

1445.

COUNTY MEMORIAL HOSPITAL—MUST BE ERECTED UNDER COUNTY HOSPITAL STATUTES—SECTION 3127 G. C., ET SEQ.

A county memorial hospital must be erected under the county hospital statutes (section 3127 et seq. of the General Code), and can not be constructed under the memorial building statutes (section 3059 et seq. of the General Code).

COLUMBUS, OHIO, July 20, 1920.

HON. JAMES M. COX, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—Receipt is acknowledged of your letter of July 10th submitting for the opinion of this office a resolution certified to you by the commissioners of Auglaize county, which said resolution is, in part, as follows:

“WHEREAS, Auglaize county, Ohio, has no public structure which is dedicated to soldiers, sailors, marines and pioneers, and * * *

WHEREAS, there is need of a hospital building in said county and such a memorial would perpetuate the deeds of those who saw service under the flag of our county, therefore,

BE IT RESOLVED, * * * that it is the unanimous opinion of the members of said board that it is desirable to erect, furnish and maintain a memorial hospital building in Auglaize county, Ohio, to commemorate the services of the soldiers, sailors, marines and pioneers, * * * and the governor of the state of Ohio is asked to appoint a board of trustees * * *.”

You desire the advice of this office as to whether you are empowered to act upon the above quoted resolution in accordance with the tenor of it; and you express some doubt as to whether the character and purpose of the proposed building do not bring the enterprise within the provisions of section 3127 of the General Code, rather than within those sections which govern memorial buildings proper.

Section 3059 of the General Code applies to memorial buildings and provides for the action which was attempted in this case by the resolution of the county commissioners. In that section the building is simply described as “a memorial building to commemorate the services of the soldiers, sailors, marines and pioneers of the county,” and no specification of the uses to which the building is to be put in order to achieve the general object of commemoration is made. Indeed, the whole chapter in which the section is found is very vague on this point.

Section 3069 of the General Code, which is a part of the original act, authorizes the commissioners to “permit the occupancy by any society or association of soldiers, sailors, marines and pioneers, or any historical association, of any county building, or part or parts thereof not necessary for other county purposes,” from which the inference may be drawn that a “memorial building” proper, in the mind of the general assembly which passed the act, was to be occupied by such organizations and used for such purposes.

A supplementary act, codified as sections 3063-1 to 3063-3 of the General Code, authorizes the memorial building fund to be contributed to the state armory board to be expended for the construction of a state armory, which armory is also, according to section 3063-2, to be “a memorial building to commemorate the services of the soldiers, sailors, marines and pioneers of the county,” except that the armory board may “turn over to the county commissioners of the county a designated portion thereof, upon such terms as to control and use as may be agreed upon between such board and county commissioners.”

In section 3068 of the General Code it is provided that the building upon completion "shall be turned over to the county commissioners, who shall provide for the maintenance, equipment, decoration and furnishing thereof." In this same connection the commissioners are authorized "to permit the occupancy and use of the memorial building, or any part thereof, upon such terms as they deem proper."

Nothing but inference is therefore found in the sections which deal with memorial buildings, as such, to indicate exactly what kind of purposes or uses were intended by the general assembly. However, it is believed that the type of "memorial building" which the general assembly had in mind is pretty generally understood; it is a building containing a hall or auditorium for public assemblage and rooms for the meetings of patriotic organizations and for offices for other patriotic and quasi public enterprises. It is not believed that a hospital was in the contemplation of the general assembly in providing for a memorial building.

True, a hospital may very well be dedicated as a memorial which may stand as a commemoration of patriotic devotion and sacrifice. Very frequently hospitals have been erected to the memory of private individuals. In that sense it is by no means unusual to conceive of a hospital as a memorial building; but other types of public buildings may also be thought of as memorials and dedicated as such. Churches, libraries, athletic fields or stadia and bridges have frequently been dedicated in such wise. For example, sections 2451 to 2453, inclusive, of the General Code provide for the erection by the county commissioners of a monument "in memory of those who died or were killed during the war of eighteen hundred and sixty-one." It thus appears that a structure of monumental type represents an idea distinct from that embodied in the term "memorial building" as used elsewhere in the statutes.

But in the case now presented we are not left to inferences to determine the intention of the general assembly. Sections 3127 et seq. of the General Code, relating to county hospitals, were amended by the general assembly in 108 Ohio Laws, part I, p. 255. These sections now provide for procedure which may be outlined as follows:

The first step in the establishment of a county hospital is a petition signed by the taxpayers and addressed to the county commissioners (Sec. 3127 G. C.); a special election is then held on a date to be fixed by the commissioners within certain limitations (Sec. 3127 G. C. and Sec. 3130 G. C. as amended 108 O. L. 256); if the proposition carries the result is to be certified by the deputy state supervisors of elections to the governor; he then must "appoint a board of county hospital trustees, composed of four freeholders of such county" (Sec. 3131 G. C. as amended 108 O. L., part I, 256), these trustees are to select and purchase the site and build the hospital (sections 3131 and 3132 G. C. as amended 108 O. L. part I 256) they are to determine the amount of bonds to be issued by the county commissioners (Sec. 3133 G. C. as amended), when the hospital is completed this board of trustees goes out of existence and the county commissioners appoint a permanent board of trustees (Sec. 3135 G. C. as amended).

If the sections relating to county hospitals contained no more than has been abstracted the inferences above suggested and arising from the hospital act itself would suggest the impropriety of following the procedure outlined in sections 3059 et. seq. of the General Code in the erection of a county hospital. However the question under discussion is virtually answered by the following provision quoted from section 3128 of the General Code as amended 108 O. L., part I, p. 255, a part of the county hospital act:

"And when a majority of the taxpayers signing the petitions submitted to the county commissioners under the preceding section, shall state therein that it is desired by them that such hospital be designated as a memorial to commemorate the services of the soldiers, sailors, marines and pioneers of the county, then such hospital, if erected in accordance with the provisions of this act, shall

be known and designated as a county memorial hospital; and such plates, tablets, busts, statues and other memorials and equipment as the board of county hospital trustees hereinafter provided for shall deem fit to properly accomplish and preserve the memorial feature in such hospital, shall be incorporated in its construction. And if the memorial feature be thus incorporated, this fact shall be mentioned in the published notices hereinbefore required."

Here is complete provision for erecting a county hospital as a memorial to commemorate the services of the soldiers, sailors, marines and pioneers of the county. Such hospital must be "erected in accordance with the provisions of this act," i. e., the county hospital statutes, and not in accordance with the provisions of the "memorial building" act.

The resolution submitted does not show compliance with section 3127 and succeeding sections as amended, though doubtless the commissioners, through imperfect information as to the recent amendment, intended compliance therewith. Under the act which is applicable the governor is not called upon to perform any duty until the result of an election is certified to him by the board of deputy state supervisors of elections of the county for which it is held. I take it that no such certification has been made in this case.

You are accordingly advised that, in the opinion of this department, the resolution of the commissioners of Auglaize county does not show compliance either with sections 3059 et seq. of the General Code or with sections 3127 et seq. of the General Code, and that therefore the governor is without power to appoint a board of trustees for the erection of the proposed building.

Respectfully,
 JOHN G. PRICE,
Attorney General.

1446.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENT IN CLERMONT COUNTY, OHIO.

COLUMBUS, OHIO, July 20, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1447.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN COLUMBIANA AND MAHONING COUNTIES.

COLUMBUS, OHIO, July 21, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—Your letter of July 20, 1920, has been received submitting for my approval as to form and legality the following final resolutions covering the improvement of: