

As stated by you, the Federal Reserve Bank is to receipt to the board of education for the securities and the board is to acknowledge the receipt of the securities from the depository bank. The Federal Reserve Bank is to dispose of the securities according to instructions of the board of education upon the default of the depository. That amounts to control and dominion over the securities for the purposes for which they are deposited with the board, and to availability of the securities to the board of education when necessary for the purposes which the law contemplates, and amounts to constructive possession of the securities by the board of education. The fact that the board agrees to release the securities upon the fulfillment of the depository bank's contract does not detract from the board's constructive possession of the securities during the life of the depository contract or its control and dominion over the securities during that time.

Such an arrangement is practically the same thing as the keeping of the securities by the board in a safety deposit box, which has always been recognized as proper, and is probably safer in theory at least, than the deposit of the securities in a safety deposit box controlled by the depository bank.

I am therefore of the opinion that an arrangement between a board of education and a Federal Reserve Bank, whereby the Federal Reserve Bank holds in its possession securities deposited with the board of education by its depository bank to secure the bank's deposits therein, receipts to the board of education for these securities and agrees to dispose of the securities under instructions from the board of education and for its benefit upon default of the depository bank in the fulfillment of its contract, and the board of education agrees to release the securities upon fulfillment of the contract of the depository bank is legal and satisfies the requirements of the law that the board of education shall safely keep the securities, have control and dominion over them during the life of the depository contract and return them to the depository bank upon its fulfillment of the contract, as well as the intent and purpose of the law that the securities shall be available to the board of education upon default of the bank to the end that the depository bank's liability to the depositor shall be satisfied.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2514.

HOSPITAL—MUNICIPALLY OWNED AND OPERATED ENTITLED TO REIMBURSEMENT FOR CARE OF PATIENTS SUFFERING FROM MOTOR VEHICLE INJURIES WHEN.

*SYLLABUS:*

1. *The definition of a hospital contained in Section 1 of House Bill No. 80, 115 O. L. 482, includes municipally owned and operated hospitals if they are registered with the Department of Health of the State of Ohio and if they receive and care for patients suffering from motor vehicle injuries.*

2. *Municipally owned and operated hospitals which are entitled to the benefits of House Bill No. 80, 115 O. L. 482, may be reimbursed for per diem care of indigents suffering motor vehicle injuries even though such indigents had their legal settlement within the confines of the city owning and operating such hospital.*

COLUMBUS, OHIO, April 16, 1934.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication which reads as follows:

“Will you kindly furnish this Department an opinion on the following questions, relating to the provisions of H. B. No. 80, 115 O. L., 482:

Question 1. Is the definition of a hospital as contained in section one, of this Act, such as to include municipally owned and operated hospitals?

Question 2. If the answer to the first question is in the affirmative, would such hospital be entitled to the benefits of this Act for the care of indigent persons injured in motor vehicle accidents, who were legal residents of the city owning and operating the hospital?”

Section 4023 et seq., of the General Code of Ohio make provision for the construction and maintenance of municipal hospitals, so I assume that by “municipally owned and operated hospitals” you are referring to hospitals constructed and maintained by virtue of the authority given in these sections.

Section 4035, General Code, provides in part:

“The director of public safety shall have the entire management and control of such hospital, when completed and ready for use, and subject to the ordinances of council, shall establish such rules for its government, and the admission of persons to its privileges, as he deems expedient.” \* \* \*

The village council provides for the care and management of such municipally owned hospitals. See Section 4356, General Code.

Section 4036, General Code, provides:

“In any municipal corporation which has become or may hereafter become the owner or trustee of property for hospital purposes, or of funds to be used in connection therewith, by deed of gift, devise or bequest, such property or funds shall be managed and administered in accordance with the provisions or conditions of such deed of gift, devise or bequest.”

The cost of operating such hospital institutions is ordinarily met out of the general tax funds, although sometimes such money is supplemented by trust funds or the income from trust funds which have been bequeathed to the city from time to time under wills authorizing such expenditure to be made for the care of the indigent poor requiring hospital services.

Section 1 of House Bill No. 80, which is relative to the first question, provides in part:

\* \* \*

‘Hospital’ means any institution, *not organized and/or operated for profit*, and registered with the state of Ohio, department of health, which receives and cares for patients suffering from motor vehicle injuries,

the per diem cost of which care shall be ascertained and certified in the manner provided in this act." (*Italics the writer's.*)

It should be noted at the outset that the provision quoted supra, does not specifically exclude "municipally owned and operated hospitals," and the language used is comprehensive enough to include such hospitals if they are registered with the Department of Health of the State of Ohio, receive and care for patients suffering from motor vehicle injuries, and are "not organized and/or operated for profit." I also call your attention to the fact that the language does not restrict such eligible hospital institutions solely to *corporations* organized not for profit but may include other types of hospital associations "not organized and/or operated for profit." The question of whether or not an ordinary hospital is "not organized and/or operated for profit" is a question of fact to be decided from the circumstances of each particular case, but in the case of municipally owned and operated hospitals, it may be safely stated that such institutions are "not organized and/or operated for profit." The question of fact with respect to municipally owned and operated hospitals thus simmers itself down to whether or not a particular municipal hospital is registered with the Department of Health of the State of Ohio and is a hospital which receives and cares for patients suffering from motor vehicle injuries.

From the foregoing, it is apparent that it is impossible as a matter of law to give you a categorical answer to your first question, although I may state that it is my opinion that the fact that a hospital is "municipally owned and operated" does not of itself exclude such hospital from the benefits of House Bill No. 80. The question of whether or not a municipally owned and operated hospital is entitled to the benefits provided by House Bill No. 80, thus resolves itself into the question of fact as to whether or not a municipally owned and operated hospital is registered with the Department of Health of the State of Ohio, and receives and cares for patients suffering from motor vehicle injuries.

I come now to the consideration of your second question which I rephrase, because of my answer to your first inquiry, to ask whether or not a municipally owned and operated hospital, assuming it is of the type entitled to the benefits of House Bill No. 80, would be entitled to the benefits of this Act for the care of indigent persons suffering from motor vehicle injuries who were legal residents of the city owning and operating such hospital.

Section 3480, General Code, makes provision for the hospital care of indigents having a legal settlement within a city by the proper city officials, and Section 3480-1, General Code, provides for the hospital care of indigents in a city which is not their legal settlement, and Section 3484-2, General Code, makes provision for the hospital care of indigents in a county which is not their legal settlement.

It is also clear from the statutory provisions referred to supra, that the proper city officials should provide hospital care for indigent persons having a legal settlement within such city, and it is my opinion that such statutes authorizing this hospital care, even with respect to indigents legally settled in the city who suffer by reason of motor vehicle injuries, are not repealed by implication by House Bill No. 80, as such repeals by implication are not favored. *Thorneley vs. State*, 81 O. S. 108, 118; *In re Hesse*, 93 O. S. 230, 234; *Golf vs. Gates*, 87 O. S. 142; *City of Cleveland vs. Purcell*, 31 O. App. 495; *State ex rel. vs. Bldg. Com.* 123 O. S. 70. However, House Bill No. 80 is a special Act covering a particular subject matter, viz., indigents suffering by reason of motor vehicle injuries, and it is my opinion that it should be read as an exception to the statutes covering

the same and other subjects in general terms. The pertinent provisions of House Bill No. 80 are as follows:

"Section 1. For the purpose of this act:

'Motor vehicle injury' means any personal injury suffered by a human being and caused by the operation of a motor vehicle, whether the injured person be the operator of such motor vehicle, a passenger in the same or in another vehicle, a pedestrian, or whatever be the relation of such injured person to the operation of such vehicle; and whether or not such motor vehicle is under the control of a human being at the time of such injury.

'Hospital' means any institution, not organized and/or operated for profit, and registered with the state of Ohio, department of health, which receives and cares for patients suffering from motor vehicle injuries, the per diem cost of which care shall be ascertained and certified in the manner provided in this act.

\* \* \*

'Indigent patient' means a person who has suffered a motor vehicle injury, is received and cared for in a hospital, is unable to pay for the cost of such care and whose account therefor remains unpaid at the expiration of ninety days after the termination of such care; it excludes an employee suffering from a motor vehicle injury with respect to which he is entitled to the benefits of the workmen's compensation act of this or any other state or country. A person injured by the operation of a motor vehicle shall be deemed unable to pay such charges if it shall appear that, should an action be brought and judgment secured for the amount thereof against him, or against any other person legally responsible for his care, execution thereon would be unavailing.

Section 2. Within thirty days after this act shall take effect the industrial commission of Ohio shall certify in duplicate to the registrar of motor vehicles and the auditor of state, respectively, the name, address and per diem cost of all hospitals in the state as determined by the said industrial commission for the purpose of the laws which it is required to administer. Thereafter from time to time said industrial commission of Ohio shall in like manner certify any additions to or subtractions from said list or any changes in such per diem costs which may occur. All claims made under this act shall be audited and paid in accordance with the per diem costs so certified and in effect at the time the charge shall have been incurred.

\* \* \*

Section 4. At the time of making any monthly report each hospital may present a statement of its claim for reimbursement for the cost of the care of each indigent patient, which claim has matured within the month covered by the report then due or within any previous month. Each such claim shall be made in the form prescribed by the registrar of motor vehicles and shall show the following:

\* \* \*

Section 5. The affidavit of the indigent patient, if living, and the statement of a township trustee, municipal officer or director or like representative of a social agency engaged in the relief of the poor,

having knowledge of the facts, showing that the indigent patient is unable to pay such hospital charges.

\* \* \*

Section 8. Whenever it shall come to the knowledge of the managing officer of a hospital which has received payment of a claim under the provisions of this act that the patient in respect of whom such claim has been paid, or any other person chargeable by law with his care and support has paid, or is or has become able to pay the amount thereof, such managing officer shall notify the registrar of motor vehicles thereof, and, if such hospital shall thereafter make a monthly report and/or a claim for reimbursement under the provisions of this act, a reference to such paid claim in such form as the registrar of motor vehicles shall prescribe, showing the name of the patient and the amount paid, shall be incorporated in or attached to such report or claim. Whenever the registrar of motor vehicles shall otherwise acquire knowledge of facts showing that a patient in respect of whom a payment has been made as provided in this act, or any other person chargeable by law with his care and support has paid, or is or has become able to pay such amount thereof, he shall notify the hospital which has received such payment by letter addressed to the managing officer thereof, giving a brief statement of the facts thus coming to his knowledge and specifying the amount of such paid claim, the date of its prior payment, and the name of the person from whom the same may be recovered.

Within one month after such managing officer shall have given the notice herein required, or such hospital shall have received such notice from the registrar of motor vehicles, such hospital shall, unless the amount specified therein has been fully paid, collect such amount of the balance thereof from such patient or other person chargeable by law with his care or support and in default of such collection, file an action against such patient or other person chargeable by law with his care and support for the recovery of the sum so paid, as balance thereof. Such hospital shall in its monthly reports, or otherwise, advise the registrar of motor vehicles as to the collection of such amount, or as to the filing of such action and the proceedings therein; and, in the event of recovery of judgment therein, and if the amount of such judgment is not realized, shall show by certified copies of the proceedings that all legal remedies for the satisfaction of such judgment have been exhausted.

When notice has been given as required by this section, the registrar of motor vehicles shall deduct the amount of the prior payment made to the hospital affected thereby from any payment or payments to be made to such hospital under the provisions of this act on or after two months from the date of such notice, unless such hospital shall have advised the registrar of motor vehicles as herein provided that an action has been filed for the recovery of such amount from the patient or other person chargeable by law with his care and support, that such action has not been finally determined, and that there is reasonable ground for delay; or unless such hospital shall so advise the registrar of motor vehicles that such action has been prosecuted to final judgment and that all legal remedies for the satisfaction of such judgment have been exhausted without realizing the amount thereof."

It is stated in *State ex rel. Stellar vs. Zangerle*, 100 O. S. 414 at p. 414:

"A special statute covering a particular subject matter must be read as an exception to a statute covering the same and other subjects in general terms."

Consequently, it is my opinion that municipally owned and operated hospitals, assuming they are entitled to reimbursement under House Bill No. 80, as outlined in my answer to your first inquiry, may receive per diem reimbursement under House Bill No. 80, for the care of indigents suffering motor vehicle injuries even though such patients had their legal settlements within the city owning and operating such hospitals. House Bill No. 80 supersedes the general statutes in so far as the statutes are inconsistent inasmuch as the later statute in point of time would prevail. However, I do not hold that the city may no longer provide for the care of indigents, legally settled in such city, injured in motor vehicle accidents.

Specifically answering your inquiries, it is my opinion that:

1. The definition of a hospital contained in Section 1 of House Bill No. 80, 115 O. L. 482, includes municipally owned and operated hospitals if they are registered with the Department of Health of the State of Ohio and if they receive and care for patients suffering from motor vehicle injuries.

2. Municipally owned and operated hospitals which are entitled to the benefits of House Bill No. 80, 115 O. L. 482, may be reimbursed for per diem care of indigents suffering motor vehicle injuries even though such indigents had their legal settlement within the confines of the city owning and operating such hospital.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2515.

BOARD OF EDUCATION—DEPOSITORY CONTRACT AWARDED WHEN LESS THAN TWO BANKS IN SCHOOL DISTRICT—DISCUSSION OF "CONVENIENTLY LOCATED" AND "HIGHEST RATE OF INTEREST" UNDER SECTION 7607, GENERAL CODE.

*SYLLABUS:*

1. *Under Section 7607, General Code, it is within the discretion of boards of education to determine the territory within which banks are "conveniently located."*

2. *Under said section boards of education may provide by resolution for competitive bidding for school funds by all banks "conveniently located," in which event the depository contract must be awarded to the bank or banks offering the highest rate of interest and proper security.*

3. *In the absence of such resolution competitive bidding is not necessary under Section 7607, General Code, in order for the board to determine the bank or banks offering "the highest rate of interest."*

4. *Under said section all banks "conveniently located" must be given an opportunity to advise the board as to the amount of interest which they are willing to pay, the manner of notifying such banks being within the discretion of the board.*