

OPINION NO. 69-056

Syllabus:

1. Where a private, non-profit foundation has contracted to build a hospital facility on foundation property, it is not compatible for its chairman who negotiates at arms length a long-term lease of the facility to a county hospital to serve at the same time as a member of the county hospital's board of trustees.

2. It is incompatible for a physician to serve simultaneously as chief of staff and on the board of county hospital trustees.

To: Richard E. Parrott, Union County Pros. Atty., Marysville, Ohio
By: Paul W. Brown, Attorney General, June 5, 1969

I have before me your request for my opinion in which you ask two questions which read as follows:

"1. Where a private, non-profit foundation has contracted to build a hospital facility on foundation property, is it compatible for its chairman who negotiates at arms length a long-term lease of the facility to a County Hospital to serve at the same time as a member of the County Hospital's Board of Trustees?"

"2. Is it compatible for a physician to simultaneously serve as Chief of Staff and on the Board of Trustees of a County Hospital?"

Section 339.06, Revised Code, provides in part as follows:

"The board of county hospital trustees shall, upon completion of construction or leasing 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.

"The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation. The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated

for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. Such banks or trust companies shall furnish security for every such deposit to the extent and in the manner provided in section 135.18 of the Revised Code, but no such deposit shall otherwise be subject to the provisions of sections 135.01 to 135.21, inclusive, of the Revised Code. The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquiring of, leasing, or construction of permanent improvements to county hospital property, on a voucher signed by the administrator, provided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees." (Emphasis added)

It thus appears that the board of county hospital trustees may negotiate a lease for a hospital facility with a non-profit foundation. Section 2919.08, Revised Code, reads as follows:

"No person, holding an office of trust or profit by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected.

"Whoever violates this section shall be imprisoned not less than one nor more than ten years."

In Opinion No. 2682, Opinions of the Attorney General for 1958, page 694, at page 696, my predecessor held:

"It is my opinion, therefore, that a member of the board of trustees of a county hospital holds an office of trust in a public institution, and under Section 2919.08, Revised Code, he is precluded from being interested in contracts of the hospital."

Accordingly, where a private, non-profit foundation has contracted to build a hospital facility on foundation property, it is not compatible for its chairman who negotiates at arms length a long-term lease of the facility to a county hospital to serve at the same time as a member of the county hospital's board of trustees.

Your second question relates to the compatibility of a physician serving simultaneously as chief of staff and on the board of county hospital trustees. The answer to this question appears to be controlled by Opinion No. 1742, Opinions of the Attorney General for 1958, page 93, which held:

"The provisions of Section 339.06, Revised Code, make the office of member of the board of county hospital trustees incompatible with the position of employee in the county hospital."

It thus appears that it is incompatible for a physician to serve simultaneously as chief of staff and on the board of county hospital trustees.

It is, therefore, my opinion and you are hereby advised:

1. Where a private, non-profit foundation has contracted to build a hospital facility on foundation property, it is not compatible for its chairman who negotiates at arms length a long-term lease of the facility to a county hospital to serve at the same time as a member of the county hospital's board of trustees.

2. It is incompatible for a physician to serve simultaneously as chief of staff and on the board of county hospital trustees.