

to be issued under the provisions of Sections 1223 and 2293-26, General Code, the levy provided in Section 1222, General Code, in anticipation of which such notes and bonds have been authorized would be unaffected by Section 2, Article XII of the Constitution as amended, so long as any of such bonds are outstanding.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

2704.

COUNTY HOSPITAL—CONSTRUCTION PURSUANT TO AUTHORITY OF ELECTORS—HOW TO PROCEED—WHEN COUNTY COMMISSIONERS MAY SELL REAL ESTATE—FUND INTO WHICH PROCEEDS MAY GO.

SYLLABUS:

1. *In the event a county proposes to construct a new county hospital pursuant to authority of the electors, proceedings therefor should be taken under the provisions of Section 3127, et seq., of the General Code.*
2. *A board of county commissioners may sell any tract of real estate belonging to the county and not needed for public use in parcels in the event it should appear to the best interests of the county so to do.*
3. *The proceeds of such sale should be paid into the sinking fund, the bond retirement fund or into a special fund for the construction or acquisition of a permanent improvement or improvements.*

COLUMBUS, OHIO, December 22, 1930.

HON. EVERETT L. FOOTE, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“On November 4, 1930, electors of Portage County approved the issue of seventy-five thousand dollars (\$75,000.00) of bonds for the purpose of providing funds to assist in the construction of a new fireproof county hospital in line with the proposal of the devisees of the last will and testament of Mary A. Robison.

The county now owns and operates a hospital situated on North Chestnut Street, Ravenna, which has been held by the State as unsafe for hospital purposes and the aforesaid devisees have offered a site on South Chestnut Street and fifty thousand dollars (\$50,000.00) in cash without restrictions for the erection and furnishing of a new county hospital.

The question has now arisen whether the new building should be constructed under Sections 3127 et seq. or Sections 2333 et seq.

Another question is whether the old hospital site can be sold in separate tracts or must it be sold as a whole, and finally, if the old hospital is sold, what disposition shall be made of the sale price.”

While I find no special authority whereby a county may receive a bequest or gift of property for a general county hospital as in the case of a county tuberculosis hospital under the provisions of Section 3142, General Code, there is probably no question as to such authority being contained in the general provisions of Section 18, General Code, which section provides as follows:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, the council, a board or other officers thereof, a benevolent, educational, penal or reformatory institution, wholly or in part under the control of the state, the board of directors, trustees or other officers thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation. This section shall not affect the statutory provisions as to devises or bequests for such purposes."

Coming now to the question of the statutory proceedings to be taken in the construction of a county hospital, Sections 2333, et seq., to which you refer, are a part of Title IX, Chapter I, entitled "Building Regulations". These sections are obviously general in their provisions relating to the erection of county court houses or other county buildings generally, Section 2333, General Code, providing as follows:

"When the county commissioners have determined to erect a court house or other county building at a cost to exceed twenty-five thousand dollars, they shall submit the question of issuing bonds of the county therefor to vote of the electors thereof. If determined in the affirmative, within thirty days thereafter, the county commissioners shall apply to the judge of a Court of Common Pleas of the county who shall appoint four suitable and competent freehold electors of the county, who shall in connection with the county commissioners constitute a building commission and serve until its completion. Not more than two of such appointees shall be of the same political party."

Were it not for the fact that special provision is made for the proceedings to be taken in the construction of county hospitals, the above section of the General Code would, of course, be applicable, since in the absence of special provisions relating to hospitals, they might well be said to come under the category of other county buildings. Sections 3127 to 3156, inclusive, however, comprise Chapter 4, Title X, Division IV, entitled "Hospitals". Section 3127 provides 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 service of the soldiers, sailors, marine and pioneers of the county."

Section 3131, General Code, provides that after the question of issuing bonds for a county hospital has been favorably voted upon, the board of elections shall certify the result to the Governor of the state, and the Governor shall within ten days after the receipt of such certification appoint a board of county hospital trustees composed of four freeholders of the county. This section further provides for the bipartisanship of the board, the notification of the person so selected, the organization of the board, etc. Section 3132, General Code, sets forth the powers and duties of such board of county hospital trustees.

Applying the well established doctrine that when special provisions are in conflict with general provisions, the special provisions shall govern, I have little difficulty in concluding that in the event a county proposes to construct a new county hospital pursuant to authority of the electors, proceedings therefor should be taken under the provisions of Section 3127, et seq. of the General Code.

You next inquire as to the matter of the sale of the old hospital site. Section 2447, General Code, provides 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; and, in case of the sale of such real estate not used for county purposes, the proceeds of such sale or such parts thereof as the board of commissioners may designate may be placed by the commissioners in a separate fund to be used only for the construction, equipment, maintenance or repair of other county buildings, and the provisions of Section 5638 of the General Code shall not apply to appropriations or expenditures of said fund."

The following section, 2447-1, provides for the procedure in the sale of real estate, publication of notice, receipt of bids, etc. While I find no specific reference to selling a given parcel of real estate as a whole or in separate tracts, in the absence of any inhibitory provisions, I am of the view that the authority to sell the whole includes the authority to sell a part and in the event it should appear to the best interests of the county to sell any given tract in parcels, the county commissioners are not prohibited from so doing.

As to the disposition of the proceeds of the sale of the old hospital property, I assume there are no bonds now outstanding which were issued for the acquisition, construction or improvement of this old hospital. In addition to the provision of Section 2447, supra, authorizing the county commissioners to designate the separate fund into which these proceeds or any part thereof may be paid, Section 5625-10, General Code, being part of the Budget Law, provides inter alia as follows:

"If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a permanent improvement or improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there be no such fund, into the general fund."

It is obvious in view of the provisions of Sections 2447 and 5625-10, supra, that the proceeds of the sale of the old county hospital property may in whole or in part be paid into the sinking fund, the bond retirement fund or into any special fund for the construction or acquisition of any permanent improvement or improvements as the county commissioners may see fit.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*