

OPINION NO. 73-013

Syllabus:

Where a county tax levy has been passed to provide care for tuberculosis patients either in a hospital or in a clinic, the money may be used to obtain supplies and equipment for the clinic.

To: Michael Nolan, Athens County Pros. Atty., Athens, Ohio
By: William J. Brown, Attorney General, February 28, 1973

You have requested my opinion as to whether funds, levied both for tuberculosis clinic services in your county, and for the hospitalization of county residents suffering from the tuberculosis, may be used to provide supplies and equipment for the operation of the clinic. The tax levy, which was passed in 1968, reads as follows:

PROPOSED RENEWAL OF A TAX LEVY

FOR TUBERCULOSIS CLINIC SERVICES AND FOR
THE HOSPITALIZATION OF ATHENS COUNTY RESI-
DENTS WITH TUBERCULOSIS.

A renewal of a tax for the benefit of Athens County for the purpose of providing an adequate amount for the care, treatment and maintenance of residents of Athens County who are suffering from tuberculosis at hospitals with which the board of commissioners has contracted and for the support of tuberculosis clinic services, at a rate of .6 mill which amounts to six cents (.06) for each one hundred dollars of valuation for a period not to exceed five years beginning with the tax year 1969.

I assume that this was either a special levy within the ten-mill limitation under R.C. 5705.06 (A), or a special levy

in excess of the ten-mill limitation under R.C. 5705.20. The clinic itself was established in 1971. I am informed that the necessity for hospitalization of tuberculosis patients is diminishing, and that most patients are now treated in the clinic.

The clinic was established by the board of county commissioners pursuant to authority granted by R.C. 339.39, which reads in part as follows:

The board of county commissioners of any county * * * may establish and maintain one or more tuberculosis clinics in the county, may employ physicians, public health nurses, and other persons for the operation of such clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis, and may provide by tax levies, or otherwise, the necessary funds for such clinics to be established, maintained, and operated. Clinics so established shall be under the control of the board of county commissioners, and shall be supervised by a board of three trustees, similar in all respects to and with all the powers enjoyed by a board of trustees of a county tuberculosis hospital, or by a city or general district board of health within the county, as the board of county commissioners designates. (Emphasis added.)

There can be no doubt of the authority of a board of county commissioners to establish and operate a clinic for the examination, diagnosis and treatment of those suspected of having tuberculosis. Chalfant v. State, 37 Ohio St. 60, 62 (1881); Opinion No. 5308, Opinions of the Attorney General for 1942. This is a proper exercise of the police power of the state "in the performance of its duty to provide for the health, safety and best interest of the people." Brissel v. State, ex rel. McCommon, 87 Ohio St. 154, 162 (1912). "Of necessity the police power must be as expansive as the public needs." McNab v. Cleveland Park Board, 108 Ohio St. 497, 502 (1923).

Under the plain and unambiguous language of R.C. 339.39 a board of county commissioners is clothed with authority to establish, and to operate, a tuberculosis clinic. That language provides that a board "may provide by tax levies, or otherwise, the necessary funds for such clinics to be established, maintained, and operated." It is obvious that, for the maintenance and operation of a clinic, supplies and equipment are necessary. The 1968 tax levy in your county was adopted to provide hospital care for tuberculosis patients and "for the support of tuberculosis clinic services." I can only conclude that intent was to provide funds for the establishment, maintenance and operation of a clinic. By necessary implication, this means the purchase of equipment and supplies.

The levy was adopted for the single purpose of providing care for those suffering from tuberculosis, and I am not aware of any challenge to its validity. There is no evidence of any intent to allot definite proportions to hospital care and to clinical services. Consequently, if the need for hospitalization

is no longer so pressing, the funds are available for operation of the clinic.

In specific answer to your question it is my opinion, and you are so advised, that where a county tax levy has been passed to provide care for tuberculosis patients either in a hospital or in a clinic, the money may be used to obtain supplies and equipment for the clinic.