
565

SYLLABUS:

The position of member of board of governors of a joint township hospital district is incompatible with the office of county auditor of the county in which such hospital district is situate.

Columbus, Ohio, October 11, 1963

Hon. Forrest H. Bacon
Prosecuting Attorney
Wyandot County
Upper Sandusky, Ohio

Dear Sir:

I have your request for my opinion which reads as follows:

“It would be appreciated if your office would advise as to the compatability of the office of County Auditor and a member of the Board of Governors of a Joint Hospital District formed under Section 513.16 R.C. of Ohio.”

An examination of the constitution and statutes of Ohio has failed to disclose any express provision which would render incompatible the simultaneous holding of the two positions in question.

It is therefore necessary to recur to the common law test of incompatibility set forth in the case of *State ex rel. Attorney Gen-*

eral v. Gebert, 12 C.C. (N.S.) 274 at page 275, wherein it was stated:

“Offices are considered incompatible when one is subordinate to or in any way a check upon the other; or when it is physically impossible for one person to discharge the duties of both.”

The application of the above test to the situation under discussion necessarily leads to a consideration of the organization and structure of a joint township hospital district, the powers and duties of the board of governors and the authority and function of a county auditor in respect thereto.

A joint township hospital district may be formed pursuant to Section 513.07, Revised Code, by the requisite vote of the boards of township trustees of two or more contiguous townships in any county. All members of the boards of township trustees participating therein shall comprise the joint district hospital board of trustees.

The board of hospital trustees is authorized by Section 513.12, Revised Code, to determine the amount of bonds to be issued for the purchase of a site and the construction and equipping of a hospital building thereon. Such bonds, when approved by the electors of the district *voting as a subdivision*, shall be issued and sold as provided by Sections 133.01 to 133.65, inclusive, Revised Code.

Section 513.12, *supra*, in respect to expenses for the operation of the hospital, further provides in pertinent part as follows:

“All necessary expenses for the operation of such hospital may be paid out of any moneys derived from the special levy approved for such purposes by such voters, or out of any other moneys received from hospital income or services rendered, or from unencumbered funds from any other source. The board of township trustees of the townships participating in such district may appropriate and pay over to the joint township hospital board, for maintenance of such hospital, any unencumbered funds of the township. Moneys received from hospital income or services rendered, or funds from any other source, except moneys derived from the special levy for operation and funds appropriated by township trustees for maintenance, may be used for the replacement of necessary equipment, the purchase of a site, construction, equipping, or furnish-

ing of additions to the hospital, or the purchase or construction of capital improvements to the hospital.

“Such necessary expenses as are incurred by the board of township trustees in meeting with other boards of township trustees for the consideration of proposals to proceed under sections 513.07 to 513.18, inclusive, of the Revised Code, shall be paid from the general fund of the township incurring such expenses. When such hospital board has funds of its own, derived from the special levy approved by the electors of the district, as provided in section 513.13 of the Revised Code, or unencumbered funds from any other source, then the expenses incidental to such hospital shall be paid by the hospital board.”

Pursuant to Section 513.13, Revised Code, the board of hospital trustees may also have placed on the ballot the question of levying a one mill tax for the necessary expenses incurred in the operation of such hospital. Section 513.13, *supra*, reads as follows:

“The board of elections of the county in which a joint township hospital district lies shall, by resolution approved by a two-thirds vote of the joint township district hospital board, place upon the ballot for submission to the electorate of such district, at the next primary or general election, occurring not less than thirty nor more than ninety days after the request is received from such joint township district hospital board, the question of levying a tax, not to exceed one mill outside the ten-mill limitation, for a period not to exceed five years, to provide funds for the payment of necessary expenses incurred in the operation of the hospital. Such resolution shall be certified to the board of elections not later than four p.m. of the ninetyth day before the day of the election. If sixty-five per cent of the electors in such district voting on the proposition, vote in favor thereof, the county auditor shall annually place a levy on the tax duplicate against the property in such district, in the amount required by the joint board of trustees of the district, but not to exceed one mill.”

The operation and control of the hospital is vested in a board of governors appointed under Section 513.16, Revised Code. The board of hospital trustees may remove any such hospital governor for cause after a hearing upon written charges.

The powers and duties of the board of governors are set forth in Section 513.17, Revised Code, which reads 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, inclusive, 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. 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, subject to the direction of the board of governors and to the rules and regulations prescribed by it, the superintendent shall have complete charge and control of the operation of such hospital. He shall prepare and submit to the board of governors, quarterly, a statement showing the average daily per capita cost for the current expense of maintaining and operating such hospital, including the cost of ordinary repairs. The members of the board of governors shall serve without compensation, but their necessary expenses, when engaged in the business of the hospital board, shall be paid by the joint township hospital board.”

It is apparent from the foregoing that a joint township hospital district constitutes a taxing unit as defined in Section 5705.01, Revised Code, and as such, is amenable to the provisions of Section 5705.27, *et seq.*, Revised Code, the budget laws.

Section 5705.27, *supra*, provides for the creation in each county of a budget commission consisting of the *county auditor*, county treasurer, and the prosecuting attorney.

Since a joint township hospital district is a taxing unit, as above noted, Section 5705.28, Revised Code, requires in substance that a budget for the next succeeding fiscal year be adopted and submitted to the county auditor who will present such budget to the county budget commission for its action thereon as provided in Section 5705.30, *et seq.*, Revised Code.

Referring to the function of the county auditor while serving as a member of the county budget commission, the court stated the following in the case of *State ex rel. Baden v. Gibbons*, 40 Ohio Law Reporter, 285 at page 289:

** * *

* * *

* * *

“* * * One of the many duties of that office is created

by Section 5625-19, General Code, which makes the county auditor a member of the county budget commission. As a members thereof, he assists in adjusting the amounts budgeted by the various taxing divisions and revises the estimates and equalizes the total tax levied and collected between the various taxing subdivision. He is further clothed with authority to value property for taxation, and to fix the rates of taxation, and to consider exemptions claimed; and to distribute special taxes collected by the state, such as gasoline and inheritance taxes.

“* * *

* * *

* * *”

In the *Gibbons* case, at page 288, the court elaborated further on the concept of incompatibility as follows:

“* * *

* * *

* * *

“It has long been the rule in this state that one may not hold two positions of public employment when the duties of one may be so administered and discharged that favoritism and preference may be accorded the other, and result in the accomplishment of the purposes and duties of the second position, which otherwise could not be effected. To countenance such practice would but make it possible for one branch of government or one individual to control the official act and discretion of another independent branch of the same government or of interlocking governments which are constructed so as to operate in conjunction with each other. If the possible result of the holding of two positions of public trust leads to such a situation, then it is the rule, both ancient and modern, that the offices are incompatible and are contrary to the public policy of the state.”

It is readily apparent from a consideration and comparison of the duties and functions of the two positions in question that both are positions of public trust so related to each other that the simultaneous holding of both by one individual would, applying the reasoning of the *Gibbons* case, “make it possible for one branch of government or one individual to control the official act and discretion of another independent branch of the same government or interlocking governments which are constructed so as to operate in conjunction with each other.”

Clearly then, the position of member of board of hospital governors is not only subordinate to the office of county auditor, but the county auditor, by virtue of his position on the county budget

commission must be a check on the township hospital board of governors.

It is therefore my opinion and you are so advised that the position of member of board of governors of a joint township hospital district is incompatible with the office of county auditor of the county in which such hospital district is situate.

Respectfully,
WILLIAM B. SAXBE
Attorney General