

6939

1. BOND PREMIUM — COUNTY HOSPITAL TRUSTEES — NO AUTHORITY TO PAY OUT OF PUBLIC FUNDS PREMIUM ON BOND GIVEN TO SECURE FAITHFUL PERFORMANCE OF DUTIES BY ANY EMPLOYEES OF BOARD.

2. BOND — SUPERINTENDENT — COUNTY HOSPITAL — MAY BE PAID FOR OUT OF PUBLIC FUNDS — SECTIONS 3137, 9573-1 G. C.

SYLLABUS:

The trustees of a county hospital have no authority to pay, out of public funds at their disposal, the premium on a bond given to secure the faithful performance of their duties by any of the employes of said board, excepting the bond of the superintendent of such hospital whose bond is provided for by Section 3137 of the General Code, and which may be paid for out of such public funds by virtue of the provision of Section 9573-1, General Code.

Columbus, Ohio, May 26, 1944

Hon. Joel S. Rhinefort, Prosecuting Attorney
Toledo, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The board of trustees of the Lucas County General Hospital, a county hospital operated by said board under the provisions of General Code Section 3136 et seq., have submitted for approval a surety bond for the purpose of indemnifying the hospital against loss sustained as a result of any dishonest or fraudulent acts by any of its ‘employes.’ The word ‘employee’ is defined in the bond as including only such ‘officers and subordinates who are not required by law to give bond or bonds conditioned for the faithful performance of their duties.’

Your opinion is respectfully requested as to whether the board of trustees of the hospital is authorized to pay the premium on such bond.”

Sections 3136 to 3138-1, General Code, relate to the management of a county hospital. Section 3136 provides that when such hospital shall have been fully completed and equipped the county commissioners are to appoint a board of four trustees. Section 3137 provides for the organization of such board and the following paragraph from that section contains a statement of their general powers and duties:

“Such board shall assume and continue the operation of such hospital. It shall have the entire management and control of the hospital and shall establish such rules for the government thereof and the admission of persons thereto as it deems expedient; it shall have control of the property of the hospital and deposit all monies thereof with the county treasurer to the credit of the hospital fund; and the same shall be paid out only for the maintenance and operation of such hospital, on the war-

rant of the county auditor, issued pursuant to the orders of the trustees.”

This section further authorizes the board to employ a superintendent, and, upon his nomination to confirm the employment of such nurses, physicians and other employes as may be necessary for the care and management of such hospital and its inmates. They are further authorized to fix the salaries and compensation of such appointees. It is further provided in the same section that the hospital superintendent shall give such bond for the faithful performance of his duties as the trustees may require and approve. Nothing in the statute relating to such hospital authorizes any bond to be taken from any employe except the superintendent.

Section 9573-1 of the General Code reads as follows:

“The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe.”

I find no general statute which would appear to confer upon the trustees of a county hospital the power to require a bond of their appointees or employes. Section 2931, General Code, authorizes the several county officers to appoint and employ necessary deputies, assistants and other employes for their respective offices, to fix their compensation and to require such of them as they deem proper to give bond to the State in an amount to be fixed by such officer. This statute, however, would have no bearing on the rights of the trustees of a hospital, since it is limited by its terms to the regularly elected county officers. Nor would Section 9 of the General Code, which authorizes officers to appoint deputies and to take from such deputies a bond conditioned for the faithful performance of their duty, apply to the situation you present. That provision is a matter strictly between the principal and his deputy, and is for the protection of the principal who is, by the statute, made responsible for the neglect or misconduct of his deputy.

A former Attorney General had before him the question of the right of the county commissioners to pay premium on bonds which might be required by county officers under the provisions of Section

2981, General Code. And it was held in an opinion, found in Opinions of the Attorney General for 1932, page 1502, that they had such right. The Attorney General gave consideration to Section 9573-1, General Code, holding that by reason of its broad terms, the county was authorized and required to pay the premium not only on bonds specifically required by the statute but also upon those bonds which county officers were authorized to require of their employers by virtue of Section 2981, General Code.

In an opinion found in 1935 Opinions of the Attorney General, page 549, the then Attorney General had before him questions submitted by the Tax Commission, reading as follows:

“Will you please advise if we are authorized to require certain of our employees who handle some money — particularly in the excise tax section — to have surety bonds. If so, may the commission lawfully make an expenditure for this purpose out of its funds allotted for maintenance?”

The answer of the Attorney General, as indicated by the syllabus, was as follows:

“There is no authority in the statutes at the present time for the bonding of employes engaged in the performance of duties for the Tax Commission of Ohio.”

The opinion turned upon the fact that Section 154-14 of the General Code, which had long been in force as a part of the Administrative Code, had authorized the heads of the various administrative departments of the State to require officers and employes in their respective departments to give bond. This section appeared to have been repealed, probably by mistake (113 O. L. 551); but the Attorney General held that because there was then no statute in force authorizing the Tax Commission to require a bond of its employes, the commission was without power to require such bonds, and therefore the Attorney General said it was unnecessary to answer the second part of the question, as to the right of the commission to make an expenditure for that purpose out of the funds allotted for its maintenance. The plain inference from these opinions appears to me to be that the right to pay the premium on such bonds out of public funds was predicated upon the express authority given to the county officers to require such bonds, and,

by inference, is limited to bonds specifically required by law or authorized to be required by the officers in question.

It will be observed that Section 9573-1 uses very general language providing that the premium on the bond of any public officer, deputy or employe shall be paid by the political subdivision concerned. However, I can not bring myself to believe that the legislature intended to give every public officer or board a right to require bonds indiscriminately for all of their employes and to impose the expense thereof on the public treasury. In addition to the somewhat general authority allowed county officers by Section 2981, General Code, in the matter of requiring bonds, there are numerous provisions found in the General Code specifically requiring a bond to be given by certain officers therein named, and it is my opinion that the legislature in passing Section 9573-1, General Code, had in mind these many provisions relative to bonds required or authorized by law and intended to authorize the payment from public funds of the premiums on such bonds and none others.

We may well keep in mind the general principle applying to the various administrative boards and offices created by the statute, that they possess only such powers and privileges as may be delegated to or conferred upon them by the statute. 11 O. Jur., 244; *Com'rs of Lake v. Com'rs of Ashtabula*, 24 O. S., 293; *Com'rs v. Gates*, 83 O. S., 19, 30. In addition to the powers expressly granted, they have only such powers as are necessarily implied from the grant, and acts of such public officers which go beyond the limits of their powers are void. 11 O. Jur., 302.

This principle is especially applicable to the expenditure of public funds, and where there is any doubt as to the right to expend public funds for any purpose, such doubt is resolved in favor of the public and against the grant of power. 11 O. Jur., 519; *State, ex rel. v. Pierce*, 96 O. S., 44.

It is accordingly my opinion, in specific answer to your question, that the trustees of a county hospital have no authority to pay, out of public funds at their disposal, the premium on a bond given to secure the faithful performance of their duties by any of the employes of said board, excepting the bond of the superintendent of such hospital whose bond is provided for by Section 3137 of the General Code, and which

may be paid for out of such public funds by virtue of the provision of Section 9573-1, General Code.

Respectfully,

THOMAS J. HERBERT
Attorney General