

OPINION NO. 2012-004**Syllabus:**

2012-004

1. The appointing authority of a board of county hospital trustees shall fill vacancies on the board of county hospital trustees while the board is winding up its affairs and until the board ceases to exist.
2. Pursuant to R.C. 339.02(F)(2), when a vacancy on a board of county hospital trustees remains unfilled for six months, the remaining members of the board of county hospital trustees shall appoint an individual to fill the vacancy.

To: Jessica A. Little, Brown County Prosecuting Attorney, Georgetown, Ohio
By: Michael DeWine, Ohio Attorney General, February 27, 2012

You have requested an opinion whether the appointing authority of a board of county hospital trustees still exists or has reason to exist when the county hospital has been sold and the board of county hospital trustees is winding up its affairs. If the appointing authority does not exist or declines for any reason to make appointments to the board of county hospital trustees, you wish to know whether the board of county hospital trustees may continue to fill vacancies pursuant to R.C. 339.02(F)(2).

For the reasons that follow, we find that the appointing authority described in R.C. 339.02 may make appointments to a board of county hospital trustees as long as the board of county hospital trustees is in existence.¹ If the appointing authority does not make an appointment to fill a vacancy on the board, R.C. 339.02(F)(2) applies, and the board shall fill the vacancy by majority vote.

¹ While there is no statute expressly addressing the dissolution of boards of county hospital trustees, the Attorney General has considered similar situations. *See, e.g.*, 1986 Op. Att’y Gen. No. 86-043 (syllabus, paragraph 2) (“[a] board of hospital governors, appointed pursuant to R.C. 513.16 by a joint township district

A board of county hospital trustees is created and its initial members are appointed pursuant to R.C. 339.02(B) (“[t]he board of county commissioners together with the probate judge of the county senior in point of service and the judge of the court of common pleas of the county senior in point of service shall, within ten days after [certification of the resolution establishing a county hospital], appoint a board of county hospital trustees”). R.C. 339.02(C) prescribes the qualifications for appointment to a board of county hospital trustees. R.C. 339.02(F) addresses the manner in which vacancies on the board are to be filled:

(1) Annually, on the first Monday of March, the board of county commissioners together with the probate judge of the county senior in point of service and the judge of the court of common pleas of the county senior in point of service shall appoint or reappoint for a term of six years a sufficient number of members to replace those members whose terms have expired.

(2) The appointing authority shall fill a vacancy not later than six months after the vacancy occurs. If the vacancy remains unfilled on that date, the remaining members of the board, by majority vote, shall appoint an individual to fill the vacancy.

R.C. 339.02(F)(1)-(2).

Pursuant to R.C. 339.02(F)(1), with respect to vacancies on a board of county hospital trustees, the county commissioners and senior judges that comprise the appointing authority “shall appoint or reappoint . . . [board of county hospital trustees] members to replace those members whose terms have expired.” When there is a vacancy on a board of county hospital trustees, the appointing authority *shall* fill such vacancy.² R.C. 339.02(F)(2). Unless the appointing authority intends to reduce the size of a board of county hospital trustees pursuant to R.C. 339.02(G)(2), *see* note 2, *supra*, the requirement that the appointing authority fill any vacancy on a board of county hospital trustees is not qualified or limited by any other provision of R.C. Chapter 339. Filling vacancies is a duty of the appointing authority regardless of the status of the board of county hospital trustees.

There is no provision of R.C. Chapter 339 that suggests the appointing hospital board, may be dissolved in the event the joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 140.05”).

² R.C. 339.02(G)(2) provides an exception to this mandate:

The board of county commissioners together with the probate judge senior in point of service and the judge of the court of common pleas senior in point of service may reduce the number of members of a board of county hospital trustees to eight or to six. The reduction shall occur on expiration of a member’s term of office, at which time no appointment shall be made. While the board of county commissioners and the judges are in the process of reducing the number of members, the board of county hospital trustees may consist of nine or seven members for one year.

authority is to act differently, or refuse to act, based on the types of tasks that remain for a board of county hospital trustees to complete. A board of county hospital trustees is subject to the same statutory scheme for as long as it has business to accomplish. The provisions of R.C. Chapter 339 governing boards of county hospital trustees make no distinction between a board that is winding up its affairs after the sale of a county hospital and a board that continues to operate a county hospital. In either case, R.C. 339.02(F) requires the appointing authority to carry out its appointing responsibilities.

If the appointing authority does not make an appointment pursuant to R.C. 339.02(F)(1), the board of county hospital trustees shall act pursuant to R.C. 339.02(F)(2) to fill a vacancy on its own accord.³ In sum, it is my opinion, and you are hereby advised that: 1. The appointing authority of a board of county hospital trustees shall fill vacancies on the board of county hospital trustees while the board is winding up its affairs and until the board ceases to exist. 2. Pursuant to R.C. 339.02(F)(2), when a vacancy on a board of county hospital trustees remains unfilled for six months, the remaining members of the board of county hospital trustees shall appoint an individual to fill the vacancy.