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COUNTY COMMISSIONERS CANNOT EXPEND PUBLIC FUNDS TO PAY HOSPITAL BILLS, EXCEPT FOR THOSE PERSONS MENTIONED IN §§311.20, 339.11, AND 5106.01, REVISED CODE.

SYLLABUS:

A board of county commissioners has no authority to expend public funds to pay hospital bills, except hospital bills for those persons mentioned in Sections 311.20, 339.11, and 5106.01, Revised Code.

Columbus, Ohio, October 12, 1961

Hon. Robert H. Huffer, Prosecuting Attorney
Pickaway County, Circleville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I have the pleasure to request your opinion as to the following queries concerning bills of injured persons at a joint city county hospital.

"1) Where a person is injured not upon or along a public highway, and thereafter taken to the joint city county hospital for emergency treatment by a member of the sheriff's department, and said person fails to pay the bill incurred for his treatment at said hospital, what, if any, is the liability or responsibility of the county to pay said bill?

"Is there any difference if said person is placed under arrest?

"May the County Welfare Department pay such a bill?

"2) What responsibility or liability does the county incur for hospital and/or medical bills for persons injured after being arrested, either before or during incarceration?

It is a well established rule that a board of county commissioners has only such powers as are conferred by statute. *Elder v. Smith*, 103 Ohio St., 369 (1921). This rule is particularly applicable to the power to expend public funds which, it is said, can be only disbursed under a clear legislative grant, and any doubt must be resolved in favor of the public and against the grant. 44 Ohio Jurisprudence, 381, Public Funds, Section 18.

The legislature in Sections 513.08 and 549.16, Revised Code, has granted a board of county commissioners power to expend public funds to contribute toward the support and operation of a municipal hospital (sometimes inadvertently referred to as a "joint city county hospital." See Opinion No. 341, Opinions of the Attorney General for 1951, page 139). An agreement pursuant to Section 513.08 or 749.16, *supra*, between the board of county commissioners and the municipal corporation concerning the operation of such a hospital may provide for the rights and privileges to be enjoyed by the county and its inhabitants by virtue of such contribution. Since the hospital bill in the instant case is unpaid, I assume that the agreement, if any, between the board of county commissioners and the municipal corporation herein does not grant the right or privilege of free hospital care to an injured person taken to such hospital by a member of the county sheriff's department.

The legislature in Sections 339.11 and 5106.01, Revised Code, has also granted a board of county commissioners power to expend public funds to pay the hospital bills of certain persons. Section 339.11, *supra*, provides in part as follows:

“The board of county commissioners *may* enter an agreement with one or more corporations or associations organized for charitable purposes or for the purpose of maintaining and operating a hospital in any county in which such hospital has been established, for the care of the *indigent* sick and disabled, excepting persons afflicted with pulmonary tuberculosis, upon such terms as are agreed upon between the board and such corporations or associations. * * *”

Section 5106.01, *supra*, reads as follows :

“Subject to the provisions of sections 5106.01 to 5106.10, inclusive, of the Revised Code, the board of county commissioners of each county *shall* furnish aid to *needy persons who are permanently and totally disabled*. Such aid shall include such payments as are necessary for medical, dental, optometrical services, or agency entitled to compensation for the service.”

In addition to the statutes already mentioned, your attention is directed to Section 311.20, Revised Code, which provides *inter alia* as follows :

“* * * The sheriff shall furnish, at the expense of the county, to all prisoners or other persons *confined in the jail*, fuel, soap, disinfectants, bed, clothing, washing, and *nursing*, when required, and other necessities as the court, in its rules, designates. * * *”

Thus, unless a person is indigent, or needy and permanently and totally disabled, or confined in the jail, I can find no authority for the board of county commissioners to pay a hospital bill for a person. I have also been unable to find any specific statutory authority for the county welfare department to pay the hospital bill in the instant case.

Since a board of county commissioners has only such powers as are conferred by statute, I have limited this opinion to a consideration of the statutory liability or responsibility of the county to pay the hospital bill in the instant case. I might point out, however, that even under the common law when a person secures medical services to be rendered to a stranger, no obligation to pay for such services is incurred by such person in the absence of an express contract. Otherwise, a neighbor or a stranger might hesitate to call for a physician to attend a stricken person who is unable to make such a call himself. *Cleveland Anesthesia Group v. Krulak*, 135 N.E. 2d, 685 (Cuyahoga C.A. 1956) ; *East 55 St. Hos. v. Gen. Acc. Assurance Co.*, 4 Ohio L. Abs., 83 (Cuyahoga C.A. 1925).

It is my opinion, therefore, and you are accordingly advised that a board of county commissioners has no authority to expend public funds to pay hospital bills, except hospital bills for those persons mentioned in Sections 311.20, 339.11, and 5106.01, Revised Code.

Respectfully,

MARK MCELROY
Attorney General