

OPINION NO. 86-088**Syllabus:**

1. Pursuant to R.C. 513.16 and R.C. 513.17, a board of hospital governors may, with the approval of the joint township district hospital board, construct a building adjacent to the joint township district hospital for the purpose of leasing office space to hospital physicians for use in their private medical practices if the board of hospital governors determines such purpose is reasonably related to the proper operation of the hospital. Such an arrangement does not violate Ohio Const. art. VIII, §6.

2. A board of hospital governors may, pursuant to its power under R.C. 513.16 and R.C. 513.17 to assume responsibility for the control, management, and operation of the joint township district hospital, permit hospital physicians to use office space in a building constructed adjacent to the joint township district hospital for their private medical practices without requiring reimbursement of the hospital for the value of those facilities, if the board determines that such an arrangement is reasonably related to the proper operation of the hospital. Such an arrangement does not violate Ohio Const. art. VIII, §6, so long as the value of the office space provided to a physician for use in his private medical practice does not exceed the amount which the board determines may reasonably be expended to promote the proper operation of the hospital.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 19, 1986

You have requested my opinion regarding the proposed construction of a building adjacent to a joint township district hospital by the joint township district hospital board

and the board of hospital governors for the purpose of leasing office space in the building to physicians for their private medical practices. Specifically, you have asked that I address the following questions:

1. May the board of governors of the Highland County Joint Township Hospital legally authorize the construction of such a building and maintain it for the use, in part, by physicians as their personal office space?
2. May this board of governors grant such physicians lease obligations incurred to secure and maintain office space for the private practice of the medical staff in locations outside of the hospital?
3. Would the proposed construction of this building promote the purposes enumerated within Section 140.02 of the Ohio Revised Code?
4. Would the proposed construction of this building be a violation of Article VIII, Section 6, of the Ohio Constitution in that townships are not authorized to become stockholders, or raise money for, or loan their credit to any company, corporation, or association?

It is my understanding that parts of the new building are to be rented to physicians on the staff of the hospital for use in their private medical practices, as well as in their treatment of hospital patients. Legal title to the new building will remain in the joint township district hospital board and the amount of rent to be paid by the physicians for this office space will be equal to or greater than the fair market value of those facilities. It is also contemplated that the rent paid by the physicians will not be characterized as part of their compensation, and that the physicians will not otherwise receive reimbursement from the hospital for such rent.

Resolution of your questions requires that I first review those provisions of the Revised Code that address the formation of a joint township hospital district and the construction of a joint township district hospital for the benefit of inhabitants of the joint township hospital district, and the control, management, and operation of such hospital and related health care facilities. R.C. Chapter 513 authorizes a board of township trustees, acting singly or in conjunction with the boards of other townships, to establish and provide for the operation of a general hospital for the benefit of township inhabitants. R.C. 513.01; R.C. 513.07. In particular, R.C. 513.07 provides that the boards of township trustees of any two or more contiguous townships may "form themselves into a joint township district hospital board for the purpose of establishing, constructing, and maintaining a joint township district general hospital or other hospital facilities as defined in [R.C. 140.01], and such townships shall be a part of a joint township hospital district." The members of all such boards of township trustees comprise the joint township district hospital board. Id.

R.C. 513.16 addresses the appointment of a board of hospital governors by the joint township district hospital board. The board of hospital governors is empowered to

"control the operation of such hospital and perform such other duties as are provided by [R.C. 513.17]."

R.C. 513.17 describes the powers of the board of hospital governors, providing in pertinent part as follows:

The board of hospital governors shall, with the consent and approval of the joint township district hospital board and as provided by sections 513.07 to 513.18 and 3702.51 to 3702.67¹ of the Revised Code, prepare plans and specifications, and may employ technical assistance if necessary, and proceed to erect, furnish, and equip necessary buildings for a joint township general hospital. Except where the hospital of the district is leased pursuant to section 513.171 of the Revised Code, such board of governors shall appoint and fix the compensation of a suitable person to be superintendent of the hospital for such period of time as it determines, and shall employ and fix the compensation for such nurses and other employees as are necessary for the proper conduct of the hospital. (Emphasis and footnote added.)

R.C. 513.17 further describes various fringe benefits the board of hospital governors may offer to hospital employees, and scholarships and other staff development programs the board of hospital governors also may provide for the purpose of recruiting and retaining qualified employees. See generally 1980 Op. Att'y Gen. No. 80-068 (a board of hospital governors may establish, pursuant to R.C. 513.17, satellite facilities or outpatient clinics in townships that are not part of the joint township hospital district if such facilities or clinics are necessary to provide hospital services to inhabitants of the joint township hospital district); 1957 Op. Att'y Gen. No. 1003, p. 423 (the power vested in a board of hospital governors by R.C. 513.17 to erect, furnish, and equip a joint township district hospital includes, by implication, the power to make capital improvements to a joint township district hospital).

I now direct my attention to your first question, whether the board of hospital governors of a joint township district hospital may authorize the construction of a building adjacent to the joint township district hospital for the purpose of leasing office space in the building to hospital physicians for their private medical practices. I note initially that a board of hospital governors of a joint township district hospital is a creature of statute. See R.C. 513.16. Since the board of hospital governors owes its existence to statute, its duties, powers, and responsibilities must also be drawn from statute, and it may exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, to enable the board to perform the duties imposed upon it. See generally State ex rel. Schramm v. Ayres, 158 Ohio St. 30, 106 N.E.2d 630 (1952); Board of Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875); Op. No. 80-068.

¹ The provisions of former R.C. 3702.51-.67, which pertained to certificate of need requirements that must be satisfied by certain health care facilities before such facilities may offer their services to persons in need thereof, now appear in R.C. 3702.51-.62.

The duties, powers, and responsibilities conferred upon a board of hospital governors with respect to the control, management, and operation of a joint township district hospital and health care facilities related thereto are enumerated in R.C. 513.16 and R.C. 513.17. R.C. 513.17 specifically authorizes a board of hospital governors, with the consent and approval of the joint township district hospital board, to "erect, furnish, and equip necessary buildings for a joint township general hospital." See R.C. 513.07 (providing for the formation of a joint township district hospital board "for the purpose of establishing, constructing, and maintaining a joint township district general hospital or other hospital facilities as defined in [R.C. 140.01];" R.C. 140.01(E) defines "hospital facilities" to include "buildings, structures and other improvements, additions thereto and extensions thereof, furnishings, equipment, and real estate and interests in real estate, used or to be used for or in connection with one or more hospitals," and to further include "site improvements, utilities, machinery, facilities, furnishings, and any separate or connected buildings, structures, improvements, sites, utilities, facilities, or equipment to be used in, or in connection with the operation or maintenance of, or supplementing or otherwise related to the services or facilities to be provided by, any one or more of such hospital facilities"). Thus, a board of hospital governors clearly has authority to construct, furnish, and equip a building adjacent to the joint township district hospital if such building is necessary to, or to be used in connection with, the operation of the hospital.

Further, my review of R.C. 513.16 and R.C. 513.17 leads me to conclude that a board of hospital governors may lease office space in a building constructed adjacent to the joint township district hospital to hospital physicians for their private medical practices. I believe the power of the board of hospital governors in this regard may be inferred from the authority expressly conferred upon the board by R.C. 513.16 and R.C. 513.17 to assume responsibility for the overall control, management, and operation of the joint township district hospital and health care facilities associated therewith. Insofar as the board of hospital governors has been given the primary responsibility of controlling and managing all aspects of the joint township district hospital and associated facilities, it seems reasonable to infer therefrom that the board of hospital governors may also enter into agreements for the lease of such properties to appropriate parties, if the board determines that such agreements are reasonably related to the proper operation and management of the hospital.

My conclusion is supported by 1979 Op. Att'y Gen. No. 79-052 wherein my predecessor concluded that a board of county hospital trustees may, pursuant to its general authority to improve and manage county hospital property under R.C. 339.06, provide office space to local physicians, if the board determines that the provision thereof is reasonably related to the operation of the county hospital. Op. No. 79-052 also concluded that if the board of county hospital trustees determines that the provision of office space to physicians is related to the proper operation of the hospital, then the board may, with the approval of the board of county commissioners, which has the authority pursuant to R.C. 339.01 to "purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities," as defined in R.C. 140.01, construct an addition to the county hospital or acquire an existing structure for such purpose, since the addition or structure

would qualify as a "hospital facility" as defined under R.C. 140.01. See also 1986 Op. Att'y Gen. No. 86-046, n.4 at 2-247 (pursuant to its statutory authority to manage university property, including auxiliary medical facilities, the board of trustees of a state university may provide university resources to physicians employed by the university for use in their private medical practices and require the physicians to reimburse the university the full value of those resources).

Thus, I conclude that a board of hospital governors may, with the approval of the joint township district hospital board, construct a building for the purpose of leasing office space to hospital physicians for use in their private medical practices if the board of hospital governors determines that such purpose is reasonably related to the proper operation of the hospital. Further, such an arrangement will not implicate the lending aid and credit provisions of Ohio Const. art. VIII, §6, to which your fourth question is addressed, inasmuch as a lease of public facilities to an individual or private entity for the full value of the facilities is not prohibited by Ohio Const. art. VIII, §6. See Op. No. 86-046, n.4 at 2-246; Op. No. 79-052 at 2-163; 1977 Op. Att'y Gen. No. 77-047 (Ohio Const. art. VIII, §6 does not prohibit a board of county commissioners from leasing county owned lands to a private developer pursuant to R.C. 307.02).

I now direct my attention to your second question, whether a board of hospital governors may grant physicians lease obligations incurred to secure and maintain office space for the private practice of the medical staff in locations outside the hospital. In this regard you have indicated in conversations with a member of my staff that you wish to know whether the board of hospital governors may permit hospital physicians the use of office space in the new building in their private medical practices without requiring that they reimburse the hospital the value of those facilities.

As discussed above, the board of hospital governors has the authority, pursuant to R.C. 513.16 and R.C. 513.17, to control, manage, and operate a joint township district hospital, and health care facilities related thereto. Such authority empowers the board of governors to construct a building adjacent to the joint township district hospital for the purpose of leasing office space to physicians for use in their private medical practices if the board determines such purpose is reasonably related to the proper operation of the hospital. Similarly, I conclude that a board of hospital governors, pursuant to its power under R.C. 513.16 and R.C. 513.17 to control, manage, and operate the joint township district hospital, may permit hospital physicians the use of office space in a building constructed adjacent to the joint township district hospital for their private medical practices, if the board determines that such an arrangement is reasonably related to the proper operation of the hospital. In this regard, the board of hospital governors may determine that permitting hospital physicians the use of such office space in their private medical practices enhances the quality and efficient delivery of medical care the hospital provides its patients. Further, the board of hospital governors, motivated by a desire to attract the services of physicians who are well-qualified and preeminent in their individual areas of medical expertise, may also conclude that such an arrangement serves as a strong incentive for such physicians becoming affiliated with the joint township district hospital, which, in turn, will advance the efficient operation of the hospital and the salutary

objective of better patient care. See Op. No. 86-046 at 2-246; 1952 Op. Att'y Gen. No. 1126, p. 97 (in order to secure properly qualified physicians, nurses, and employees, a board of county hospital trustees may use funds appropriated for their use to pay advertising and travel expenses incurred in interviewing prospective employees). Thus, a board of hospital governors may, pursuant to its power under R.C. 513.16 and R.C. 513.17 to assume responsibility for the control, management, and operation of the joint township district hospital, permit hospital physicians to use office space in a building constructed adjacent to the joint township district hospital for their private medical practices, without requiring reimbursement of the hospital for the value of those facilities, if the board determines that such an arrangement is reasonably related to the proper operation of the hospital.

Such an arrangement does raise questions as to the implication of Ohio Const. art. VIII, §6, which prohibits any county, city, town, or township from raising money for, or lending its aid and credit to, private entities. Previous opinions of this office have concluded, however, that if the primary objective of an expenditure of public resources serves a public purpose, it is immaterial that the private interests of individuals may be advanced incidentally by such expenditure. See 1985 Op. Att'y Gen. No. 85-047 and 1982 Op. Att'y Gen. No. 82-006 (relying on State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 98 N.E.2d 835 (1951)). See also 1973 Op. Att'y Gen. No. 73-038; 1973 Op. Att'y Gen. No. 73-018. The provision of public resources to individuals or private enterprises will be proper if the governing body of a statutory entity determines that such provision is necessary to the performance of a function or the exercise of a power expressly or impliedly conferred upon it by statute, and such determination is not manifestly arbitrary or unreasonable. Op. No. 82-006. A board of hospital governors may, for the reasons set forth above, determine that the provision of office space to staff physicians, without requiring reimbursement, promotes the operation of the hospital and enhances the quality of patient care. Cf. 1985 Op. Att'y Gen. No. 85-005 (a board of county hospital trustees may make payments to hospital employees whose services are no longer needed in order to encourage early retirement, if the board reasonably finds the payments are necessary to the efficient operation of the hospital); 1977 Op. Att'y Gen. No. 77-090 (a state agency may provide free parking facilities to employees if the facilities are necessary to the efficient operation of the state agency). The fact that the private interests of the physicians are also advanced does not render the arrangement improper, so long as the board's determination is not manifestly arbitrary or unreasonable.

In this regard, I recently concluded in Op. No. 86-046 at 2-246 to 2-247 that the board of trustees of a state university that maintains and operates a college of medicine may permit faculty members of the university, as compensation in kind for services rendered, to maintain private medical practices on university property, and utilize university facilities, personnel, and services in conjunction therewith pursuant to the trustees' power, inter alia, to hire and compensate faculty members. See R.C. 3335.03; R.C. 3335.09; R.C. 3361.03; R.C. 3361.04. See also 1986 Op. Att'y Gen. No. 86-067. Op. No. 86-046 further notes, however, that if the board of trustees determines that the value of public resources provided a physician exceeds the amount the university sets as compensation, then the physician must reimburse the university

the amount of the excess. Such reimbursement is necessary to avoid implicating the constitutional prohibition against lending aid and credit to private enterprises.

In this instance, it is my understanding that the physicians to whom office space would be offered are not employees of the hospital, but rather, merely maintain privileges to admit patients to the joint township district hospital. See generally 1982 Op. Att'y Gen. No. 82-095. The power to provide office space to such physicians is based upon the authority of the board of hospital governors to control, manage, and operate the hospital, rather than upon the power to compensate. As with the power to compensate discussed in Op. No. 86-046, however, if the board of hospital governors determines that the value of the office space provided to a physician for use in his private medical practice exceeds the amount which the board determines may reasonably be expended to promote the operation and purposes of the hospital, then the physician must be required to reimburse the hospital the amount of the excess. Such partial reimbursement ensures that the hospital's provision of public resources serves a public purpose and that the proscription of Ohio Const. art. VIII, §6 is not violated. The ability of the board of hospital governors to require a physician to reimburse the hospital for the full value of the hospital resources provided him for use in his private medical practice is, of course, discussed above in connection with your first question.

Finally, your third question asks whether the construction of a building adjacent to a joint township district hospital for the purpose of leasing office space in the building to hospital physicians for their private medical practices will promote the purposes enumerated in R.C. 140.02. Broadly speaking, R.C. Chapter 140 authorizes hospital agencies and various governmental entities to cooperate in utilizing various hospital facilities and the medical services they provide for the purpose, as expressed in R.C. 140.02, of enhancing the "availability, efficiency, and economy" of those facilities and services. See generally 1986 Op. Att'y Gen. No. 86-043; 1976 Op. Att'y Gen. No. 76-023. To that end, R.C. 140.03 authorizes two or more hospital agencies to enter into agreements for the acquisition, construction, management, and operation of hospital facilities, and R.C. 140.05 authorizes a public hospital agency to enter into an agreement to lease any hospital facility to particular governmental entities, which, in turn, shall assume responsibility for the management and operation of the facility in question.² Further, such

² As used in R.C. Chapter 140, "hospital agency" is defined as any public hospital agency or any nonprofit hospital agency, see R.C. 140.01(A), "public hospital agency" is defined as any county, board of county hospital trustees established pursuant to R.C. 339.02, county hospital commission established pursuant to R.C. 339.14, municipal corporation, joint township hospital district, state or municipal university or college, operating or authorized to operate a hospital facility, or the state, see R.C. 140.01(B), and "nonprofit hospital agency" is defined as a corporation or association not for profit, which has authority to own or operate a hospital facility or which provides or is to provide services to one or more other hospital agencies, see R.C. 140.01(C).

agreements and the arrangements resulting therefrom with respect to the hospital facilities in question must "promote the public purpose stated in [R.C. 140.02]." R.C. 140.03; R.C. 140.05.

The public purpose requirement enunciated in R.C. 140.02-.05, however, appears to apply only to those particular agreements entered into pursuant to R.C. Chapter 140, and I am unaware of any Revised Code provision that makes the public purpose requirement set forth in those sections applicable to those agreements negotiated by a board of hospital governors pursuant to its power to control, manage, and operate a joint township district hospital under R.C. 513.16 and R.C. 513.17. Thus, I find it unnecessary, for purposes of this opinion, to determine whether the construction of a building under the circumstances described above promotes the purposes specified in R.C. 140.02.

Accordingly, based on the foregoing, it is my opinion, and you are advised that:

1. Pursuant to R.C. 513.16 and R.C. 513.17, a board of hospital governors may, with the approval of the joint township district hospital board, construct a building adjacent to the joint township district hospital for the purpose of leasing office space to hospital physicians for use in their private medical practices if the board of hospital governors determines such purpose is reasonably related to the proper operation of the hospital. Such an arrangement does not violate Ohio Const. art. VIII, §6.
2. A board of hospital governors may, pursuant to its power under R.C. 513.16 and R.C. 513.17 to assume responsibility for the control, management, and operation of the joint township district hospital, permit hospital physicians to use office space in a building constructed adjacent to the joint township district hospital for their private medical practices without requiring reimbursement of the hospital for the value of those facilities, if the board determines that such an arrangement is reasonably related to the proper operation of the hospital. Such an arrangement does not violate Ohio Const. art. VIII, §6, so long as the value of the office space provided to a physician for use in his private medical practice does not exceed the amount which the board determines may reasonably be expended to promote the proper operation of the hospital.