

1159

HOSPITALS, COUNTY—SPECIAL PROVISIONS, SECTION 3137 ET SEQ., G. C. RENDER INAPPLICABLE PROVISIONS OF SECTION 5625-13a ET SEQ., G. C.—TRANSFER OF PUBLIC FUNDS—ORIGINAL CONSTRUCTION OF COUNTY HOSPITALS—MANNER IN WHICH FUNDS OBTAINED.

SYLLABUS:

The special provisions of Section 3127 et seq., General Code, governing the original construction of county hospitals, and prescribing the manner in which public funds for such construction shall be obtained, render inapplicable the provisions of Section 5625-13a et seq., General Code, relating to the transfer of public funds.

Columbus, Ohio, August 16, 1946

Hon. Harold K. Bostwick, Prosecuting Attorney
Chardon, Ohio

Dear Sir:

This will acknowledge receipt of your letter from which it appears that Geagua county is contemplating the original construction of a county hospital under authority of Section 3127, et seq., General Code, and requesting my opinion on the question whether or not money may be transferred for that purpose from the county general fund under Section 5625-13a, General Code, to the county hospital fund mentioned in Section 3134.

Section 5625-13a, General Code, reads as follows:

“In addition to the transfers authorized in section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes.”

The construction of county hospitals is authorized by Section 3127, et seq., General Code, and special provision is made therein for financing the cost of original construction, and the manner in which the necessary funds therefor may be provided. The sections and portion of sections pertinent to your question are as follows:

Section 3127, after authorizing in general terms the purchase, appropriation or construction of county hospitals, contains the following express limitation on the exercise of such authority :

“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.”

Section 3131 :

“If a tax levy or bond issue for such purpose is approved by vote of the electors in the manner provided by law, the deputy state supervisors of elections for such county shall certify the result of such election to the governor of the state ; whereupon the governor shall, within ten days after the receipt of such certification, appoint a board of county hospital trustees, composed of four freeholders of such county. * * *

Such hospital trustees shall serve until such hospital be fully completed and sufficiently equipped for occupancy, whereupon their successors shall be appointed as hereinafter provided.”

Section 3132 :

“Such board of trustees shall have full charge and control of the selection and purchase of a site for such hospital (taking title thereto in the name of the county), the selection of plans and specifications, the determination and erection of all necessary buildings thereon, and of the selection and installation of all necessary and proper furniture, fixtures and equipment therefor. * * *”

Section 3134 :

“All funds arising from a special tax levy or bond issue for the purchase, appropriation or construction of such county hospital, and contributions thereto, shall be placed in the county treasury to the credit of a fund to be known as the ‘County Hospital Fund.’ And such fund shall be paid out on the order of said board of county hospital trustees, certified by the chairman and secretary thereof.”

Section 3135 :

“Before making a contract for the expenditure of money on any structure or improvement in excess of one thousand dollars, the hospital trustees shall advertise according to law for bids, and cause plans, specifications and detailed drawings to be distributed among the bidders.”

Section 3136:

“When said hospital shall have been fully completed and sufficiently equipped for occupancy as hereinbefore provided, the county commissioners shall appoint a board of four trustees as follows: * * *”

It will thus be seen that under the express terms of these statutes no public money may be expended for the original construction of a county hospital, unless such funds are provided either by a voted tax levy or a voted bond issue; that a board of hospital trustees to construct and equip the hospital may not be appointed by the governor until after the tax levy or bond issue has been submitted to and approved by the electors; that a hospital board appointed by the governor is the only board authorized to take full charge and control of selecting the site, erecting and equipping the necessary buildings; and that it is required that all funds arising from a voted tax levy or voted bond issue for such original construction, or from contributions, shall be placed in the county treasury to the credit of a fund to be known as the “County Hospital Fund”, and paid out only on the order of the hospital board just referred to.

In an opinion reported in Opinions of the Attorney General for 1929, page 143, it was held:

“Unless the procedure prescribed in Sections 3127 and 3131, General Code, for a tax levy or bond issue to purchase, appropriate or construct a county hospital or hospital buildings, is taken, the governor of the state is without power or authority to appoint a board of county hospital trustees.”

And in another opinion reported in Opinions of the Attorney General for 1930, page 1836, it was held:

“In the event a county proposes to construct a new county hospital pursuant to authority of the electors, proceedings therefor should be taken under the provisions of Section 3127, et seq., of the General Code.”

While Section 5625-13a, hereinabove quoted, after providing in general terms for the transfer of public funds from one fund to another, also contains certain exceptions to the exercise of such authority, it was in effect held in *Niles v. Union Ice Corporation*, 133 O. S., 169, and *Lake-wood v. Rees*, 132 O. S., 399, that these exceptions were not in all cases

exclusive. In other words, that the general provisions of Section 5625-13a authorizing the transfer of funds do not apply when in conflict with the express provisions of another statute which specify and limit the uses to which a particular fund may be applied, such as Section 3959, General Code, relating to waterworks funds.

I believe that the legal principle recognized and applied in these two cases with respect to waterworks funds, may also be applied in cases, such as the one you present, involving the original construction of a county hospital under the provisions of Section 3127, et seq. As already pointed out, these statutes in clear and express terms not only provide the manner in which the funds for the original construction of a county hospital may be obtained, but also prohibit the expenditure of any money for such construction unless a tax levy or bond issue therefor has been submitted to and approved by the electors. Stated differently, it seems to me that the electorate of the county is the authority that is to decide whether or not public funds may be expended for the original construction of a county hospital, and that if the electorate decide in the affirmative, the public funds to be expended for such construction are those to be raised by the tax levy or bond issue which they have approved.

If, notwithstanding the express and specific terms of Section 3137 et seq., which require the approval of the electors in original construction cases before money may be expended therefor, the authorities mentioned in the Section 5625-13a group of statutes should approve a transfer from the general fund, their action would be a useless ceremony, because, without such approval, the governor would be without authority to appoint the only board which Sections 3131 and 3132 designate as the board having the power and authority to construct and equip the hospital and to control and disburse the fund.

You are therefore advised that the special provisions of Section 3127 et seq., governing the original construction of county hospitals, and prescribing the manner in which public funds for such construction shall be obtained, render inapplicable the provisions of Section 5625-13a et seq., General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.