

555

HOSPITAL, COUNTY—COUNTY COMMISSIONERS MAY CONSTRUCT—WHEN HOSPITAL COMPLETED AND EQUIPPED IT MAY BE LEASED TO CORPORATION NOT FOR PROFIT—LEASE MAY NOT BE INCONSISTENT WITH NEED OF LAND FOR PUBLIC USE BY COUNTY—SECTIONS 2447, 3127, ET SEQ., G. C.

SYLLABUS:

County commissioners may construct a county hospital in accordance with Section 3127, et seq., General Code, and immediately, upon completion of the construction and equipping of said hospital, may lease said hospital to a corporation not for profit for hospital purposes under the power granted by Section 2447, General Code, if such lease shall be deemed by the commissioners not to be inconsistent with the need of such land for public use by the county.

Columbus, Ohio, July 20, 1951

Hon. Sumner J. Walters, Prosecuting Attorney
Van Wert County, Van Wert, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Please render your opinion for me stating whether or not the county commissioners may construct a county hospital in accordance with General Code of Ohio, Section 3127 et seq., and immediately, upon completion of the construction of said hospital, lease said hospital to a private corporation incorporated for hospital purposes, as General Code of Ohio, Section 2447 indicates that they might do.”

Under the terms of Section 3127, General Code, to Section 3135, General Code, the County Commissioners have power to construct a county hospital or hospital buildings. Subsequent to the procedure outlined therein for the issuance of bonds and the appointment of trustees for the construction of the hospital, the activities of the board of trustees are governed by Section 3131, General Code, which reads as follows:

“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 board shall be bi-partisan, with two members from each of the two political parties casting the highest number of votes in such county for their respective candidates for governor at the next preceding gubernatorial election. And the governor shall forthwith notify the persons so selected of their appointment as such trustees, by mail, and fix a date not more than ten days later when such trustees shall meet at the county seat of such county to organize such board.

“On the date thus fixed such trustees shall meet and organize such board by electing one of their number as chairman and another as secretary. The county commissioners shall fill all vacancies which may occur in such board of trustees, as well as in the board of hospital trustees hereinafter provided for, which may result from death, resignation or removal from office. Such board of trustees shall hold such meetings as the performance of its duties may require and shall keep a record of its proceedings and a strict account of all its receipts, disbursements and expenditures; and upon completion of their duties as herein provided, they shall file such account with the board of county commissioners and make final settlement with such board.

“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.”

The above statute contemplates that the board of trustees, appointed by the governor, shall have full charge and control of the selection and purchase of the site, erection of necessary buildings, and the installation of all necessary and proper furniture, fixtures and equipment. The above section also makes specific provision for an accounting to the county commissioners of the receipts, expenditures and disbursements of said board.

Under the procedure as outlined in Section 3127, et seq., General Code, the county commissioners then have the power to appoint a board of operating trustees to operate the hospital which was built and equipped by their predecessors.

The authority of county commissioners to sell real estate, the title to which is vested in the county, has been recognized in Ohio from an early date.

“Where real estate is vested absolutely in the county com-

missioners for public purposes, they may dispose of it in the same manner as individuals could."

Reynolds v. Commissioners, 5 Ohio, 204.

It has been further held that the power to sell land also included the lesser power to lease. Opinion No. 1250, Opinions of the Attorney General for 1924, Vol. I, (p. 110). The sale or lease of real estate belonging to a county is governed by Section 2447, General Code, which reads as follows:

"If, in their opinion, the interests of the county so require, the commissioners may sell any real estate belonging to the county, and not needed for public use, or may lease the same, but no such lease shall be for a longer term than one year; provided, however, that in any event they may grant leases, rights, and easements to municipalities or other governmental subdivisions for public purposes, or to corporations not for profit for hospital or charitable purposes, including among other such purposes memorial structures and underground structures, on or in lands owned by the county where such lease, right or easement shall not be deemed by the commissioners to be inconsistent with the need of such land for public use by the county. Any such lease, right or easement so granted to a municipality or other governmental subdivision or to corporations not for profit for hospital or charitable purposes, may be for such length of time or period of years and upon such terms and for such purposes and may provide for such renewals thereof as said commissioners may deem to be for the best interests of the public; and in case of the sale of such real estate not used for county purposes, and in case of such a grant of lease, right or easement to a municipality or other governmental subdivision, or to corporations not for profit for hospital or charitable purposes, all or such part of the proceeds thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for construction equipment, furnishing, maintenance or repair of the county buildings and for the acquisition of sites therefor."

This section prior to 1947 did not specifically grant the power to grant leases, rights or easements to corporations not for profit. However, by the amendment of the above quoted section by Amended Senate Bill 309, 122 Ohio Laws, 373, Section 1, the specific power to grant long-term leases to non-profit corporations for hospital or charitable purposes was granted to the county commissioners by the legislature. The power thus granted by the legislature includes all implied powers as are necessary and incident to carry out the power granted.

At the time of the above mentioned amendment the statutes pertaining to the building of county hospitals by the county commissioners were in effect. Therefore, it may be assumed that the legislature, by the above amendment, gave to the county commissioners the power to lease a hospital, built in accordance with the procedure outlined in Section 3127, et seq., General Code, to a non-profit corporation for hospital or charitable purposes in addition to their already existing power to appoint a board of operating trustees for the operation of such hospital.

Therefore, in specific answer to your request, it is my opinion and you are hereby advised that county commissioners may construct a county hospital in accordance with Section 3127, et seq., General Code, and immediately, upon completion of the construction and equipping of said hospital, may lease said hospital to a corporation not for profit for hospital purposes under the power granted by Section 2447, General Code, if such lease shall be deemed by the commissioners not to be inconsistent with the need of such land for public use by the county.

Respectfully,

C. WILLIAM O'NEILL
Attorney General