by devise in trust and thereafter administer such property in accordance with the terms of the trust. Your fourth and fifth questions are essentially the same, relating to the transfer in trust of a tuberculosis hospital and of a juvenile correctional institution to a county child welfare board or a county welfare department.

In the case of each of these institutions, there are specific statutes, Sections 339.08, 339.31 and 335.30, Revised Code, which might be inter-

puted to confer the power here in question. However, that power is clearly granted by Section 9.20, Revised Code, which reads as follows:

“The state; a county, a township, or a cemetery association or the commissioners or trustees thereof, a municipal corporation or the legislative authority, a board, or other officers thereof; and a benevolent, educational, penal, or reformatory institution, wholly or in part under the control of the state, or the board of directors, trustees, or other officers thereof, may receive by gift, devise, or bequest moneys, lands, or other properties, for their benefit or the benefit of any of those under their charge, *and hold and apply the same according to the terms of the gift, devise, or bequest.* Such gifts or devises of real estate may be in fee simple or of any lesser estate and may be subject to any reasonable reservation. This section does not affect the statutory provisions as to devises or bequests for such purposes.” (Emphasis added.)

It appears to me that this statute clearly confers power upon these boards to *accept* this property and to *administer it subject to the terms of the trust*, provided the board or agency has statutory power (1) to acquire such properties otherwise than by gift, and (2) to administer or operate them in harmony with such trust.

As you have noted, Section 335.30, Revised Code, provides that the facilities established through any gift, bequest, or devise to the county child welfare board or county welfare department are subject to the approval of the division of social administration.

The answer to your second question is in the affirmative.

Your fourth and fifth questions were answered in part by what was said with reference to the first question, and what has now been said completes affirmative answers to both.

Your third question sets forth a number of specific terms of the trust agreement regarding the transfer of the city hospital to the board of county hospital trustees and asks whether that board may accept the transfer on such conditions.

Let me first say that in general it would seem that the authority of governmental agencies to administer property according to the terms of gifts, devises or bequests is primarily limited by the scope of the functions, powers and duties of those agencies.

I do not interpret the provisions of the trust agreement as obligating the board of county hospital trustees to provide free medical care or

treatment to the indigent sick of the city or county. If it did so provide I should be compelled seriously to question the authority of the board to enter such an agreement.

A board of county hospital trustees is under no statutory obligation to provide free hospital care, and in my opinion it is without authority to assume such an obligation. Under the provisions of Chapter 5113., Revised Code, a city is obliged to provide relief, including medical care, to the poor within its relief area. A board of county hospital trustees cannot assume that obligation for a city. However, under provisions of Section 5113.02, Revised Code, and in accordance with the provisions of Section 307.14 through 307.19, Revised Code, a board of county commissioners may agree to act as the local relief authority in behalf of a city within the county.

The last paragraph of the agreement set forth in your third question provides for the board of county hospital trustees to assume and discharge all obligations of the City of Cleveland to the State of Ohio incident to the transfer of Hoover Pavilion to the State of Ohio, and for the board to receive all compensation paid by the state for the rendition of services by the general hospital to Hoover Pavilion. That transfer took place in 1946. I have before me a copy of the agreement whereby the transfer was effected. Under this agreement, the state took over the operation of Hoover Pavilion, the mental section of the Cleveland general hospital. Hoover Pavilion being a branch of the larger hospital, it had formerly shared in the use of the general hospital facilities—such as utilities, staff housing, medical record library, laundry, food services,, drugs, X-ray, *etc.* The City agreed that the general hospital should continue to provide these services at cost, and it was agreed that the state should pay for certain of the services, and the Hoover Pavilion staff should pay for such items as housing, food, *etc.* Under the proposed trust agreement the board of county hospital trustees would provide these services and receive payment for them.

I see no reason why the board of county hospital trustees may not perform the obligations of this agreement. By Section 339.06, Revised Code, such board is given plenary powers of management and control of the county hospital.

That section reads in pertinent part as follows:

“The board of county hospital trustees shall, upon completion of construction 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.”

It is within its authority to provide for the county hospital each of the services mentioned in the agreement. If it may acquire additional hospital facilities by agreeing to sell to the state at cost any or all of these services, it appears to me it is within its power so to do. I see no objection to the other two provisions.

Your sixth question is:

“Assuming transfer of the institutions by devise of trust as outlined above, does the City of Cleveland have legal power to retain responsibility for retirement of the bonded indebtedness outstanding at the date of transfer in accordance with the provisions of bonds already issued and in process of retirement?”

I can see no legal impediment to the city’s retaining responsibility for the retirement of these bonds. If the city has contracted a lawful debt it may discharge it. *In the absence of a provision in the bond indenture so providing*, there is no principle of law that a city must retain, until the retirement of bonds, the property to acquire which or to improve which the bonds were issued.

It is therefore my opinion and you are advised that:

1. The City of Cleveland has the power under the constitution and laws of Ohio, and as provided in its charter, to transfer in trust to the Board of County Hospital Trustees of Cuyahoga County the municipal facility known as City Hospital excluding the tuberculosis hospital and mental hospital facilities thereof, to transfer in trust to the Board of County Tuberculosis Hospital Trustees of Cuyahoga County the municipal tuberculosis hospital facility known as Lowman Pavilion, and to transfer in trust to the Cuyahoga County Department of Welfare the municipal juvenile institutions known as Cleveland Boys’ School and Blossom Hill School for Girls.

2. A board of county hospital trustees, a board of county tuberculosis hospital trustees, and a county department of welfare may under Section 9.20, Revised Code, accept real or personal property conveyed to them in trust and administer the same in accordance with the terms of the trust, *provided no such term requires such a board or department to exercise powers or duties and functions not accorded them by law.*

3. A city may continue to retire outstanding bonded indebtedness lawfully contracted for the purpose of acquiring or improving property, even though it has transferred away such property and is no longer the owner thereof, *provided such transfer is not prohibited by the terms of the indenture under which such bonds were issued.*

Respectfully,
WILLIAM SAXBE
Attorney General