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TUBERCULOSIS HOSPITAL, DISTRICT — FUNDS TO MEET COUNTY'S APPORTIONED SHARE OF EXPENSE—IMPROVEMENTS, REPAIRS, ADDITIONS TO HOSPITAL — MAY BE RAISED BY LEVY IN EXCESS OF TEN MILL LIMITATION—SECTION 5625-15a GC.

SYLLABUS:

Funds for use in meeting a county's apportioned share of the expense of improvements, repairs and additions to a district tuberculosis hospital may be raised by a levy in excess of the ten mill limitation, as provided in Section 5625-15a, General Code.

Columbus, Ohio, July 31, 1953

Hon. Rodney R. Blake, Prosecuting Attorney
Shelby County, Sidney, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Shelby County along with several other counties has established a district tuberculosis hospital which is located in Allen County, Ohio. This hospital is in need of improvements, repairs, and additions. Shelby county contributes annually from the general fund for care, treatment and maintenance of Shelby County patients at this hospital, but a larger sum is needed for the proposed improvement (i.e., apportioned share of Shelby County), and it will therefore be necessary to ask for a levy outside of the ten mill limitation for such purpose.

"Section 5625-15a, Ohio General Code, provides in part as follows:

"The board of county commissioners of any county * * * may declare * * * that the amount of taxes which may be raised within the ten mill limitation will be insufficient to provide an adequate amount for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county * * *."

"Section 3139, Ohio General Code, defines 'maintenance, care and treatment' to include proper housing.

"Section 3139-5 would seem, however, to limit the authority of the commissioners to borrow money in meeting the expense of such improvements and repairs.

"We therefore request your opinion as to the following questions:

"1. For the purpose of repairing, improving and adding to a tuberculosis hospital, may the county commissioners proceed under Section 5625-15a?"

"2. If not, is it proper to proceed under Section 5625-15?"

Section 3139-5, General Code, to which you have referred, reads in part:

"The first cost of the hospital, and the cost of all betterments, repairs and additions thereto, as determined by the board of trustees, shall be paid by the counties comprising the district, in pro-

portion to the taxable property of each county as shown by their respective duplicates. To meet the expenses incurred in the purchase of a site or enlargement thereof, and for the erection and equipment of buildings, or for the purpose of enlarging, improving or rebuilding thereof, or for purchasing an interest in a district tuberculosis hospital, the commissioners may borrow such sum or sums of money as may be apportioned to the county, at a rate of interest not to exceed five per cent per annum, and issue and sell the bonds of the county to secure the payment of the principal and interest thereof. * * *

The provision in this language that the commissioners may borrow funds needed to meet the cost of additions, betterments and repairs at once suggests that such method of raising funds is discretionary, and that alternate methods are available. In considering the import of this section in my opinion No. 2586, dated May 14, 1953, I said:

“Although this section does not expressly authorize a tax levy to provide such funds, or to repay the amount borrowed for such purpose, we find the following language in the section immediately following, i.e., in Section 3139-6, General Code:

“All taxes levied by the county commissioners of any county under the provisions of section 6 (G. C. 3139-5) of this act shall, when collected, be paid over to the trustees of the district tuberculosis hospital upon the warrant of the county auditor, at the same time that school and township moneys are paid to the respective treasurers; and the board of trustees shall receipt therefor and deposit said funds to its credit in banks or trust companies to be designated by it and said banks or trust companies shall give to said board, a bond therefor in an amount at least equal to the amount as so aforesaid deposited; and thereupon said funds may be disbursed by said board of trustees for the uses and purposes of said district tuberculosis hospital, and accounted for as provided in the foregoing sections. * * *

“From this language it would appear that the commissioners may either (1) borrow the necessary funds, appropriate them to the use of the hospital, and pay them over to the trustees at once, or (2) appropriate such funds in anticipation of the receipt of proceeds of current levies. * * *

If the commissioners may raise funds for the purpose above indicated either by borrowing or by use of the proceeds of current levies, as I conclude they may, then I perceive no basis for the supposition that the language in Section 3139-5, supra, relative to borrowing, is in any essential respect a limitation on the tax levying power for such purposes, provided, of course, that the aggregate amounts levied do not exceed the county's apportioned share.

The authorization to make a levy in excess of the ten mill limitation for tuberculosis hospital purposes is found in Section 5625-15a, General Code, which reads :

“The board of county commissioners of any county, at any time prior to September 15 in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the county commissioners have contracted pursuant to the authority granted in section 3139 of the General Code, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the county commissioners have contracted pursuant to the authority granted in section 3139 of the General Code, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purposes, but the total levy for this purpose shall not exceed sixty-five one hundredths of a mill.

“Such resolution shall conform to the requirements of section 5625-15 of the General Code and be certified and submitted in the manner provided in section 5625-17 of the General Code.

“If the majority of electors voting on a levy to supplement general fund appropriations for the support of tuberculosis hospitals, or for the care, treatment and maintenance of residents of the county who are suffering from tuberculosis at hospitals with which the county commissioners have contracted pursuant to the authority granted in section 3139 of the General Code, vote in favor thereof, the board of county commissioners of said county may levy a tax within such county at the additional rate outside the ten-mill limitation during the period and for the purpose stated in the resolution or at any less rate or for any of the said years.”

In Section 3139, General Code, we find the following provision :

“* * * By maintenance, care and treatment is meant proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational and pre-vocational rehabilitation, or other services, as the medical superintendent of each tuberculosis institution may prescribe. * * *”

When these provisions are considered in *pari materia*, the argument might be advanced in support of a strictly technical view that the “main-

tenance of residents of the county who are suffering from tuberculosis at hospitals" should include only provision for housing improvements which are necessary to adequate care of patients who are now actually "suffering * * * at hospitals," and does not authorize a levy to provide *additions* for the purpose of providing facilities for the treatment of an added number of persons not yet admitted to such hospitals.

It does not appear necessary, however, to resolve this point, for we may observe that Section 5625-15a, *supra*, authorizes a special levy not only for the purpose noted above, but also "for the *support of tuberculosis hospitals*, or for the care, treatment and maintenance of residents," etc. (Emphasis added.) The word "support" is defined, in the sense in which I deem it here to be used, in Webster's New International Dictionary, as follows:

"Act of providing means of maintenance; maintenance."

In my opinion No. 2877, dated July 22, 1953, I expressed the view that:

"* * * when the word 'maintenance' is used in connection with an institution, its meaning is not confined to the upkeep of buildings unless that meaning is clearly expressed, but that the word means the support and operation of the entire institution, including the buildings and all its functions."

Applying a similar view in the instant case, it becomes necessary to conclude that "support of tuberculosis hospitals" comprehends expenditures for the "improvements, repairs and additions" mentioned in your inquiry.

Accordingly, in specific answer to your inquiry, I conclude that funds for use in meeting a county's apportioned share of the expense of improvements, repairs and additions to a district tuberculosis hospital may be raised by a levy in excess of the ten mill limitation as provided in Section 5625-15a, General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General