

365

HOSPITAL, COUNTY—COUNTY NOT PERMITTED TO VOTE SPECIAL TAX LEVY FOR MAINTENANCE—TEN MILL LIMITATION—SECTIONS 3127 TO 3138-4 G. C.—ADDITIONAL TAX FOR SUCH PURPOSE—MAY BE SUBMITTED TO ELECTORS—SECTION 5625-15 ET SEQ., G. C.

SYLLABUS:

A county is not permitted to vote a special tax levy for maintenance of a county hospital outside of the ten mill limitation under Sections 3127 to 3138-4 of the General Code. An additional tax for such purpose may be submitted to the electors under Section 5625-15, General Code, and related sections.

Columbus, Ohio, April 7, 1949

Hon. Clark Wickensimer, Prosecuting Attorney
Fayette County, Washington C. H., Ohio

Dear Sir:

This is to acknowledge receipt of your letter requesting an opinion, which reads:

“Fayette County is about to start building a county hospital as authorized under Sections 3127 to 3138-4, inclusive, of the General Code. We anticipate that the hospital will not pay its way, and will the county be permitted to vote a special tax levy for the maintenance of said county hospital outside of the ten mill limitation.”

Section 3127, General Code, provides:

“The county commissioners shall have power to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital or hospital buildings. But no money shall be expended for the original purchase, appropriation or construction thereof, until a tax levy or bond issue therefor has been submitted to the electors of the county and approved by them in the manner provided by law. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county.”

You will note that the above section makes no provision for maintaining the hospital, however, paragraphs 3 and 7 of Section 3137 of the General Code provide:

“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 as it deems expedient; it shall have control of the property of the hospital and deposit all moneys 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 warrant of the county auditor, issued pursuant to the orders of the trustees.”

“The trustees shall annually on the first day of March file with the county commissioners a statement of their receipts and expenditures for the preceding year and shall submit to such commissioners an estimate of the financial requirements of such hospital for the ensuing year.”

It is further provided in Section 3138 of the General Code that :

“On the first Monday in April of each year, the hospital trustees shall file with the commissioners of the county a report of their proceedings with reference to the hospital, and a statement of their receipts and expenditures during the year. At such time the trustees shall certify the amount necessary to maintain and improve the hospital for the ensuing year.”

County commissioners are creatures of statute and have only such powers and duties as are expressly given them by law and such as are naturally and necessarily implied therefrom.

The above cited sections are *pari materia* and as such must be construed together. You will note that Section 3127 gives the county commissioners specific authority to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital, but no provision is made for the maintenance of same therein, however, Section 3137 and Section 3138 imply maintenance. Construing the sections together, it necessarily follows that the county commissioners, through the board of trustees, have authority to maintain the same.

If your county commissioners desire to submit to the electors the question of an additional tax for the purpose of maintaining the hospital, they may proceed under the provisions of Section 5625-15, General Code, and related sections. Such expenses, in my opinion, are included in the general classification of “Current expenses of the subdivision,” referred to in paragraph 1 of that section. See also paragraph “f” of Section 5625-1 of the General Code, which defines “current expenses” as “lawful expendi-

tures of a subdivision, except those for permanent improvements and except payments for interest, sinking fund and retirement bonds, notes and certificates of indebtedness of the subdivision.”

It is therefore my opinion that a county is not permitted to vote a special tax levy for maintenance of a county hospital outside of the ten mill limitation under Sections 3127 to 3138-4 of the General Code. An additional tax for such purpose may be submitted to the electors under Section 5625-15, General Code, and related sections.

Respectfully,

HERBERT S. DUFFY,
Attorney General.