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HOSPITAL—COLUMBUS STATE HOSPITAL—HOUSE BILL 477, 96 GENERAL ASSEMBLY—ERECTION, NEW HOSPITAL BUILDING, COLUMBUS STATE HOSPITAL—APPROPRIATION MAY BE USED FOR CONSTRUCTION OF RECEIVING HOSPITAL FOR OBSERVATION, CARE AND TREATMENT OF MENTALLY ILL ON GROUNDS, OHIO STATE UNIVERSITY—AGREEMENT WITH UNIVERSITY TRUSTEES—CONTROL AND MANAGEMENT OF HOSPITAL PRESERVED TO DEPARTMENT OF PUBLIC WELFARE—BY AGREEMENT HOSPITAL MAY BE USED IN COOPERATION WITH COLLEGE OF MEDICINE OF UNIVERSITY AND MEDICAL CENTER AUTHORIZED AND PROVIDED BY HOUSE BILL 477.

SYLLABUS:

The appropriation contained in House Bill 477 passed by the 96th General Assembly for the erection of a new hospital building for Columbus State Hospital, may be used for the construction of a receiving hospital for the observation, care and treatment of the mentally ill on grounds of the Ohio State University, under a proper agreement with the trustees of such university, preserving to the department of public welfare the control and management of such hospital; and pursuant to such agreement said hospital may be used in cooperation with the college of medicine of said university and the medical center authorized and provided in said House Bill 477.

Columbus, Ohio, February 18, 1946

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

"H. B. 477 contained among other items the following appropriation for capital expenditure:

COLUMBUS STATE HOSPITAL

G-2, Complete Hospital Building,

Including Equipment and Service Lines.....\$476,500.00

It has been mutually agreed among the Governor, the President of Ohio State University, and myself, that it would be of considerable advantage to have this hospital building a part of the medical unit that is to be developed at the Ohio State University instead of building it on the grounds of the Columbus State Hospital. H. B. 477 also appropriated \$5,000,000.00 for a health center at Ohio State University. The hospital building in question will be used as a receiving hospital and by having it a part of the health center, all medical facilities of the University would be available for patients in the receiving Hospital, and, in addition, facilities of the receiving hospital could be used for psychiatric training of medical students and others at the University.

Section 4 of H. B. 477 further provides that the appropriation set forth in the act should not be expended for any purposes other than those specified in the act. In view of this section, the question arises whether the money that was specifically appropriated for the Columbus State Hospital could be spent for a building which would be a part of the health center at the Ohio State University. Although erected at the University, this building for all intents and purposes would be a part of the Columbus State Hospital, operated by funds appropriated to the Department of Public Welfare, and carried on the inventory of the Welfare Department.

Before proceeding further with the receiving hospital, we would like your opinion on this question.

By the provisions of Section 154-57 General Code, there are committed to the Department of Public Welfare all powers and duties heretofore vested in or imposed upon the Ohio Board of Administration, excepting the control of the State Schools for the Deaf and for the Blind. Among the powers vested in your department is the management and

government of the several state hospitals for the insane and mentally ill. In an act passed by the General Assembly May 16, 1941 (119 O. L. p. 616), provision was made among other things, for the establishment of a system of receiving hospitals for the observation, care and treatment of the mentally ill and especially for those whose condition is incipient or of short duration. Section 1890-16 General Code, provides as follows:

“Under the direction and with the authority of the director, the division of mental hygiene shall develop, extend and complete a statewide system of receiving hospital service, by contracting for the use of services for the care and treatment of patients, or by establishing receiving hospitals or by leasing, or contracting for the use of privately or publicly owned facilities to be designated as receiving hospitals as defined and provided for herein, *either separate from or in connection with* existing or future state hospitals, which receiving hospitals shall be used for the observation, care and treatment of the mentally ill, and especially for those whose condition is incipient, mild, or of possible short duration. Such receiving hospital shall perform any of the work or duties authorized to or required of the division of mental hygiene. If established in connection with a state hospital on the site of the state hospital, they shall be operated under the same procedure and laws governing receiving hospitals located on sites other than a state hospital.” (Emphasis added.)

Section 1890-17 General Code, reads as follows:

“At the earliest possible date after this act becomes effective there shall be established receiving hospitals as defined herein *in connection, with and on the site of each of the existing state hospitals, except the Lima state hospital.* The district served by the receiving hospitals provided for herein shall be identical with the districts served by the state hospital in connection with which the receiving hospital is established. The districts shall be changed as additional receiving hospitals are established at places other than on the site of a state hospital.” (Emphasis added.)

It will be noted that said Section 1890-16 authorizes the setting up of this system either “by *establishing* receiving hospitals or by leasing or contracting for the use of publicly or privately owned facilities,” and further provides that they may be so established “either separate from or in connection with existing or future state hospitals.” These provisions appear to contemplate that such receiving hospitals may be established either on or away from the site of a state hospital.

Section 1890-17 supra, does provide that there shall be established receiving hospitals in connection with and on the site of each of the existing state hospitals except Lima state hospital, at the earliest possible date after this act becomes effective. There is, however, nothing in that section which forbids the establishment of a receiving hospital in the district served by the state hospital on a site other than that of the state hospital. Furthermore, the establishment of a receiving hospital on state owned ground within the same city in which a state hospital is located would appear to be a substantial compliance with the statute. It is provided by Section 1890-17 that the district served by the receiving hospital shall be identical with the district served by the state hospital in connection with which the receiving hospital is established.

I had occasion in Opinion No. 236 issued on April 24, 1945, to consider these statutes, and it was held as shown by the second syllabus.

“Section 1890-17, General Code, does not prohibit designation of facilities as a ‘receiving’ hospital, even though a ‘receiving’ hospital has not previously been established at the site of the state hospital in the district in which such facilities are located.”

I find therefore, nothing in the law so far as your department is concerned, that would forbid using the appropriation of \$476,500.00 made by House Bill No. 477 enacted by the recent General Assembly, in the construction of the hospital building on the grounds of the Ohio State University.

Coming to a consideration of the matter from the standpoint of the Trustees of the Ohio State University, I note that that institution was established by an act of the legislature passed March 22, 1870, found in 67 O. L. p. 20. It was by that act established as the “Ohio Agricultural and Mechanical College,” and the provisions of that act are found with all their essential features in the present General Code Section 4861 et seq. Section 13 of the original act is now found in Section 4861-11 in substantially unchanged language. That section now reads:

“The title for all lands for the use of the university shall be made in fee simple to the state of Ohio, with covenants of seizing and warranty, and no title shall be taken to the state for the purposes aforesaid until the attorney-general is satisfied that it is free from all defects and incumbrances.”

Section 4861-6 General Code, provides :

“The board of trustees may adopt by-laws, rules and regulations for the government of the university.”

Section 4861-8 General Code, provides :

“The board of trustees shall have *general supervision* of all lands, buildings, and other property belonging to the university, and the control of all expenses therefor, but shall not contract a debt not previously authorized by the general assembly of the state.”
(Emphasis added.)

Observe that the above quoted section only gives the university board of trustees the “general supervision” of all lands, buildings, etc. Nothing is said about exclusive management or control. Such general supervision in the case under consideration, might well include a determination of the location and general architectural style of the proposed hospital building, but need not extend to its management or control when erected. In this connection let us notice what the law has provided in respect to the authority and duty of the department of public welfare. Section 1890-15 General Code, reads :

“The department of public welfare shall have *charge and control, of any and all institutions* now in existence or which may hereafter be established and which are maintained in whole or in part by the state of Ohio for the treatment and care of the mentally ill, psychopathic, mentally deficient, and epileptic, including institutions which may be provided and designated for the custody, care and special treatment of criminal insane, psychopathic offenders, and mentally deficient offenders.”

(Emphasis added.)

Here, there is no specific reference to buildings. The department is to have control of all “*institutions * * ** maintained in whole or in part by the state of Ohio”, etc. * * * As already shown, these institutions may be either hospitals built by the department or by public or private “facilities” for which the department may contract. It appears to me, therefore, that there is no difficulty in reconciling the “general supervision” of buildings committed to the university trustees, with the “management and control” of institutions committed to your department.

I can find nothing in the law relating to the organization and government of the Ohio State University that would forbid the trustees to au-

thorize or consent to the erection of a receiving hospital such as you contemplate on the grounds of the Ohio State University, particularly in view of the obvious benefit to the university in having the use of it in connection with the medical school of said university and the proposed health center to be located on the university grounds, for which an appropriation of \$5,000,000 was made by the same act first above mentioned.

The fact must not be overlooked that both the Ohio State University and the Columbus State Hospital belong to the state, and in so far as they have common purposes, may properly be considered as appropriate arms of the state, designed to contribute to the general welfare of the people of the state. This view, it appears to me was presented in the early case of *Neil v. Board of Trustees of the Ohio Agricultural and Mechanical College*, 31 O. S. p., 15. It was claimed in that case that the act to which I have referred organizing the college, was unconstitutional in that it was a special act conferring corporate powers. The court denied that contention, and in the opinion of Judge Boynton at page 21, said:

“The college is a state institution, designed and well calculated to promote public educational interests, established for the people of the whole state, to be managed and controlled by such agencies as the legislature in its wisdom may provide. Similar powers, but perhaps less extensive, because less required, are conferred on the trustees of the various hospitals for the insane (73 Ohio L. 80), and on the board of managers of the Ohio Soldiers’ and Sailors’ Orphans’ Home (67 Ohio L. 53), and other institutions of the state. The powers thus conferred are essentially necessary to accomplish the objects for which these institutions were established. The power to establish them is found clearly granted in the seventh article of the constitution.”

It is therefore my opinion that under a proper agreement preserving to your department the control over this hospital which the law contemplates shall be exercised by your department, there is no legal obstacle to the construction upon the grounds of the Ohio State University of the receiving hospital for the mentally ill as contemplated by the appropriation contained in House Bill No. 477 of the 96th General Assembly.

It should be stated that I have not had before me abstracts of title of the university lands, and have made no examination of the conveyances by which they were obtained, and hence it must be assumed for the pur-

pose of this opinion that there are no restrictive covenants in the conveyances whereby the land that may be devoted to the hospital in question may not be used for such purpose.

Respectfully,

HUGH S. JENKINS,
Attorney General.