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HOSPITAL, MUNICIPALLY OWNED — AUTHORITIES MAY NOT ENTER INTO CONTRACT WITH NON-PROFIT HOSPITAL SERVICE ASSOCIATION ORGANIZED UNDER SECTIONS 669 ET SEQ., G. C.—TO FURNISH HOSPITAL CARE, STIPULATED PRICE, DEFINITE PERIOD OF TIME TO SUCH ASSOCIATION OR CORPORATION.

SYLLABUS:

*The authorities in charge of a municipally owned hospital may not enter into a contract with a non-profit hospital service association organized pursuant to the provisions of Sections 669, et seq., General Code, whereby the hospital is obligated to furnish hospital care at a stipulated price for a definite period of time to subscribers of the non-profit hospital service corporation.*

Columbus, Ohio, February 26, 1940.

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

Gentlemen:

Your recent request for my opinion reads as follows:

“We have been requested by officials of the City of Springfield, Ohio, to submit for your consideration a tentative draft of a contract now under consideration by and between the city owned hospital of that City and The Central Hospital Service Association, and to seek your opinion as to the legality of such proposed contract, in view of the prohibition against the public and private corporation joining in any undertaking, as expressed in Article VIII Sec. 6 of the State Constitution.

Since there are a number of city owned hospitals in this State, and therefore a ruling on this question will have rather general application, may we request that you examine the proposed contract for hospital service and give us your opinion as to the legality thereof, or as to the powers of the City to enter into such a contract, with an association, to render hospital service to its clients."

While you do not state what type of organization The Central Hospital Service Association is, an examination of the records of the Secretary of State discloses that it is a non-profit hospital service corporation organized pursuant to Sections 669 to 669-12, both inclusive, of the General Code.

An examination of the proposed contract discloses that it purports to obligate the hospital owned by the city to furnish certain services therein enumerated to any subscriber of the Hospital Service Association at a certain stipulated rate which is to be paid by the Service Association. The proposed contract does not purport to obligate the municipally owned hospital to furnish such services to subscribers of the Service Association without being compensated therefor.

Section 6 of Article VIII of the Ohio Constitution, to which you refer, reads as follows:

"No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association; provided, that nothing in this section shall prevent the insuring of public buildings or property in mutual insurance associations or companies. Laws may be passed providing for the regulation of all rates charged or to be charged by any insurance company, corporation or association organized under the laws of this state, or doing any insurance business in this state for profit."

The terms and provisions of the proposed contract do not in themselves appear to violate this section of the Constitution. However, the proposed contract must be construed in connection with Section 669-4, General Code, which provides in part as follows:

"All contracts issued by such corporation to the subscribers to the plan shall constitute direct obligations of the hospital or hospitals with which such corporation has contracted for hospital care, and such contracts may contain provisions rendering the corporation liable only for its own acts and omissions. \* \* \*"

This statutory provision must be read into the proposed contract and it would be as much a part thereof as if it were actually rewritten therein. See *Southern Surety Company v. Chambers*, 115 O. S., 434; *American Guaranty Company v. Cliff Wood Coal and Supply Company*, 115 O. S., 524; *John Hancock Mutual Life Insurance Company v. Snyder*, 52 O. App., 438.

If a municipally owned hospital could lawfully enter into a contract with a hospital service association organized under the provisions of Sections 669, et seq., General Code, such hospital would be obligated by reason of the provisions of the statute above quoted to render hospital care to persons who have subscribed to the hospital service plan irrespective of the ability of the service association to pay for such service.

The constitutional provision above quoted has been construed by the Supreme Court of this state in several cases. In *Walker v. Cincinnati*, 21 O. S., 14, at page 54, it was said:

“The mischief which this section interdicts is a business partnership between a municipality or subdivision of the State, and individuals or private corporations or associations. *It forbids the union of public and private capital or credit in any enterprise whatever.*” (Emphasis mine.)

And in *Wyscaver v. Atkinson*, 37 O. S., 80, at page 97, it was said:

“In short, the thing prohibited is the combination in any form whatever of the public funds or credit of any county, city, town or township with the capital of any other person, whether corporated or unincorporated, for the purpose of promoting any enterprise whatever.”

The proposed contract considered in connection with the provisions of Section 669-4, General Code, above set forth, would constitute a loan of the credit of the municipal corporation to the Service Association and would therefore be a violation of Section 6 of Article VIII of the Ohio Constitution.

I am therefore of the opinion that the authorities in charge of a municipally owned hospital may not enter into a contract with a non-profit hospital service association organized pursuant to the provisions of Sections 669, et seq., General Code, whereby the hospital obligates itself to furnish hospital

care at a stipulated price for a definite period of time to subscribers of the non-profit hospital service corporation.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.