

**OPINION NO. 86-067****Syllabus:**

1. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 are public moneys, as defined in R.C. 117.01(C), for purposes of R.C. 117.28.
2. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 are subject to the lending aid and credit provisions of Ohio Const. art. VIII, §6. A board of county hospital trustees may not disburse and expend such moneys in a manner contrary to the prohibitions appearing in Ohio Const. art. VIII, §6.
3. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 may be expended for any purpose, consistent with the terms of the instrument creating the trust, that effects the erection, improvement, or support of the county hospital.

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**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, September 12, 1986**

You have requested my opinion on several questions relative to the disbursement and expenditure of moneys received by a board of county hospital trustees. Specifically, you have asked that I address the following questions:

1. Are monies received by a county hospital in accordance with R.C. 339.08 considered "public monies" subject to the provisions of Article VIII, Section 6, of the Ohio Constitution?
2. Are monies received by a county hospital in accordance with R.C. 339.08 considered "public monies" for purposes of R.C. 117.28?

3. May monies received by a county hospital in accordance with R.C. 339.08 be expended for any hospital purpose, subject only to the limitation that such purpose accomplish the erection, improvement, or support of the county hospital, or are they also subject to the limitations of R.C. 339.06?

Additionally, you have provided specific examples of a variety of expenditures with respect to a county hospital and have asked whether those expenditures are of a type authorized by R.C. 339.08.

Resolution of your questions requires that I review first those provisions in R.C. Chapter 117 (Auditor of State) that define public money and several related terms, and those provisions in R.C. Chapter 339 (county hospitals) that authorize the receipt, disbursement, and expenditure of moneys for county hospital purposes. R.C. 339.01-.17 provide for the establishment and operation of county hospital facilities. Pursuant to R.C. 339.01, a board of county commissioners "may purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof." Once a board of county commissioners determines to establish a county hospital, a board of county hospital trustees must be created in the manner set forth in R.C. 339.02.

The powers and duties conferred upon a board of county hospital trustees with respect to the acquisition or construction of a county hospital are set forth in R.C. 339.03, and the powers and duties of the board with respect to the daily operation of the county hospital are further set forth in R.C. 339.06, which provides, in part, as follows:

The board of county hospital trustees shall upon completion of construction or leasing and equipping of the county hospital, assume and continue the operation of such hospital. The board shall have the entire management and control of the hospital, and shall establish such rules for its government and the admission of persons as are expedient.

The board has control of the property of the hospital, including management and disposal of surplus property other than real estate or an interest in real estate, and has control of all funds used in the hospital's operation. The administrator or his designee shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in section 5705.22 of the Revised Code,<sup>1</sup> to the hospital's credit in banks or trust companies designated by the board of county hospital trustees, which fund shall be known as the hospital operating fund....The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees, consistent with sections 3702.51 to 3702.67

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<sup>1</sup> R.C. 5705.22 authorizes a special tax levy for the purpose of supplementing the general fund appropriations for the support of county hospitals.

of the Revised Code<sup>2</sup> and the approved budget, for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquiring of, leasing, or construction of permanent improvements to county hospital property, on a voucher signed by signatories designated and approved by the board of county hospital trustees. (Emphasis and footnotes added.)

R.C. 339.06 further describes a variety of specific hospital purposes for which a board of county hospital trustees may expend moneys deposited in the hospital operating fund. In this regard R.C. 339.06 states that a board of county hospital trustees shall employ and fix the compensation of a hospital administrator who shall, in turn, employ such physicians, nurses, and other employees as are necessary for the proper care, control, and management of the county hospital and its patients; may obtain insurance protection for the county hospital; may employ such management consultants and other professional advisors as it determines are necessary and desirable to assist in the management of the programs and operation of the county hospital; may furnish its employees various fringe benefits it determines to be customary and usual in the nonprofit hospital field in its community, including vacation leave benefits, holiday pay, moving expenses for new employees, and discounts on hospital supplies and services; may provide employee recognition awards and hold employee recognition dinners; may provide scholarships and other staff development programs for the purpose of recruiting and retaining qualified employees; and may pay reasonable expenses for recruiting physicians and other appropriate health care practitioners.

R.C. 339.08 also confers upon a board of county hospital trustees the power to receive and hold in trust any property for the erection, improvement, or support of the county hospital, and to administer such property and the proceeds thereof. R.C. 339.08 provides, in pertinent part, as follows:

The board of county hospital trustees may receive any gift, bequest, or devise of real or personal property in trust for the erection, improvement, or support of the county hospital, and administer the said property and the proceeds thereof in the manner required by law or the instrument creating such trust, and according to sections 3702.51 to 3702.67 of the Revised Code. Before receiving such trust property, the board shall give additional bond in such amount as the board of county commissioners or a court requires.

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All money held in trust by the board shall be kept in a separate fund to be known as "the hospital trust fund." The board of county hospital trustees shall make a complete report of its administration of all property and funds held in trust to the board of county commissioners with its annual report of operation of the hospital. (Emphasis added.)

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<sup>2</sup> The provisions of former R.C. 3702.51-.67, which pertained to certificate of need requirements that must be satisfied by certain health care facilities before such facilities may offer their services to persons in need thereof, now appear in R.C. 3702.51-.62.

R.C. 339.08 further provides that any corporation or association holding property in trust for the erection, improvement, or support of a county hospital may make application to the court of common pleas of the county for permission to resign and relinquish the obligations of such trust. Upon hearing, with consent of the the board of county hospital trustees and upon its giving such additional bond as is ordered, the court may authorize the trust property to be delivered over to the the board of county hospital trustees as successor trustees. Id. See also R.C. 339.04 (there shall be established in the county treasury a fund to be known as the "county hospital building fund", wherein shall be placed all funds for the purchase, appropriation, or construction of a county hospital, to be paid out on the order of the board of county hospital trustees).

Thus, pursuant to R.C. 339.06, a board of county hospital trustees has general authority to manage and control the county hospital and has the express power to disburse and expend moneys deposited in the hospital operating fund "for the uses and purposes of such hospital," including those uses and purposes enumerated therein. In addition, a board of county hospital trustees may, pursuant to R.C. 339.08, receive, hold in trust, and administer any moneys given to the hospital for the erection, improvement, or support of the county hospital.

I now direct my attention to the specific questions set forth in your letter. For ease of discussion I shall consider first your second question, whether moneys received by a county hospital in accordance with R.C. 339.08 are considered public moneys for purposes of R.C. 117.28.

The Auditor of State is required to audit all public offices as provided in R.C. Chapter 117. R.C. 117.10. See also R.C. 117.09. Following an audit of a public office, the Auditor of State shall compile an audit report summarizing his findings with respect to whether any public money has been illegally expended, unaccounted for, or uncollected, or whether any public property has been converted or misappropriated. R.C. 117.24; R.C. 117.25. See also R.C. 117.26 (filing of completed audit report in the office of the Auditor of State and with appropriate officials of the audited public office); R.C. 117.27 (filing of completed audit report with the officer required by law to act as legal counsel to the officers of the audited public office, or with the prosecuting attorney of the county within which the fiscal office of the audited public office is located). R.C. 117.28 sets forth the procedure that must be taken following the compilation and filing of an audit report, "[w]here an audit report sets forth that any public money has been illegally expended, or that any public money collected has not been accounted for, or that any public money due has not been collected, or that any public property has been converted or misappropriated."

I believe the answer to your question is provided by the definitions appearing in R.C. 117.01 and the express language of R.C. 339.08. As used in R.C. Chapter 117, R.C. 117.01 provides the following pertinent definitions:

(A) "Color of office" means actually, purportedly, or allegedly done under any law, ordinance, resolution, order, or other pretension to official right, power, or authority.

....  
(C) "Public money" means any money received.

collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office.

(D) "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.

(E) "Public official" means any officer, employee, or duly authorized representative or agent of a public office.

It is apparent that a county hospital qualifies as a public office as defined in R.C. 117.01(D), insofar as it is a public institution established under the laws of this state. See R.C. 339.01-.17; 1985 Op. Att'y Gen. No. 85-005; 1980 Op. Att'y Gen. No. 80-094; 1973 Op. Att'y Gen. No. 73-017. It is also apparent that the trustees of a county hospital qualify as public officials as defined in R.C. 117.01(E), insofar as they are appointed, pursuant to R.C. 339.02, as the duly authorized representatives of the county hospital. Wierzbicki v. Carmichael, 118 Ohio App. 239, 187 N.E.2d 184 (Cuyahoga County 1963); Op. No. 73-017. The trustees of a county hospital are authorized, pursuant to R.C. 339.08, to receive and hold in trust any moneys intended for the erection, improvement, or support of the county hospital. Such moneys are, thus, received by public officials under color of office. Accordingly, it follows that all such moneys are public moneys, as defined in R.C. 117.01(C), for purposes of R.C. 117.28. Cf. 1983 Op. Att'y Gen. No. 83-055 (moneys donated to a county children services board or to a county department of welfare which has assumed the administration of child welfare constitute "public money" within the meaning of former R.C. 117.10, the provisions of which now appear in R.C. 117.01(C) and R.C. 117.28).

In your first question you ask whether public moneys received by a county hospital in accordance with R.C. 339.08 are subject to the provisions of Ohio Const. art. VIII, §6, which provides, in part, as follows:

No laws shall be passed authorizing any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association.

A similar restriction is placed upon the lending of credit by the state in Ohio Const. art. VIII, §4.<sup>3</sup> It has thus been stated that cases interpreting either §4 or §6 may be consulted

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<sup>3</sup> Ohio Const. art. VIII, §4 reads as follows:

The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association, in this State, or elsewhere, formed for any purpose whatever.

in construing the other provision. See State ex rel. Eichenberger v. Neff, 42 Ohio App. 2d 69, 330 N.E.2d 454 (Franklin County 1974); 1978 Op. Att'y Gen. No. 78-040; 1977 Op. Att'y Gen. No. 77-047; 1971 Op. Att'y Gen. No. 71-044. See generally 1985 Op. Att'y Gen. No. 85-047 (reviewing various court decisions and prior Attorney General opinions that have analyzed and interpreted the scope and application of Ohio Const. art. VIII, §§4 and 6).

As a county agency, see Op. No. 85-005; Op. No. 80-094, a county hospital is governed by and subject to the lending aid and credit provisions appearing in Ohio Const. art. VIII, §6. See, e.g., State ex rel. Taft v. Campanella, 51 Ohio App. 2d 237, 368 N.E.2d 76 (Cuyahoga County 1977) (involving the use of county first mortgage revenue bonds to acquire existing hospital facilities for the purpose of leasing such facilities to a private hospital agency); Lazarus v. Board of Commissioners, 6 Ohio Misc. 254, 217 N.E.2d 883 (C.P. Hamilton County 1966) (involving the use of county funds for construction of a hospital building to be owned by the county but leased to and operated by a private charitable corporation). In addition, moneys received as gifts or in trust by governmental entities may, as a general matter, be characterized as public moneys for purposes of the constitutional lending aid and credit provisions. See, e.g., 1985 Op. Att'y Gen. No. 85-031 (applying Ohio Const. art. VIII, §6 to moneys received by a county board of mental retardation and developmental disabilities by means of a bequest). See also 1985 Op. Att'y Gen. No. 85-055; 1983 Op. Att'y Gen. No. 83-055. Accordingly, it follows that such moneys are subject to the lending aid and credit provisions of Ohio Const. art. VIII, §6.

In your third question you have asked whether moneys received by a county hospital in accordance with R.C. 339.08 may be expended for any hospital purpose, subject only to the limitation that such purpose accomplish the erection, improvement, or support of the county hospital, or whether such expenditures are also subject to the limitations of R.C. 339.06. I note initially that as a creature of statute, a board of county hospital trustees may exercise only those powers as are expressly conferred upon it by statute, or that may be necessarily implied therefrom. Burger Brewing Co. v. Thomas, 42 Ohio St. 2d 377, 329 N.E.2d 693 (1975); State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). Since a county hospital is a public agency, see Op. No. 85-005; Op. No. 73-017, a board of county hospital trustees is bound by the principle that it may expend public moneys it receives on behalf of the hospital only pursuant to clear statutory authority. State ex rel. Locher v. Menning, 95 Ohio St. 97, 115 N.E. 571 (1916). Further, it is a well-established principle that statutes authorizing the expenditure of public moneys are to be strictly construed, since all public moneys constitute a public trust. State v. McKelvey, 12 Ohio St. 2d 92, 232 N.E.2d 391 (1967); State ex rel. Leis v. Ferguson, 149 Ohio St. 555, 80 N.E.2d 118 (1948); State ex rel. Smith v. Maharry, 97 Ohio St. 272, 119 N.E. 822 (1918); 1976 Op. Att'y Gen. No. 76-017; 1976 Op. Att'y Gen. No. 76-004; 1971 Op. Att'y Gen. No. 71-058. Thus, any doubt with respect to the legality of a particular expenditure of public moneys is to be resolved against the expenditure. State ex rel. Leis v. Ferguson; Op. No. 76-017.

R.C. 339.08 addresses, in part, the use of moneys that are donated or bequeathed in trust to a county hospital by

individual donor. Applying the foregoing principles in this instance, I believe it is clear from the plain language of R.C. 339.08 that such moneys received in trust may be utilized for any purpose, consistent with the terms of the instrument creating the trust, that effects "the erection, improvement, or support of the county hospital." Further, it appears that this language of R.C. 339.08 contemplates, with respect to moneys received and held in trust pursuant thereto, a wide variety of permissible uses, insofar as such moneys may be used for the general support of the county hospital.

R.C. 339.06, on the other hand, addresses, in part, the expenditure by the board of county hospital trustees of moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners as provided for in R.C. 5705.22. R.C. 339.06 states that such moneys may be disbursed and expended "for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquiring of, leasing, or construction of permanent improvements to county hospital property." Thus, it appears that R.C. 339.06 also contemplates a wide variety of permissible uses for moneys received pursuant thereto, insofar as those moneys may be used generally "for the uses and purposes" of the county hospital. See, e.g., Op. No. 85-005 (a board of county hospital trustees has broad authority, pursuant to R.C. 339.06, to operate and manage a county hospital, and thus may expend funds pursuant to that section in such a manner that the board finds reasonably necessary to the efficient operation of the hospital); 1972 Op. Att'y Gen. No. 72-084 (a board of county hospital trustees may, pursuant to R.C. 339.06, expend funds for the services of certified public accountants and financial specialists to review and supervise the hospital's fiscal operations if reasonably necessary for the efficient operation of the hospital); 1956 Op. Att'y Gen. No. 7307, p. 757 (a board of county hospital trustees may, pursuant to R.C. 339.06, purchase the services of a credit bureau where the board determines that such services are necessary to the efficient operation of the hospital's fiscal affairs).

Insofar as R.C. 339.08 does not make the expenditure of moneys received pursuant thereto subject to the terms of R.C. 339.06, I conclude that such moneys may be expended in any manner provided for in R.C. 339.08. Accordingly, public moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 may be expended for any purpose, consistent with the terms of the instrument creating the trust, that effects the erection, improvement, or support of the county hospital.

In your final question you have enumerated specific examples of a variety of expenditures with respect to a county hospital and have asked whether those expenditures are of a type authorized by R.C. 339.08. In this regard you have included among your examples expenditures for physician and medical staff recruitment; employment of hospital consultants to perform hospital market feasibility and related studies; travel expenses related to continuing medical education and related professional programming; medical staff meetings and employee recognition events; lease obligations incurred to secure and maintain office space for the private practices of the medical staff in locations outside of the hospital; public relations activities to promote the hospital within its service

area; and compensation and related employee benefits paid to hospital administrative staff members. The expenditure of moneys deposited in the hospital operating fund for these specific purposes, with the exception of lease obligations incurred for the benefit of hospital medical staff, is expressly authorized by R.C. 339.06.

As I have already noted, R.C. 339.08 states that a board of county hospital trustees may expend moneys received and held in trust pursuant thereto for any purpose that effects the erection, improvement, or support of the county hospital. Webster's New World Dictionary 1431 (2d college ed. 1978) defines the term "support," in part, as "to maintain or provide for (a person, institution, etc.) with money, or subsistence." It seems, therefore, that the specific expenditures you have set forth in your letter are authorized under R.C. 339.08, since they appear to contribute to the overall support of the county hospital, particularly in terms of the quality of care and services the hospital is able to provide to persons in need thereof. Further, since R.C. 339.06 expressly authorizes the expenditure of moneys deposited in the hospital operating fund for these specific activities, I believe one may reasonably conclude that such activities contribute to the general support of the county hospital.<sup>4</sup>

Accordingly, it is my opinion, and you are advised that:

1. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C.

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<sup>4</sup> You have asked whether the board of county hospital trustees may incur lease obligations to secure and maintain office space for the private practice of the medical staff. In 1986 Op. Att'y Gen. No. 86-046 I recently concluded that the board of trustees of a state university that maintains and operates a college of medicine may permit faculty members of the university, as compensation in kind for services rendered, to maintain private medical practices on university property, and utilize university facilities, personnel, and services in conjunction therewith, pursuant to the trustees' power, inter alia, to hire and compensate faculty members. Similarly, a board of county hospital trustees may, pursuant to its authority to establish the compensation of the hospital medical staff, see R.C. 339.06, and expend funds for the support of the hospital, see R.C. 339.08, characterize lease obligations incurred to secure and maintain office space for the private practices of the medical staff in locations outside the hospital as a form of compensation in kind. The trustees may decide, however, that such lease obligations incurred by the hospital on behalf of the medical staff shall not be intended as compensation in kind, in which case the trustees should require the medical staff to reimburse the hospital the full value of those obligations. Such an arrangement would not implicate the lending aid and credit provisions of Ohio Const. art. VIII, §6, inasmuch as it would be analogous to a lease of county hospital facilities by the medical staff. See Op. No. 86-046 at 2-248 n.4; 1979 Op. Att'y Gen. No. 79-052. See also R.C. 339.01(providing, in part, that, "[a] board of county hospital trustees...may purchase, acquire, lease, appropriate, or construct an outpatient health facility in another county, which may include office space for physicians").



339.08 are public moneys, as defined in R.C. 117.01(C), for purposes of R.C. 117.28.

2. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 are subject to the lending aid and credit provisions of Ohio Const. art. VIII, §6. A board of county hospital trustees may not disburse and expend such moneys in a manner contrary to the prohibitions appearing in Ohio Const. art. VIII, §6.
3. All moneys received and held in trust by a board of county hospital trustees pursuant to R.C. 339.08 may be expended for any purpose, consistent with the terms of the instrument creating the trust, that effects the erection, improvement, or support of the county hospital.