

3230.

MUNICIPALITY—AUTHORITY TO LEVY TAXES AND PAY PROCEEDS
TO HOSPITAL FOR CHARITY WORK, DISCUSSED.

SYLLABUS:

Under the provisions of section 4021 a municipality may levy and collect a tax and turn the proceeds thereof over to a private corporation or association which furnishes and maintains a hospital and furnishes free services to such inhabitants of the municipality as in the opinion of a majority of such trustees are unable to pay, irrespective of whether such corporation is for profit or non-profit; provided, however, that the services rendered by such hospital must be commensurate with the amount of funds received.

Opinion of Attorney General for 1915, page 332 not followed.

COLUMBUS, OHIO, March 30, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication which reads as follows:

“The syllabus of Opinion No. 180, page 332, of Opinions for 1915 reads:

“The arrangement authorized by section 4021 G. C., whereby a municipal corporation may levy taxes and pay the proceeds thereof to a hospital for charity work, may be made with more than one hospital, but not with a hospital organized for profit.”

Section 4021 G. C. reads:

“The council of each municipality, annually, may levy and collect a tax not to exceed one mill on each dollar of the taxable property of the municipality and pay the amount to a private corporation or association which maintains and furnishes a free public hospital for the benefit of the inhabitants of the municipality, or not free except to such inhabitants of the municipality as in the opinion of a majority of the trustees of such hospital are unable to pay. Such payment shall be as and for compensation for the use and maintenance of such hospital. Without change or interference in the organization of such corporation or association, the council shall require the treasurer thereof, annually, to make a financial report setting forth all of the money and property which has come into its hands during the preceding year and the disposition thereof, together with any recommendations as to its future necessities.”

The solicitor of the city of Barberton is of the opinion that a hospital located in that city is organized for profit and while it does accept all residents of Barberton who are unable to pay, it is not entitled to receive the proceeds of a levy made by council for hospital purposes under authority of section 2021 G. C.

The solicitor’s letter and other data is enclosed herewith and your opinion will be appreciated.”

Section 4021 seems to clearly provide that the council of a municipality may levy and collect a tax and pay the amount to a private corporation or association which maintains and furnishes a free public hospital for the benefit of the inhabitants of the municipality; or not free except to such inhabitants of a municipality as in the opinion

of a majority of the trustees of such hospital are unable to pay.

From an analysis of this language it would appear that council is authorized to pay the proceeds of such a tax to a hospital which does not furnish free service to all of the inhabitants of the municipality, but must furnish free service to such inhabitants as a majority of the trustees of such hospital in their opinion determine are unable to pay. In other words, it would seem to be the intent of this section to authorize council of a municipality to make proper arrangements with such an institution for the furnishing of free hospital attention to the poor without requiring such municipality to establish and maintain one of its own. Logically, so long as such service is furnished to the municipality, the public would not be particularly interested in whether or not such hospital made profits from its other operations.

However, in the statement of facts submitted by the president of the hospital association, it would appear that this particular hospital is not operated for the purpose of making profits. While it may be that the corporation is organized "for profit," it is not believed that the use of the words "for profit" in the articles of incorporation are necessarily determinative of the character of the hospital. In the case of *State ex rel. Leaverton, et al., vs. Kerns, et al.*, 104 O. S. 550, it was indicated that the words "for profit" were not necessarily conclusive. On the other hand, it was indicated that it was a question of fact depending upon whether profits are taken by the stockholders, which in the final analysis determines the true character of a corporation. In so far as the specific case is concerned, it is believed that in view of the facts submitted, and *State vs. Kerns, supra*, the conclusion could be reached that the corporation to which you refer is not for profit.

However, it is believed a careful analysis of the legislative intent in the enactments governing such hospital and authorizing the payment of certain sums by municipalities, compel the conclusion that it is up to a municipality to provide for the maintenance of hospital services free to its poor, and the statute does not prevent such an arrangement with a private corporation and one which is organized for the purpose of profit. However, as pointed out in the opinion to which you refer, section 6 of article VIII of the Constitution would inhibit the payment to such a hospital of a greater sum than the value of the services which are rendered to the citizens of such municipality. In other words, it is believed that so long as the municipality obtains value received for the money which it contributes it may legally do so. The paying for a legitimate service rendered to the inhabitants of such a municipality as is authorized by law is not a violation of such constitutional provision.

In this connection it may be noted that the constitutional provision does not distinguish between corporations or associations for profit and not for profit.

In view of the foregoing, it is the opinion of this department that under the provisions of section 4021 a municipality may levy and collect a tax and turn the proceeds thereof over to a private corporation or association which furnishes and maintains a hospital and furnishes free services to such inhabitants of the municipality as in the opinion of a majority of such trustees are unable to pay, irrespective of whether such corporation is for profit or non-profit; provided, however, that the services rendered by such hospital must be commensurate with the amount of funds received.

Respectfully,
C. C. CRABBE,
Attorney General.