

2594.

AUTHORITY OF COUNTY COMMISSIONERS TO ISSUE BONDS FOR
ERECTION OF BUILDINGS FOR DISTRICT TUBERCULOSIS HOS-
PITAL.

SYLLABUS:

County commissioners may issue bonds under the provisions of section 3152, General Code, for the purpose of purchasing site, erection of buildings for district tuberculosis hospitals, or for the purpose of enlarging, improving or rebuilding the same, without approval of the electors of the county, in excess of the limitations, as provided for county buildings, under the provisions of section 5638, General Code.

COLUMBUS, OHIO, June 23, 1925.

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

GENTLEMEN :—This acknowledges receipt of your communication as follows :

“We respectfully request you to render this department your opinion upon the following matter :

“The commissioners of the counties comprising the district tuberculosis hospital at Lima are anticipating building an addition to the hospital building, the estimated cost of such addition and betterment amounting to \$65,000.00, of which Allen county’s share would be approximately \$26,000.00. This amount exceeds the limitation of section 5638 G. C.

“Question :

“May the Allen county commissioners borrow or issue bonds under authority of section 3152, General Code, to the extent of \$26,000.00 without vote to pay Allen county’s share of such cost, notwithstanding the provisions of section 5638, General Code?

“At page 960 of annual report for 1918, we note an approval of a bond issue of \$25,000.00 for Montgomery county, to be used for a similar purpose.”

The provisions of law governing district tuberculosis hospitals are found in 108 Ohio laws, part 1, page 252; 107 Ohio laws, page 497; 103 Ohio laws, page 494 and 100 Ohio laws, page 86.

Section 3148, General Code, provides :

“The commissioners of any two or more counties not to exceed ten, may form themselves into a joint board for the purpose of establishing and maintaining a district hospital, provided there is no municipal tuberculosis hospital therein for care and treatment of persons suffering from tuberculosis, and may provide the necessary funds for the purchase of a site, which site shall be separate and apart from the infirmary boundaries in any county, and also may provide for the erection of the necessary buildings thereon; and provided further that where any number of counties have already constructed and are operating a district tuberculosis hospital, counties may join such counties for enlargement and use of such hospital, and providing further that the county commissioners of any county within a district which desires to withdraw from said district, may dispose of its interest in said district hospital by selling same to any county or counties in said

district and subject to the approval of the state board of health. Any new district or addition to a district shall be approved by the state board of health. Such necessary expenses as may be incurred by the county commissioners in meeting with the commissioners of other counties for consideration of the proposal to establish a district tuberculosis hospital shall be paid from the general fund of the county. After the organization of the joint board such expenses shall be paid from the fund provided for the erection and maintenance of such hospital."

Section 3152, General Code, provides:

"The first cost of the hospital, and the cost of all betterments and additions thereto, shall be paid by the counties comprising the district in proportion to the taxable property of each county outside of a municipality having a tuberculosis hospital as shown by their respective duplicates. To meet the expenses incurred in the purchase of a site and for the erection or for the purpose of enlarging, improving or rebuilding thereof, the commissioners may borrow such sum or sums of money as may be apportioned to the county, at a rate of interest not to exceed six per cent. per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof. Such principal and interest shall be paid as provided in section 2435 of the General Code. A statement shall be prepared quarterly showing the per capita daily cost for the current expenses of maintaining such hospital, including the cost of the ordinary repairs, and each county in the district shall pay its share of such cost as determined by the number of days the total number of patients from such county have spent in the hospital during the quarter, but the sum paid by patients from such county for their treatment therein shall be deducted from this amount. The boards of commissioners of counties jointly maintaining a district hospital for tuberculosis shall make annual assessments of taxes sufficient to support and defray the necessary expense of maintenance of such hospital."

Section 5638, General Code, provides:

"The county commissioners shall not levy a tax, appropriate money or issue bonds for the purpose of building county buildings, purchasing sites therefor, or for land for infirmary purposes, the expenses of which will exceed \$15,000.00, except in case of casualty, and as hereinafter provided; or for building a county bridge, the expense of which will exceed \$18,000.00, except in case of casualty, and as hereinafter provided; or enlarge, repair, improve, or rebuild a public county building, the entire cost of which expenditure will exceed \$10,000.00; without first submitting to the voters of the county, the question as to the policy of making such expenditure."

These limitations as to the amounts that can be issued by county commissioners without the approval by the electors of the county are specifically restricted to the issuance of bonds for the purpose of erecting county buildings, for purchasing sites therefor, or for land for infirmary purposes, or for building a county bridge, or to enlarge, repair, improve or rebuild a public county building; and provision is made that the question of the issuance of bonds shall be submitted to the voters of the county.

Your question then raises the specific point as to whether or not the building for the district tuberculosis hospital is a county building within the purview of section 5638, General Code.

The title of house bill No. 61 as found in 100 Ohio laws, page 86, is as follows:

"An act to amend sections 1 and 2 of an act 'to provide for county hospitals for the care and treatment of inmates of county infirmaries and other residents of the county suffering from tuberculosis,' passed April 2, 1908, and to supplement said act by adding thereto sections 6, 7, 8, 9 and 10 to provide for district hospitals."

In 103 Ohio laws, page 492, the following title is given to house bill No. 265:

"An act to amend sections 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3151, 3152 and 3153 of the General Code of Ohio, relating to county and district tuberculosis hospitals."

It is therefore observed that the legislature has distinguished between county and district hospitals and the organization thereof. It must then be concluded that a district tuberculosis hospital is a distinct and separate entity from that of a county tuberculosis hospital.

It is true that the provisions of sections 3148 and 3152, General Code, are that the county commissioners shall provide for, levy a tax and issue bonds for the county's interest in a district tuberculosis hospital, and have power to sell the interest in the institution of the county to another or other counties of the district.

The title to the property is limited to the county's rights, however, to the extent that the sale of the property can only be made to the other county or counties of the district, thereby raising the presumption at least that the interest in the hospital is more than that of the single county interest; that there is a mutual right of all counties constituting the members of the district.

Section 3148-2, General Code, provides:

"The management and control of such tuberculosis hospital shall be vested in a board of trustees, which board of trustees shall have all the powers conferred by law upon the board of trustees of district hospitals for the care of persons suffering from tuberculosis, and all laws applicable to the levy of taxes for the erection, maintenance and operation of said district hospitals shall apply to the leasing, erection, operation and maintenance of said county hospital for the treatment of persons suffering from tuberculosis."

Section 3148-3, General Code, provides:

"The county commissioners shall constitute the board of trustees of such hospital."

Section 3127, General Code, provides for a county hospital as follows:

"When two hundred or more taxpayers of a county petition the county commissioners for the privilege of having submitted to a vote of the electors of such county the issue of county bonds or notes to provide funds for the purchase of a site and the erection thereon of a county hospital or hospital buildings, and the support thereof; such commissioners shall order a special election to be held not less than forty nor more than sixty days from the filing of such petition with such board of county commissioners. Such

election shall be to determine the question of issuing bonds or notes for the county hospital, to purchase the site therefor, erect the buildings thereon and to maintain them. The election shall be held at the usual places in the county for electing county officers and notices shall be given and the election conducted in the same manner as nearly as practicable as the election of county officers."

Section 3130, General Code, provides for the issuance of bonds for the county hospital as follows:

"If a majority of the electors of the county voting at such election are in favor of the issuance of bonds, the commissioners shall provide for the issuing and sale thereof according to law and in conformity to the provisions of this chapter."

It will be observed that the requirement for the submission of the question to the electors is not included in the provisions of section 3148-2, General Code, as is the case within the sections above quoted for county hospitals, and furthermore that the provisions of section 3152, General Code, as to the issuance of bonds are:

"To meet the expenses incurred in the purchase of a site and for the erection of buildings or for the purpose of enlarging, improving or rebuilding thereof, the commissioners may borrow such sum or sums of money as may be apportioned to the county, at a rate of interest not to exceed six per cent per annum, and issue the bonds of the county to secure the payment of the principal and interest thereof."

It would therefore seem by applying the different provisions of the foregoing sections that the legislature has intended in the creation, promulgation and maintenance of a district tuberculosis hospital, to establish a legal entity distinguishable from the county hospital, and has especially so distinguished by placing no limitations as to the issuance of bonds for the district establishment.

The failure of the electors of any county in the district to authorize the issue for the county's part of the cost of any district hospital would defeat the purpose of the trustees in providing the funds to build such hospital. This must be given some weight as an argument in favor of this construction, especially in view of section 3139, General Code, which is as follows:

"On and after January first, nineteen hundred and fourteen, no person suffering from pulmonary tuberculosis, commonly known as consumption, shall be kept in any county infirmary.

The foregoing section is the first one under the subject "County tuberculosis hospital" and is section 1 of house bill No. 61, 100 Ohio laws, page 86. As heretofore observed, this act provides for county tuberculosis hospitals and for district tuberculosis hospitals.

A further argument may be advanced that it was the intention of the legislature:

1. To provide the creation of county hospitals for persons afflicted with tuberculosis when the same can be done as a county entity and;
2. To provide the means for the creation of district tuberculosis hospitals for such counties as could not comply with the law in providing a county hospital.

As above concluded, it would defeat the purpose of the act should the electors of any county disapprove the issuance of the bonds for the county's portion. The

conclusion can therefore be reached that the provisions of section 3152, General Code, for the issuance of bonds by a county for the county's share was intended to be available to any county in the district, irrespective of the limitations of sections 5638 or 3130, General Code. The distinction as found in sections 3141-1 and 3152, General Code, should also be observed.

Section 3141-1, General Code, provides in part as follows:

"For the purpose of constructing and maintaining such county hospital the county commissioners may issue bonds and shall annually levy a tax and set aside the funds necessary for such maintenance. Such funds shall not be used for any other purpose. When it shall become necessary to enlarge, repair, or improve such county hospital for tuberculosis, the county commissioners shall proceed in the same manner as provided for *other county buildings*. * * *"

Section 3152, General Code, is distinguished in that it makes no reference to or has any specifications as to the limitations governing county buildings as specified in section 3141-1, General Code, *supra*.

You are therefore advised that the commissioners of Allen county may issue bonds under the provisions of section 3152, General Code, in a sum in excess of the limitations of section 5638, General Code.

Respectfully,
C. C. CRABBE,
Attorney General.

2595.

APPROVAL, BONDS OF PERRY TOWNSHIP RURAL SCHOOL DISTRICT,
CARROLL COUNTY, \$8,000.00.

COLUMBUS, OHIO, June 23, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2596.

APPROVAL, BONDS OF LOGAN COUNTY, \$13,000.00.

COLUMBUS, OHIO, June 23, 1925.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.