

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2188 was overruled as a result of legislative enactment by 2019 Op. Att'y Gen. No. 2019-006.

2188

A COUNTY BOARD OF TRUSTEES OF A COUNTY HOSPITAL IS WITHOUT AUTHORITY TO CONTRACT WITH A PROFESSIONAL HOSPITAL CONSULTING FIRM TO SURVEY COMMUNITY-WIDE HOSPITAL FACILITIES AND NEEDS PROJECTED OVER A SPECIFIED PERIOD—§§339.01 TO 339.14, INCLUSIVE, R.C.

SYLLABUS:

Under Sections 339.01 to 339.14, inclusive, Revised Code, dealing with county hospitals, a board of trustees of a county hospital is without authority to contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over a specified period.

Columbus, Ohio, May 18, 1961

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Trustees of the Cuyahoga County Hospital have requested that I seek of you an opinion with respect to the following question:

“May the hospital trustees contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over the next ten to fifteen years.

“I have rendered an opinion predicated on Attorney General’s Opinion No. 3063, dated September 25, 1953 to the effect that the Board of Trustees are without authority to enter into such a contract.”

Sections 339.01 and 339.02, Revised Code, provide for the establishment of a county hospital in a county. Under Section 339.02, *supra*, a board of county hospital trustees is appointed to establish the hospital. Section 339.03, Revised Code, dealing with the powers and duties of the board, provides:

“The board of county hospital trustees shall have complete charge of the selection and purchase of a site for a county hospital, taking title to such site in the name of the county, the selection of plans and specifications, the determination and erection of all necessary buildings on such site, and of the selection and installation of all necessary and proper furniture, fixtures, and equipment.

“The trustees shall serve without compensation, but shall be allowed their necessary and reasonable expenses incurred in the performance of their duties. Such expenses shall be paid out of the funds provided for such hospital. The board of county hospital trustees may employ such help as is necessary to perform its clerical work, superintend properly the construction of such hospital, and pay the expenses thereof, including the salary of the administrator as provided in section 339.06 of the Revised Code, out of the funds provided for such hospital.

“The board of county hospital trustees with the approval of the county commissioners may employ counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts.

“Each trustee shall give bond for the proper performance of his duties, in such sum as the board of county commissioners requires, with sureties to its approval.”

Section 339.06, Revised Code, further provides :

“The board of county hospital trustees shall, upon completion of construction and equipping of the county hospital, assume and continue the operation of such hospital. The board of county hospital trustees shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

“The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation. The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. * * * The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees *for uses and purposes of such hospital, for the replacement of necessary equipment, or*

for the acquiring of or construction of permanent improvements to county hospital property.

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(Emphasis added)

As public officers, the members of a board of county hospital trustees have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated (37 Ohio Jurisprudence, Section 74, pages 933, 934). On reviewing the above-noted provisions of Sections 339.03 and 339.06, Revised Code, I am unable to find any specific authority for a board of hospital trustees to contract with a consulting firm to survey community-wide hospital facilities and needs projected over the next ten to fifteen years. Nor do I believe that such authority is necessarily implied for the board to effectuate its statutory duties. Also, I am unable to find such express or implied authority anywhere in Sections 339.01 to 339.14, inclusive, Revised Code, which sections deal with county hospitals. In this regard, I might add that in my opinion the “uses and purposes of such hospitals” as used in Section 339.06, *supra*, must necessarily refer only to those uses and purposes authorized by law.

In Opinion No. 3063, Opinions of the Attorney General for 1953, page 462, one of my predecessors had occasion to consider a question somewhat similar to that here presented. In that instance the question concerned the authority of a board of county commissioners or the county department of welfare to contract with a person or organization for the purpose of making a survey of the welfare department. The conclusion of my predecessor, as found in the syllabus of the opinion, reads:

“Neither the director of the county department of welfare nor the commissioners of the county are authorized by law to contract with a person or organization outside of the staff of the welfare department or of the commissioners, for the purpose of making a survey of the welfare department.”

At page 464 of said Opinion No. 3063 it is stated:

“In ascertaining the powers that may be exercised by a county or by any of its boards or commissions, we are not permitted to indulge, in any degree, the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature, and the county commissioners and other officers of the county have only those powers which the legislature has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers

granted. 11 Ohio Jurisprudence, page 332. This rule is particularly emphasized in matters involving the expenditure of public money. In 11 Ohio Jurisprudence, page 573, it is said :

“ ‘The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.’

“State ex rel. Locher v. Menning, 95 Ohio St., 97. These principles are, I believe, too well settled and recognized to require extensive citation of authority.”

In reaching his conclusion my predecessor also cited the case of *Gorman v. Heuck*, 41 Ohio App., 453, which concerned the authority of a board of county commissioners to enter into a contract with a private organization to make certain studies relative to county affairs. At page 458 of that case the court said :

“If then, there be no statutory authority permitting such expenditures out of public funds, all that is contended and introduced in evidence can be but strong and impelling matter for the consideration of the Legislature, but unavailing to a court limited to approval of drafts upon the treasury authorized by the statute laws of this state.”

I believe that the reasoning found in Opinion No. 3063, *supra*, and in *Gordon v. Heuck*, *supra*, may be applied to the instant question which also deals with the authority of a public body to act in a certain situation.

In view of the foregoing, therefore, it is my opinion and you are advised that under Sections 339.01 to 339.14, inclusive, Revised Code, dealing with county hospitals, a board of trustees of a county hospital is without authority to contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over a specified period.

Respectfully,

MARK MCELROY

Attorney General