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COUNTY HOME, MANAGEMENT — ESTABLISHED UNDER SECTION 2419, GENERAL CODE—COMMITTED BY SECTIONS 2522 TO 2577-4 TO COUNTY COMMISSIONERS—COMMISSIONERS WITHOUT AUTHORITY TO TURN OVER CONTROL AND MANAGEMENT TO TRUSTEES OF COUNTY HOSPITAL—SECTION 3136 ET SEQ., GENERAL CODE.

SYLLABUS:

The management of a county home, established pursuant to the authority of Section 2419, General Code, is committed by Sections 2522 to 2577-4, General Code, to the county commissioners, and they are without authority to turn over the control and management of such county home to the trustees of a county hospital, appointed pursuant to Section 3136, et seq., General Code.

Columbus, Ohio, April 2, 1943.

Hon. Joel S. Rhinefort, Prosecuting Attorney,
Toledo, Ohio.

Dear Sir:

I have your communication requesting my opinion, reading as follows:

"A number of years ago a county infirmary was constructed in Lucas County under Section 2419 of the General Code. Thereafter a statute was passed, the same being Section 2419-3, which changed the name from county infirmary to county home. After the institution was constructed, it was operated more as a hospital than a county home. The county commissioners are desirous in transferring the property or changing its name so that it will be known as a county hospital under the provisions of Section 3127 et seq. of the General Code. The reason the commissioners desire to have the name changed is so that a board of trustees may be appointed to conduct and operate the home as provided by the chapter on hospitals, beginning with Section 3127 of the General Code.

The question that the commissioners, as well as myself, desire answered is: Can the board of county commissioners, by resolution or otherwise, change the status of the county home, and operate and call it a county hospital by a resolution of the board? In other words, does the board have such power?"

The general authority for the institution and maintenance of what is now known as a county home may be found in Section 2419 of the General Code, the pertinent portion of which reads as follows:

"A court house, jail, public comfort station, offices for county officers and an infirmary shall be provided by the commissioners when in their judgment they or any of them are needed. Such buildings and offices shall be of such style, dimensions and expense as the commissioners determine. * * *"

It was provided by Section 2419-3, General Code, enacted in 1919, that institutions previously known as "county infirmaries" should thereafter be known as "county homes" and that wherever in the statutes there was reference to an "infirmary" or "county infirmary", such words should be construed to read "county home".

Section 2522, et seq., General Code, provide more specifically for the management of the county infirmary or county home.

Section 2523 requires the county commissioners to appoint a superintendent who shall reside in the home, who shall perform such duties as the commissioners impose upon him and be governed in all respects by their rules and regulations. The commissioners are also authorized to appoint an assistant superintendent.

Section 2522 authorizes the superintendent to employ a matron. This section also imposes upon the county commissioners the duty to make all contracts and to prescribe rules and regulations for the management and government of the institution and the inmates. It further requires the commissioners, at least once a month, to make a complete inspection of the physical and sanitary conditions of the county home, buildings and grounds and an examination into the care and treatment of the inmates.

Section 2526 provides in part as follows:

“The superintendent and matron of the infirmary shall require all persons received therein to perform such reasonable and moderate labor, without compensation, as is suited to their age and bodily strength. * * *.”

Section 2527 requires the superintendent to keep a record of the statistics of each inmate showing, among other things, the township from which he is received and his condition as to mental and physical health.

Section 2527-1 provides that when any inmate shall escape from the home or leave without the consent of the superintendent, and he has reason to believe that it is for the public welfare that such inmate be returned to such institution, he may file in the common pleas court an affidavit upon which a warrant may issue, pursuant to which he may retake the escaped inmate and upon hearing by the court and an order for the return of the inmate, he shall take and keep him in the home until further order of the court.

Section 2531 requires vouchers for expenditures on account of the home to be signed by the commissioners.

Section 2544 provides a process whereby township trustees may present a person who they think is entitled to admission to the county infirmary, and confers on the superintendent the right to determine whether or not such person shall become a county charge and be admitted to the institution.

Section 2546 authorizes the county commissioners to contract with one or more physicians to furnish medical relief and medicines necessary for

the inmates of the infirmary but no contract shall extend beyond one year.

Section 2557 authorizes the commissioners to close a county home under certain circumstances and to provide by contract for the care of the inmates in another county home, or in rest homes or private homes.

I have outlined the foregoing sections as to the control and conduct of a county home so as to show the rather sharp contrast between the organization and operation of that institution as compared with the provisions to which I now call attention relative to county hospitals.

The statutes which relate directly to the establishment and maintenance of a county hospital are Sections 3127 to 3138-4, inclusive, of the General Code.

Section 3127 gives the commissioners of the county power to construct or otherwise acquire a county hospital. That section reads as follows:

“The county commissioners shall have power to purchase, appropriate, construct, enlarge, improve and rebuild a county hospital or hospital buildings. 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. Such hospital may be designated as a monument to commemorate the services of the soldiers, sailors, marines and pioneers of the county.”

The next following sections of the General Code provide for the appointment of a board of trustees who are to purchase a site and erect and equip such hospital, and whose duties end when that has been accomplished.

Section 3136 provides for the appointment, after the hospital shall have been completed and equipped, of another board of trustees who are charged with the management. This board is to be appointed by the county commissioners, but from this point on the entire responsibility and authority for the management of the institution rests with the trustees.

Section 3137 provides in part as follows:

“Such board shall assume and continue the operation of such hospital. It shall have the entire management and control of the hospital and shall establish such rules for the government thereof

and the admission of persons thereto as it deems expedient; it shall have control of the property of the hospital and deposit all moneys thereof with the county treasurer to the credit of the hospital fund; and the same shall be paid out only for the maintenance and operation of such hospital, on the warrant of the county auditor, issued pursuant to the orders of the trustees.

Such board shall employ a superintendent, and, upon the nomination by such superintendent, shall confirm the employment of such physicians, nurses and other employes as may be necessary for the proper care, control and management of such hospital and its inmates; and shall fix their respective salaries and compensation; and any such person may be removed by such trustees at any time when, in their judgment, the welfare of such institution may so warrant."

Prior to the enactment by the 93rd General Assembly of an amendment to this section, to which I will shortly call attention, the paragraphs which I have just quoted were followed by the following paragraph:

"Such trustees may determine *whether patients presented at the hospital for treatment are subjects for charity*, and shall fix the compensation to be paid by patients other than those unable to assist themselves. They may provide for the free treatment in such hospital of soldiers, sailors and marines of the county, under such conditions and regulations as they shall prescribe."
(Emphasis mine.)

By an amendment found in 118 O. L. p. 430, the paragraph last quoted was changed to read as follows:

"Such trustees shall fix the compensation to be paid by or for all patients for all services and treatment rendered by such county hospital. They may provide for the free treatment in such hospital of soldiers, sailors and marines of the county, under such conditions and regulations as they shall prescribe."

It will be noted that by this amendment all reference to charity patients was taken out of that section excepting as to soldiers, sailors and marines. There is a provision in Section 3138-1, General Code, authorizing the commissioners to contract with private institutions for the care of the indigent sick, but so far as I can discover, there is nothing now left in the statutes relating to county hospitals that contemplates that they are to be maintained as institutions of charity.

One of my predecessors, in considering whether a county hospital was "a charitable institution" so as to exempt it from taxation, found the charity feature in that portion of Section 3137, which, as I have

pointed out, has been eliminated by amendment. (Opinions Attorney General 1919, p. 56.) I do not feel it necessary, however, in this connection to express a positive opinion on that subject. My purpose in setting out the substance of these statutes is to show that the whole apparent trend of legislation has been to make of the county hospital an institution wholly unrelated to and dissimilar to the county home. This is evidenced by the fact that the county home is an institution purely of charity and intended for the care of indigents or paupers, whereas the county hospital is intended principally, if not entirely, for the care of patients who are able to pay for the services rendered or for whose care someone else will be responsible.

Furthermore, the entire management of the county home is devolved upon the county commissioners and, under their control, upon the superintendent; whereas, in the case of the hospital the county commissioners have no control whatever over its management except to appoint the trustee and provide the necessary appropriation for its operation. Again, the character of the county home partakes to a certain extent of the nature of a penal institution in providing for compulsory labor and for the apprehension of escaped inmates and their confinement, which is quite foreign to the character of a hospital.

From a consideration of these manifest differences as to character, purpose and management, it seems clear that the county commissioners would have no power to place the operation of a county home under the control and management of a board of trustees, whose authority is limited to the operation of a hospital; nor could the county commissioners abdicate the powers and escape the responsibilities which the law imposes upon them as managers of the county home. It would appear from a reading of your communication that this is substantially what the commissioners are undertaking to accomplish, as you say:

“The reason the commissioners desire to have the name changed is so that a board of trustees may be appointed *to conduct and operate the home*, as provided in the chapter on hospitals.”

Specifically answering your question, I am of the opinion that the board of county commissioners cannot, by resolution or otherwise, change the status of the county home and operate it through a board of hospital trustees, appointed pursuant to section 3136, General Code.

It appears to me, however, that the purpose the commissioners desire to accomplish might be substantially reached by a somewhat different approach. I see no reason from a legal standpoint why the buildings and

grounds which have been acquired by the county for a county home could not at the same time be used for the purpose of a county hospital. This is on the assumption that the land on which the county home is erected was acquired without conditions in the title that would limit its use absolutely to that single purpose. In so far as the buildings and grounds devoted to this dual use are to be used for the purpose of maintaining a county home as contemplated by the law, the management would have to be by the county commissioners directly, with a superintendent appointed for that purpose. In so far as they are used for the maintenance of a county hospital, the management would be by the board of trustees appointed in the manner provided by law and having the powers outlined therein.

Assuming an attitude of entire cooperation between the commissioners and the trustees of the hospital, it would seem that it should not be difficult to arrive at a proper allocation of expense for the maintenance of these two functions of the county government.

In connection with the suggestion last above made, it might be well to call attention to Section 3139-21, General Code, which forbids keeping in a county home any person suffering from active tuberculosis. In case the buildings of the home are used also for hospital purposes, there should be sufficient segregation to avoid violation of that provision of the statute.

Respectfully,

THOMAS J. HERBERT,
Attorney General.