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HOSPITAL—PART OF COUNTY HOME—MAINTAINED AND OPERATED BY COUNTY COMMISSIONERS—NOT A COUNTY HOSPITAL—NO AUTHORITY FOR COUNTY COMMISSIONERS TO OPERATE IT AS COUNTY HOSPITAL—SECTION 337 ET SEQ., CHAPTER 339. RC.

SYLLABUS:

A hospital which forms a part of a county home maintained and operated by the county commissioners pursuant to Section 337 et seq., Revised Code, is not a county hospital within the meaning of Chapter 339, Revised Code, and such county commissioners have no authority to operate it as a county hospital.

February 20, 1956

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"The Champaign County, Ohio, Hospital located in conjunction with the county infirmary south of Urbana, has a peculiar status in that it has never been officially set up as a county hospital, it apparently having been originally a hospital attached to the county infirmary which gradually has been developed into a public charitable hospital in addition to taking care of the patients of the county infirmary and is still being operated by the superintendent of the infirmary under the direction of the county commissioners.

"The board of county commissioners has directed me to ask for an opinion from you as to just what is the status of the hospital under the present circumstances, whether it can legally be continued in operation under its present status or whether the statutes governing the the operation of county hospitals should be followed, and whether or not the superintendent of the infirmary and the county commissioners would be personally liable in case of a damage suit by any public patient.

"They have also raised the question of whether or not, if it is set up as a county hospital, the hospital then can continue to care for the inmates of the county infirmary without charge as is now being done.

"Recently the board of county commissioners passed the following resolution:

'BE IT RESOLVED, that anyone owing an unpaid hospital bill be denied admittance to the Champaign County Hospital until arrangement be made with B. Frank Wilkins, Superintendent of the Champaign County Hospital, to pay the unpaid bill and suitable arrangement made for payment of the current bill.'

"I have advised them that in my opinion, inasmuch as they are operating the hospital as a public charitable hospital, such a resolution is illegal.

"The question arose over the refusal to accept as a patient in the hospital an old age pensioner who had previously incurred a hospital bill of approximately \$1,400.00 and some of whose children had agreed to pay the bill but had not done so.

“The commissioners would like an opinion from you as to their authority to refuse admission of patients into the hospital where previous bills are outstanding and unpaid, and particularly where the patient is indigent.”

Sections 337.01 to 337.33, inclusive, of the Revised Code, provides for the operation and maintenance of county homes, formerly referred to in the statutes as “county infirmaries,” and still earlier, as “poor-houses.” These institutions are by the provisions of the sections referred to, placed entirely in the hands of the county commissioners, both as to their erection and management. Section 337.03, Revised Code, requires the commissioners to appoint a superintendent who shall operate the home under rules and regulations adopted by the commissioners.

Such homes are intended mainly for the care of indigent persons who become a county charge. I have had to assume this, for the statutes relating to such homes are singularly vague as to the qualification of inmates, and as to the process of “commitment” of persons to such institutions. The only pertinent provision, so far as I have found is that contained in Section 337.22, Revised Code, reading as follows:

“In any county having a county home, when a board of township trustees or the proper officers of a municipal corporation, after making the inquiry provided by law, are *of the opinion that the person complained of is entitled to admission to such home*, they shall forthwith transmit a statement of the facts to the superintendent of the home. If it appears that such person is legally settled in the township or has no legal settlement in this state, or that such settlement is unknown, and the superintendent of the home is satisfied that such person *should become a county charge*, the superintendent shall account such person as a county charge and shall receive and provide for him in such institution forthwith, or as soon as the physical condition of such person will so permit. The county shall not be liable for any relief furnished, or expenses incurred by the board.” (Emphasis added.)

In Opinion No. 985, Opinions of the Attorney General for 1933, page 988, it was held that persons entitled to be received as inmates in a county home shall become county charges only in the manner provided in that section.

There is no explicit provision in these statutes for the erection of a hospital, but it is clearly implied that such institution may be a necessary part of the home, since many of the inmates are in the institution by reason of advanced age and mental or physical disability making it im-

possible to care for them in their own homes. In my opinion, such hospital facilities could be provided either by a separate building or in a portion of the main building. Section 337.27 authorizes the employment of physicians to furnish medical relief and medicines necessary for the inmates of the home.

No authority whatsoever is given to the county commissioners, in connection with the maintenance and management of such home, to turn the home or any part thereof into a general hospital for the admission of patients. Nor have the commissioners any authority to operate a county hospital. The establishment and maintenance of a county hospital are provided for in Section 339.01 et seq. of the Revised Code. Section 339.01 authorizes the county commissioners to take the first steps leading to the construction of a county hospital. That section provides:

“The board of county commissioners may purchase, appropriate, construct, enlarge, improve, and rebuild a county hospital or hospital buildings. No money shall be expended for the original purchase, appropriation, or construction of such hospital or buildings until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them.” * * *

Section 339.02, Revised Code, provides that upon a favorable vote on the levy of a tax or the issuance of bonds, the board of county commissioners, together with the probate judge of the county and the senior judge of the Court of Common Pleas shall appoint a board of county hospital trustees composed of six electors, who shall erect the hospital. Section 339.06, Revised Code, provides that upon the completion of the construction and equipment of the county hospital, the same board of trustees shall continue the operation of the hospital. This latter section contains the following provision:

“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. It may provide for the free treatment in such hospital of soldiers, sailors, and marines of the county, under such conditions and regulations as it prescribes.”

This provision of the law clearly contemplates that the hospital may furnish its service for compensation to those able to pay for same. There is certainly nothing in the law relative to a county home which contemplates any such procedure, excepting as found in Section 337.23,

Revised Code, where it is provided that when a person becomes a county charge or an inmate of a city infirmary, and is possessed of real or personal property, the proper officers of the infirmary may, by filing a petition in the probate court obtain possession of such property and cause it to be sold and the proceeds of the sale applied to the maintenance of such person, so long as he remains a county charge or an inmate of the infirmary. This does not in my opinion, amount to authority to receive pay patients generally, into the home.

It appears clear to me, from the statements in your letter, that the county commissioners have assumed power which they do not possess, in undertaking to maintain and operate as a county hospital, a building which belongs to and forms a part of the county home.

In an opinion which I rendered on September 11, 1951, being No. 726, Opinions of the Attorney General for 1951, page 478, I had before me a situation somewhat similar to the one which you present. There the county commissioners were in possession of a tract of land with a building which was purchased for a site of a county home, but never was so used. The building was said to be suitable for a hospital, and the commissioners were desirous of using the building for that purpose.

In the course of the opinion attention was called to the statutes to which I have referred outlining the proceedings by which a county hospital may be established, and it was held:

“2. Where a board of county commissioners already owns land and buildings suitable for use as a county hospital, they may convey such property without consideration to a board of county hospital trustees appointed under authority of Section 3131, General Code, provided such trustees are willing to accept it for such use; and the tax levy or bond issue submitted to a vote of the electors in such case under the provisions of Section 3127, General Code, should be sufficient in amount to provide only for such necessary and proper furniture, fixtures and equipment as will place such building in suitable condition for operation as a hospital.”

The adoption of the procedure there approved would appear to involve, in your present situation, (1) a determination by the commissioners that the county home hospital facilities are not needed for the county home; (2) the submission to the electors of the county of a tax levy or bond issue, as provided in Section 339.01, Revised Code, for meeting the cost of the necessary furniture, fixtures and equipment for the

hospital, (3) the appointment of a board of hospital trustees in the event a favorable vote is given on such tax levy or bond issue, and (4) the conveyance of the building to the hospital trustees.

Coming to that part of your inquiry which relates to the action of the county commissioners in declaring that anyone owing a hospital bill shall be denied admittance to the hospital until arrangements are made with him to pay his arrearage, it is manifest that that action would have no legal sanction because the county commissioners have no legal authority to operate a county hospital, and further because in the operation of a hospital, as an incident of the county home, they have no authority to accept boarding patients. Whether the trustees of a county hospital, if such should be appointed to take over the present hospital, might take such action appears to me to be too remote to require consideration at the present time, and that question is not included in your inquiry.

Accordingly, it is my opinion that a hospital which forms a part of a county home maintained and operated by the county commissioners pursuant to Section 337 et seq., Revised Code, is not a county hospital within the meaning of Chapter 339., Revised Code, and such county commissioners have no authority to operate it as a county hospital.

Respectfully,

C. WILLIAM O'NEILL

Attorney General