

**OPINION NO. 66-185****Syllabus:**

Under the provisions of Sections 339.03 and 339.06, Revised Code, a board of county hospital trustees is without authority to receive conveyances of any interest in realty either as payment in kind, or as security for payment, in satisfaction of compensation due from or for patients, for services and treatment rendered by the hospital, including delinquent accounts for the same, unless the land so acquired is intended to be used for a county hospital building, in which event title must be taken in the name of the county, rather than by the board in its own name.

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**To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio**  
**By: William B. Saxbe, Attorney General, December 29, 1966**

Your request for my opinion reads as follows:

"In accordance with the interpretation by this office of the meaning and import of Section 339.03 of the Revised Code of Ohio, particularly the second sentence of the third paragraph of the said statute, the Cuyahoga County Hospital has for some years accepted, in cases wherein there was little or no means of otherwise collecting delinquent hospital accounts, mortgage deeds or quit claim deeds to real property owned by such delinquent debtors. We have regarded this activity as an intermediate step in effecting the collection of delinquent accounts.

"Now, however, this practice has been challenged by a title company in connection with a proposed sale of a parcel of real property which the county hospital had acquired by quit claim deed.

"Your ruling and opinion, therefore is requested as to:

- "1.) Does the county hospital, in effecting the lawful collection of delinquent accounts, have the power and right to accept security for such debts by way of mortgage deeds or quit claim deeds or both?

"2.) If the answer to Question No. 1 is yes, may the county hospital sell property that it has acquired by quit claim and, if so, must there be advertising and competitive bidding?"

Questions closely related to yours were under consideration in several opinions of my predecessors. Opinion No. 2770, Opinions of the Attorney General for 1953, page 290, and Opinion No. 3199, Opinions of the Attorney General for 1962, page 631, both deal with collection of delinquent accounts for county-operated hospitals through the services of a collection agency, by slightly differing arrangements, but with substantially the same result, namely that the collection agency, operating as a private business concern would be compensated for its efforts on a percentage basis. In both opinions, the collection methods were found to be without authority. The earlier opinion involved a county tuberculosis hospital, which proposed to pay a percentage fee out of amounts actually collected on delinquent accounts by a collection agency, and the latter opinion related to a board of county hospital trustees who proposed to sell or assign its delinquent accounts to a collection agency for collection by it, on a percentage discount basis.

The third paragraph of Section 339.03, Revised Code, provides as follows:

"The board of county hospital trustees with the approval of the county commissioners may employ counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts."

Similar statutes are to be found with regard to various other types of public hospitals. Relating to "joint township district hospitals," Section 513.17, Revised Code, provides in pertinent part:

"The board of hospital governors with the approval of the county commissioners may employ counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts. Counsel employed under this section shall be paid from the hospital's funds."

Section 749.15, Revised Code, generally provides that the Director of Public Safety shall have the entire management and control of a municipal hospital. That statute was amended effective September 16, 1957, in 127 Ohio Laws 440 (at page 442), by adding the following language:

"Such director with the approval of the mayor may also employ counsel to bring

legal action for the collection of delinquent accounts."

Section 749.16, Revised Code, provides for county or "joint township district hospital board participation in the operation of a municipal hospital by agreement. Section 749.18, Revised Code, delineates the authority of the board of governors of a hospital operated under an agreement such as contemplated by Section 749.16, supra. Section 749.18, Revised Code, was amended in 1957, by the same enactment which amended Section 749.15, supra, by adding the following language:

"\* \* \* shall not deny the board of governors the authority to employ counsel, institute legal action in its own name, or to employ any other lawful means, for the collection of delinquent accounts.  
\* \* \*"

Section 309.09, Revised Code, provides in pertinent part:

"The prosecuting attorney shall be the legal adviser of the board of county commissioners, \* \* \* and all other county officers and boards, \* \* \*. He shall prosecute and defend all suits and actions which any such officer or board directs or to which it is a party, and no county officer may employ any other counsel or attorney at the expense of the county, \* \* \*."

Section 309.10, Revised Code, carves exceptions from the proscription of the preceding section for several specified entities within the county government, including a board of county hospital trustees, by providing in pertinent part as follows:

"\* \* \* Such sections (309.08 and 309.09, Revised Code) do not prevent a board of county hospital trustees from employing counsel with the approval of the county commissioners to bring legal action for the collection of delinquent accounts of such hospital, but such counsel, when so employed shall be paid from the hospital's funds. \* \* \*"

In Opinion No. 7307, Opinions of the Attorney General for 1956, page 757, the syllabus reads as follows:

"Under the provisions of Section 339.06, Revised Code, a board of county hospital trustees is authorized to join a credit bureau for the purpose of obtaining credit information and to pay a reasonable fee therefor and to pay the reasonable expenses of obtaining credit reports on individual accounts in cases where the board deems such services necessary to the efficient operation of the hospital's fiscal affairs."

Section 339.06, Revised Code, sets forth generally, the

authority of a board of county hospital trustees over the operation of a county hospital. It provides, in the following pertinent language:

"The board of county hospital trustees shall, \* \* \* assume and continue the operation of such hospital. The board of county hospital trustees shall have the entire management and control of the hospital, \* \* \*

"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 fix the compensation to be paid by or for all patients for all services and treatment rendered by the county hospital. \* \* \*"

The foregoing section, however, is silent as to the authority of a board of county hospital trustees to accept the conveyance of an interest in real estate, either as payment in kind, or as security for payment of accounts due for services and treatment to patients. In fact, the only authority to be found in the statutes, for acquisitions of interests in realty by boards of county hospital trustees, is contained in the first sentence of Section 339.03, Revised Code, wherein it is provided:

"The board of county hospital trustees shall have complete charge of the selection and purchase of a site for a county hospital, taking title to such site in the name of the county, \* \* \*"

Nowhere in Section 339.01 through 339.14, inclusive, Revised Code, which are all the statutes pertaining to county-operated general hospitals, is there any authority to be found for disposal of county general hospital lands by a board of county hospital trustees. In the absence of such authority, and further since title to hospital lands is taken in the name of the county, rather than by the board in its own name, under the above quoted portion of Section 339.03, Revised Code, it would appear that Sections 307.09 and 307.10, Revised Code, are the only statutes applicable to disposal of county hospital lands. Under the statutes it is an apparent prerequisite that there be a necessity for public use when the lands are acquired, and the provision "not needed for public use" in Section 307.09, Revised Code, pertaining to disposal of county lands, presupposes that the land was needed for public use when acquired.

Contrary to the provisions concerning title to county general hospital lands contained in Section 339.03, supra, the statute pertaining to title to lands of joint township district hospitals, Section 513.15, Revised Code, provides as follows:

"The ownership of a joint township district hospital, including all right, title, and interest in and to all prop-

erty, both real and personal, pertaining thereto, shall vest in the joint township district hospital board. In the selection and acquisition of a site for such hospital, the board shall have the same powers for the appropriation of lands as are conferred upon state departments, institutions, boards, or commissions. Such board may receive and hold in trust for the benefit of the hospital, any grant or devise of land, and any donation or bequest of money or other personal property that is made for the establishment or support thereof."

Section 339.31, Revised Code, pertaining to county tuberculosis hospitals, contains even greater authority than the "receive \* \* \* any grant or devise of land" of the foregoing quoted statute, by providing:

"\* \* \* The board maintaining a county tuberculosis hospital may receive for the use of such hospital, and in its name, gifts, legacies, devises, and conveyances of real or personal property or money."

(Emphasis added.)

The above quoted statutory provisions were considered in Opinion No. 65-54, Opinions of the Attorney General for 1965, page 2-101. The syllabus of that opinion reads as follows:

"Under the provisions of Section 339.31, Revised Code, a county tuberculosis hospital may receive for the use of such hospital, gifts, legacies, devises, and conveyances of real or personal property or money. However, the board of trustees of a county tuberculosis hospital does not have the authority to place liens on real estate, such as are provided for in Section 5105.24, supra, to secure obligations owing to the hospital."

In the text of above-cited opinion, at page 2-104, appears the statement:

"The legislature could have provided for acquiring liens against real estate as security for the unpaid amounts charged for care and treatment. But they did not,  
\* \* \*"

While the underlying statutory principles pertaining to tuberculosis hospitals are not identical to those pertaining to general hospitals, the significance of an absence of authority remains exactly the same. It would appear then, that for a board of county hospital trustees to acquire and attempt to sell or otherwise dispose of either security or fee interest in realty not intended to be used as a site for a hospital building, is ultra vires.

Accordingly, it is my opinion, and you are advised, that under the provisions of Sections 339.03 and 339.06, Revised Code, a board of county hospital trustees is without authority to receive conveyances of any interest in realty either as payment in kind, or as security for payment, in satisfaction of compensation due from or for patients, for services and treatment rendered by the hospital, including delinquent accounts for the same, unless the land so acquired is intended to be used for a county hospital building, in which event title must be taken in the name of the county, rather than by the board in its own name.

Since your first question has been answered in the negative, your second question is considered moot.