

**Note from the Attorney General's Office:**

1969 Op. Att'y Gen. No. 69-089 was overruled by  
1991 Op. Att'y Gen. No. 91-035.

## OPINION NO. 69-089

## Syllabus:

A taxing subdivision, be it a municipality or township, may not pass a levy under the provisions of Section 5705.191, Revised Code, for the support of a general hospital run by a private not-for-profit corporation.

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To: Bernard W. Freeman, Huron County Pros. Atty., Norwalk, Ohio  
By: Paul W. Brown, Attorney General, July 28, 1969

I have received your request for my informal opinion on the following question:

"May the taxing subdivision, be it a municipality or township, pass a levy under the provisions of Section 5705.191, Revised Code, for the support of a hospital in excess of the one mill limitation set under Sections 749.01 and 513.01, Revised Code?"

Section 5705.191, Revised Code, states in pertinent part:

"The taxing authority of any subdivision \* \* \* by a vote of two-thirds of all its members, may declare by resolution \* \* \* that it is necessary \* \* \* to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: \* \* \* support of general \* \* \* hospitals \* \* \* the question of such additional tax levy shall be submitted to the electors \* \* \* "

In reviewing the information which you have forwarded to me, I note that the hospital in question is The New London Hospital, a private not-for-profit corporation. I have no evidence before me of any contract between the corporation and any municipality or township for hospital services. Therefore, if money were levied under this statute, it would be for the support of a private not-for-profit corporation with which there is no contract.

I first call your attention to Opinion No. 394, Opinions of the Attorney General for 1945. The question presented in Opinion No. 394, supra, was whether or not the county could levy a tax

under what is now Section 5705.20, Revised Code, for the purpose of paying for the care of tuberculosis patients at hospitals with which the commissioners had contracted. My predecessor at that time ruled that the county could not levy such a tax, stating as follows:

"\* \* \* 'support of tuberculosis hospitals,' applies only to tax levies for the support of a tuberculosis hospital owned by the county making the levy, or for the support of a district tuberculosis hospital in the erection of which the county has joined, and that it makes no provision for the levying of a tax for the purpose of paying for the care, treatment and maintenance of patients at hospitals with which the county commissioners may have contracted \* \* \*"

(Emphasis added)

You will note that the present Section 5705.191, Revised Code, carries over this language of "support of general or tuberculosis hospitals." The problem inherent in this situation is a possible conflict with Section 6, Article VIII of the Ohio Constitution, which states in part:

"No laws shall be passed authorizing any \* \* \* city \* \* \* or township, by a vote of its citizens \* \* \* to raise money for \* \* \* any \* \* \* company, corporation, or association \* \* \*"

However, as stated in Opinion No. 180, Opinions of the Attorney General for 1915:

"\* \* \* a contract between a municipal corporation and a hospital \* \* \* whereby the municipality merely pays the hospital for actual services rendered in the care of the sick poor, would not be prohibited by article 8, section 6 of the constitution. The distinction here is between payment for actual services rendered and the payment of the proceeds of a whole tax levy, regardless of the amount thereof. \* \* \*"

I will agree that the description of The New London Hospital does apparently fit that of a general hospital for medical purposes. See Opinion No. 2070, Opinions of the Attorney General for 1947. However, I conclude that as used in the context of Section 5705.191, Revised Code, support of a general hospital is support of a general hospital owned by a county or municipality or other governmental entity.

It is, therefore, my opinion and you are hereby advised that a taxing subdivision, be it a municipality or township, may not pass a levy under the provisions of Section 5705.191, Revised Code, for the support of a general hospital run by a private not-for-profit corporation.