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1. TUBERCULOUS PATIENTS—RESIDENTS OF COUNTY—COUNTY COMMISSIONERS—AUTHORIZED TO EMPLOY PHYSICIAN FOR TREATMENT—CLINIC—ONLY GENERAL FUNDS OF COUNTY MAY BE EXPENDED FOR PURPOSE—SPECIAL FUNDS FROM TAX LEVIES—LIMITED TO SUPPORT OF TUBERCULOSIS HOSPITALS—CARE, TREATMENT AND MAINTENANCE OF HOSPITALIZED PATIENTS—SECTIONS 339.39, 5705.20 RC.
2. HEALTH BOARD, LOCAL—UNDER MANDATORY DUTY TO PROVIDE FOR PROMPT DIAGNOSIS AND CONTROL OF COMMUNICABLE DISEASES—BOARD MAY PROVIDE FOR DISPENSING DRUGS AND MEDICINES UPON PRESCRIPTIONS OF PHYSICIANS EMPLOYED BY COUNTY COMMISSIONERS—FUNDS SUPPLIED WITHIN DISCRETION OF COUNTY COMMISSIONERS—SECTION 3709.22 RC.

SYLLABUS:

1. A board of county commissioners is authorized, under the provisions of Section 339.39, Revised Code, to employ a physician for the treatment of tuberculous patients who are residents of the county, whether or not a clinic is established as authorized in such section, but only the general funds of the county may be expended for such purpose, the special funds derived from tax levies under authority of Section 5705.20, Revised Code, being limited to the support of tuberculosis hospitals and the care, treatment and maintenance of patients actually hospitalized in a tuberculosis institution as pointed out in Opinion No. 3623, Opinions of the Attorney General for 1954, dated March 19, 1954.

2. Under the provisions of Section 3709.22, Revised Code, a local board of health is under a mandatory duty to "provide for the prompt diagnosis and control of communicable diseases" and in the performance of such duty such board may provide for dispensing drugs and medicines for the treatment of tuberculous patients upon the prescription of physicians employed by the board of county commissioners. Such board of county commissioners have discretionary authority to supply to such board of health the funds necessary to provide such drugs and medicines.

Columbus, Ohio, July 15, 1954

Hon. George R. Smith, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Greene County Commissioners and the Greene County Health District, through its Health Commissioner, have requested that I obtain your opinion on the following questions:

"1. Do the County Commissioners have lawful authority to contract with private physicians for the treatment of tuberculosis cases?

"2. Do the county commissioners have authority to purchase a supply of drugs to be used for the treatment of tuberculosis cases, the drugs to be dispensed through the Health Dept. to the patient under the orders and prescription of the private physician treating said patient?

"You will find the statute pertaining to this question to be R.C. 339.38 and related sections."

In Section 339.20, et seq., Revised Code, formerly Section 3139, et seq., General Code, authority is given to a board of county commissioners to provide for the establishment and operation of local tuberculosis hospitals and clinics, to participate in the establishment and operation of a district tuberculosis hospital, or to contract with the trustees of hospitals established in other communities for the care of local tuberculous patients. With respect to your first question we may observe the following provisions in Section 339.39, Revised Code:

"The board of county commissioners of any county which does not operate a county tuberculosis hospital, or which has joined in the construction of a district tuberculosis hospital and in which district the joint board of county commissioners fails or refuses to maintain tuberculosis clinics as provided in section 339.36 of the Revised Code, may establish and maintain one or more tuberculosis clinics in the county, may employ physicians, public health nurses, and other persons for the operation of such clinics or other means as are provided for the prevention, cure, and treatment of tuberculosis, and may provide by tax levies, or otherwise, the necessary funds for such clinics to be established, maintained and operated. Clinics so established shall be under the control of the board of county commissioners, and shall be supervised by a board of three trustees similar in all respects to and with all the powers enjoyed by a board of trustees of a county tuberculosis hospital, or by a city or general district board of health within the county, as the board of county commissioners designates."

This section constitutes a recodification without substantive change of former Section 3139-19, General Code, which section was under scrutiny in Opinion No. 5308, Opinions of the Attorney General for 1942,

p. 480, where the specific question involved was the authority of the commissioners to employ a public health nurse "for tuberculosis work without first having established a clinic." The writer of this opinion, after first noting the dictionary definitions of "clinic," said, p. 482:

"Applying the foregoing definitions, it would follow that a tuberculosis clinic, as that term is used in Section 3139-19, supra, may be defined as an institution or station under the control of the board of county commissioners where persons suspected of having or suffering from tuberculosis may come for examination, diagnosis and expert advice or treatment.

"It will be noted from the above quoted section of the General Code that county commissioners may establish one or more tuberculosis clinics and may employ public health nurses for the operation of such clinics or other means provided for the prevention, cure and treatment of tuberculosis. *This authority resting in the hands of the county commissioners is alternative.* The commissioners may establish a tuberculosis clinic and employ public health nurses for the operation of such clinic or they may establish other means for the prevention, cure and treatment of tuberculosis.

"The establishment of other means clearly encompasses the authority to employ public health nurses, other than for the operation of tuberculosis clinics, so long as such employment is for the prevention, cure and treatment of tuberculosis."

(Emphasis added.)

I find myself in agreement with the view thus expressed and I perceive no basis for supposing that a different view in regard to the employment of physicians for the purpose thus stated would be tenable.

Here it should be said, however, that only the general funds of the county would be available for expenditure in projects of this kind, the limitation on the use of funds derived from a special levy under the provisions of Section 5705.20, Revised Code, having been pointed out in my opinion No. 3623, Opinions of the Attorney General for 1954, dated March 15, 1954.

In the matter of the participation of the local health district authorities in a program of tuberculosis treatment and control your attention is invited to the following provisions in Section 3709.22, Revised Code:

"Each board of health of a city or general health district shall study and record the prevalence of disease within its district and provide for the prompt diagnosis and control of communicable diseases. * * *"

This provision, formerly set out in Section 1261-26, General Code, was the subject of consideration in Opinion No. 975, Opinions of the Attorney General for 1946, p. 376, the writer therein concluding that it constituted a mandate to the boards of health. The first paragraph of the syllabus in such opinion reads:

“Section 1261-26, General Code, places upon boards of health the mandatory duty to provide for the prompt diagnosis and control of communicable diseases. Under that authority the board of health of a general health district is charged with the care and supervision of tuberculosis patients.”

The relative responsibility of the county commissioners and the district board of health in the care and supervision of tuberculosis patients is stated in this opinion as follows, pp. 378-380:

“The mandatory language of section 1261-26, General Code, stating ‘it shall be the duty of each district board of health to * * * provide for the prompt diagnosis and control of communicable diseases,’ has no counterpart in those statutes concerning the powers and duties of the county commissioners. It may be laid down as a general rule, that the board of county commissioners is clothed with authority to do whatever the corporate or political entity, the county, might do, if capable of rational action, except in respect to matters the cognizance of which is exclusively vested in some other officer or person. As counties possess only such powers and privileges as may be delegated to them by the Legislature, it follows as a necessary consequence that the powers of county commissioners are statutory, both as to source and intent. See 11 O. Jur. 331 and 332; State ex rel. Stanton v. Andrews, 105 O. S. 489, and State ex rel. Bushnell v. Cuyahoga County, 107 O. S. 475. As stated above, there appears in the statutes of this state no express duty upon the county commissioners to care for and supervise tuberculosis patients. There is, of course, discretionary authority, as pointed out in Opinion No. 5308, Opinions of the Attorney General for 1942, page 480, under the provisions of section 3139-19, General Code, for the employment of public health nurses for the prevention, cure and treatment of tuberculosis in those counties which do not operate county tuberculosis hospitals or which are not part of a district in which tuberculosis clinics are maintained. * * *

“Therefore, as opposed to the mandatory duty upon district boards of health to care for and supervise tuberculosis patients, I find the permissive language under which the county commissioners of Jefferson County have apparently operated in the employment of a nurse. There would be no basis for holding that the county commissioners, having thus exercised their discretion

under section 3139-19, General Code, in the employment of a public nurse, thereby acquired such exclusive jurisdiction of such patients that their care and supervision may not be turned over to the general health district which is charged with the mandatory duty.

“Therefore, in answer to your first question, it is my opinion that since it is the mandatory duty of the general health district of Jefferson County to provide for the care and supervision of county tuberculous patients under the provisions of Section 1261-26, General Code, no formal transfer of those patients who have been under the care and supervision of a nurse employed by the board of county commissioners under authority of section 3139-19, General Code, is required, and it is not necessary to obtain the consent of the district board of health to such transfer.”

It would thus appear to be quite clear that the participation of the local health authorities in the arrangement described in your inquiry is not only within the statutory authority but may, in appropriate circumstances, be regarded, as mandatory.

In such arrangement, to the extent that your second question is concerned, it would seem that the sole function of the board of county commissioners is to provide the funds, in amounts fixed by the budget commission, for the drugs and medicines to be dispensed by the health authorities. Supplying funds in general for the operations of the local county health authorities is, of course, the statutory responsibility of the several townships and municipal corporations composing the district; and I perceive no reason why funds so supplied could not be used for the purposes described in your inquiry. I do not, however, regard this circumstance as affecting in any way the discretionary authority of the county commissioners, as pointed out in the 1946 opinion, *supra*, to provide funds for use in “the prevention, cure and treatment of tuberculosis”; and I see no reason why funds so provided could not be expended in a cooperative arrangement with the local health authorities.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. A board of county commissioners is authorized, under the provisions of Section 339.39, Revised Code, to employ a physician for the treatment of tuberculous patients who are residents of the county, whether or not a clinic is established as authorized in such section, but only the general funds of the county may be expended for such purpose, the special funds derived from tax levies under authority of Section 5705.20,

Revised Code, being limited to the support of tuberculosis hospitals and the care, treatment and maintenance of patients actually hospitalized in a tuberculosis institution as pointed out in Opinion No. 3623, Opinions of the Attorney General for 1954, dated March 19, 1954.

2. Under the provisions of Section 3709.22, Revised Code, a local board of health is under a mandatory duty to "provide for the prompt diagnosis and control of communicable diseases" and in the performance of such duty such board may provide for dispensing drugs and medicines for the treatment of tuberculous patients upon the prescription of physicians employed by the board of county commissioners. Such board of county commissioners have discretionary authority to supply to such board of health the funds necessary to provide such drugs and medicines.

Respectfully,

C. WILLIAM O'NEILL

Attorney General