

OPINION NO. 72-047

Syllabus:

The authority of a board of county commissioners under Section 339.02, Revised Code, to increase the size of an existing board of trustees of a county hospital, expired 60 days after October 1, 1967.

To: Ronald J. Kane, Portage County Pros. Atty., Ravenna, Ohio
By: William J. Brown, Attorney General, June 2, 1972

I have before me your request for my opinion on the following question:

"If a board of hospital trustees is in existence and the last decennial census indicated the population of the county to be less than 400,000, is it possible under the purview of the statute to increase the number of trustees from 6 to 8?"

Section 339.02, Revised Code, as amended in 1967 and in 1971, provides for the creation of a board of county hospital trustees upon the establishment of such a hospital, and for an increase in the size of an already existing board within 60 days after October 1, 1967. The Section reads in part as follows:

"(A) Unless a board of county hospital trustees for the county is in existence in accordance with this section, such board shall be created pursuant to this section after the board of county commissioners first determines by resolution to establish a county hospital. Copies of such resolution shall be certified to the probate judge of said county senior in point of service and to the judge, other than a probate judge, of the court of common pleas of said county senior in point of service.

"(B) The Board of county commissioners together with the probate judge of said county senior in point of service and the judge of the court of common pleas of said county senior in point of service shall, within ten days after such certification, appoint a board of county hospital trustees. The board of county hospital trustees shall be composed of six electors of such county unless the board of county commissioners determines that the board of trustees can more effectively function with eight trustees in which case there may be eight trustees.
If the last decennial census indicates the population of the county to be more than four hundred thousand persons and the board of county commissioners determines that the board of trustees can more effectively function with ten trustees, the board of trustees may consist of ten members.

"(1) When the board of trustees is composed of six electors, their terms of office shall be: one for one year, one for two years, one for three years, one for four years, one for five years, and one for six years from the first Monday of March thereafter.

"(2) When the board is composed of eight electors, their terms of office shall be: one for one year, one for two years, two for three years, one for four

years, one for five years, and two for six years from the first Monday of March thereafter.

"(3) When the board is composed of ten electors, their terms of office shall be: two for one year, one for two years, two for three years, two for four years, one for five years, and two for six years from the first Monday of March thereafter.

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"(C) Within sixty days after October 1, 1967, the board of county commissioners together with the probate judge senior in point of service and the judge of the court of common pleas senior in point of service in any county wherein a board of county hospital trustees has been appointed may expand the number of trustees to eight; in a county having over four hundred thousand population at the last decennial census they may expand the number of trustees to ten.
* * *"

(Emphasis added.)

A reading of these passages makes it clear that this Section contains provisions, both for the appointment of trustees to the board of a county hospital presently being created, and also for the expansion of the board of an existing county hospital within a 60-day period following the 1967 amendment of this Section.

Under Subsection (B), supra, the board of county commissioners and the two senior judges are charged with the duty of appointing a board of trustees within ten days after certification of the resolution to establish the hospital. In creating this board, the county commissioners are authorized to exercise their discretion in determining whether to appoint six or eight trustees. The provisions allowing ten members on the board of trustees in counties with a population of more than 400,000 is simply an extension of this discretion, and as such, concerns the original creation of the board.

Subsection (C), supra, as amended in 1967, provided for the expansion of a board of trustees, currently in existence, to include eight or ten members, depending on the size of the county. However, this authority was qualified by a time limitation, which required that expansion of the board take place within 60 days after

October 1, 1967. To read into Subsection (B), supra, an authorization to increase the size of an existing board of trustees of a county hospital would render this temporary grant of authority meaningless. Therefore, Subsection (C), supra, must be read as the only provision for increasing the size of an existing board of trustees of a county hospital, and, since the effective time period has already expired, a board of county commissioners is without authority under Section 339.02, supra, to increase the size of an existing board of county hospital trustees.

In specific answer to your question it is, therefore, my opinion, and you are so advised, that the authority of a board of county commissioners under Section 339.02, Revised Code, to increase the size of an existing board of trustees of a county hospital, expired 60 days after October 1, 1967.