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1. OFFICER OF PUBLIC INSTITUTION NOT CONNECTED WITH A COUNTY, MUNICIPAL CORPORATION, OR BOARD OF EDUCATION.
2. COUNTY HOSPITAL ESTABLISHED UNDER 399. R.C., IS PUBLIC INSTITUTION TRUSTEE OF SAID HOSPITAL IS NOT CONNECTED WITH COUNTY.
3. SUCH MEMBER CAN BE INTERESTED IN COUNTY CONTRACT IF AMOUNT DOES NOT EXCEED FIFTY DOLLARS; IF AMOUNT EXCEEDS FIFTY DOLLARS, HE MAY BE INTERESTED IF CONTRACT IS LET ON BIDS ADVERTISED AS PROVIDED BY LAW. §§ 2919.08, 2919.09, 339. R.C.

SYLLABUS:

1. An officer of a public institution should not be considered to be connected with a county, township, municipal corporation, or board of education within the purview of Sections 2919.08 and 2919.09, Revised Code.

2. A county hospital established pursuant to Chapter 339, Revised Code, is a public institution within the meaning of Sections 2919.08 and 2919.09, Revised Code, and a member of the board of trustees of such a county hospital is not connected with the county under those sections.

3. Such member may be interested in a county contract, other than those of the hospital, if the amount involved does not exceed fifty dollars; and if the amount involved does exceed fifty dollars, he may be interested if the contract is let on bids advertised as provided by law.

Columbus, Ohio, December 9, 1961

Hon. Rollo M. Marchant, Prosecuting Attorney,
Fayette County, Washington C. H., Ohio

Dear Sir:

In your request for my opinion you present a situation where the owner of a local hardware store has recently become a member of the board of trustees of the local county hospital. County commissioners and other county agencies in the past purchased some of their supplies from this store. You ask whether the hardware store owner may continue to sell supplies to these county agencies.

The applicable statutes are Sections 2919.08 and 2919.09, Revised Code. Section 2919.08 reads :

“No person, holding an office of trust or profit by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is connected.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.”

Section 2919.09, Revised Code, reads :

“No person, holding an office of trust or profit, by election or appointment, or as agent, servant, or employee of such officer or of a board of such officers, shall be interested in a contract for the purchase of property, supplies, or fire insurance for the use of the county, township, municipal corporation, board of education, or a public institution with which he is *not* connected, if the amount of such contract exceeds the sum of fifty dollars, unless such contract is let on bids advertised as provided by law.

“Whoever violates this section shall be imprisoned not less than one nor more than ten years.” (Emphasis added)

The first question is whether a trustee of a county hospital holds “* * * an office of trust * * *.” This was answered affirmatively in Opinion No. 580, Opinions of the Attorney General for 1951, page 342, the first paragraph of the syllabus reading :

“1. A member of the board of trustees of a county hospital appointed pursuant to the provisions of Section 3136, General Code, is the incumbent of an office of trust or profit within the meaning of Sections 12910 and 12911, General Code.”

In the situation presented in that opinion the trustees had been appointed under a statute different from Section 339.02, Revised Code, the present statute, but this should make no difference in the result. As that opinion makes clear, the determining consideration lies in the important responsibilities placed by statute on the trustees. In the situation presented by you, similar important responsibilities are placed on the hospital trustees by statute (see Chapter 339., Revised Code).

The second question is whether the trustee would be “interested in the contract”; and here the conclusion that the owner and operator of a store is interested in every sale made by his store is irresistible.

The third question is whether a county hospital created under Chapter 339., Revised Code, is a "public institution." Again, this is a question which it is unnecessary to discuss at length. A hospital is clearly an institution. A county hospital organized pursuant to statute, accomplishing purposes prescribed by statute, and supported in part at least by tax raised money, is clearly a public institution.

It is my opinion, therefore, that a member of the board of trustees of a county hospital holds an office of trust in a public institution, and under Section 2919.08, Revised Code, he is precluded from being interested in contracts of the hospital. The real question, however, is whether a person who holds an office with a public institution of a county, holds an office of trust for the *county* as well so as to be precluded from being interested in any of the county's contracts for supplies.

As the name implies, a county hospital is a part of the county. The establishment of such a hospital is initiated by the board of county commissioners (Section 339.01, Revised Code). The title of the real property of the hospital is in the county (Section 339.03, Revised Code). And although the board of hospital trustees has complete charge of the construction of the hospital (Section 339.03, Revised Code), and the operation of same after its construction (Section 339.06, Revised Code), the budget of the hospital must be approved by the board of county commissioners. Furthermore, the board of county commissioners may lease the facilities to a non-sectarian, charitable Ohio corporation for use as a general hospital, in lieu of operation by the board of trustees (Section 339.09, Revised Code).

However, even though a county hospital may actually be a part of the county government, Sections 2919.08 and 2919.09, *supra*, do distinguish "public institution" from "county"; and the resulting implication is that an officer of a public institution should not be considered to be connected with a county, township, municipal corporation, or board of education for the purposes of those sections.

Accordingly, since I have concluded that a county hospital is a public institution, it follows that a member of the board of trustees of a county hospital is not connected with the county within the purview of Sections 2919.08 and 2919.09, *supra*.

Applying the provisions of said Section 2919.09, Revised Code, you will note that the member of the board of trustees of the hospital may not

be interested in contracts exceeding fifty dollars when made by one of the county agencies with which such member is *not* connected unless the contract is let on advertised bids. This restriction would clearly apply to the contracts of the county agencies to which you refer. That is, if the contract involves fifty dollars or less the trustee may be interested; if the amount is more than fifty dollars, he can only be interested if the contract is let on advertised bids.

In conclusion, it is my opinion and you are advised:

1. An officer of a public institution should not be considered to be connected with a county, township, municipal corporation, or board of education within the purview of Sections 2919.08 and 2919.09, Revised Code.

2. A county hospital established pursuant to Chapter 339., Revised Code, is a public institution within the meaning of Sections 2919.08 and 2919.09, Revised Code, and a member of the board of trustees of such a county hospital is not connected with the county under those sections.

3. Such member may be interested in a county contract, other than those of the hospital, if the amount involved does not exceed fifty dollars; and if the amount involved does exceed fifty dollars, he may be interested if the contract is let on bids advertised as provided by law.

Respectfully,

MARK McELROY

Attorney General