

1801

1. HOSPITAL DISTRICT, JOINT TOWNSHIP—TRUSTEES OF TWO OR MORE CONTIGUOUS TOWNSHIPS MAY JOIN TO ESTABLISH SUCH HOSPITAL—SECTION 3414-1 ET SEQ., G.C.
2. NO AUTHORITY IN LAW FOR MUNICIPALITY TO JOIN WITH ONE OR MORE TOWNSHIPS TO ESTABLISH JOINT TOWNSHIP—VILLAGE HOSPITAL DISTRICT.
3. TO DETERMINE PERCENTAGE OF FAVORABLE VOTES CAST TO ESTABLISH JOINT TOWNSHIP HOSPITAL DISTRICT, VOTES COMPUTED ON BASIS OF DISTRICT AS A WHOLE—SECTIONS 3414-2, 3414-3 G. C.
4. MANAGEMENT AND CONTROL OF JOINT TOWNSHIP HOSPITAL VESTED IN BOARD OF HOSPITAL GOVERNORS—SECTION 3414-6 G. C.

SYLLABUS:

1. The trustees of two or more contiguous townships may under the authority of Section 3414-1 et seq. of the General Code, join in establishing a joint township hospital district.
2. There is no authority in law whereby a municipality as such, may join with one or more townships in establishing a joint township-village hospital district.
3. In determining the percentage of favorable votes cast by the electors of a joint township hospital district, in elections held pursuant to Sections 3414-2 and 3414-3, General Code, such votes are to be computed on the basis of the district as a whole, and it is not necessary that the required vote of sixty-five percent be found to have been cast in favor of the submitted proposition in each of the townships constituting such district.
4. The management and control of a joint township hospital are vested in a board of hospital governors appointed in the manner and having the qualifications set forth in Section 3414-6 of the General Code.

Columbus, Ohio, April 21, 1947

Hon. Erwin L. Clemens, Prosecuting Attorney, Defiance County
Defiance, Ohio

Dear Sir:

I acknowledge receipt of your communication, requesting my opinion as to the interpretation of Section 3414-1 et seq. of the General Code,

relative to the organization of joint township hospital districts, and as to the authority of a village to join with townships in the establishment and maintenance of a hospital. The questions which you have submitted are as follows:

“1. May the four townships in and around the Village of Hicksville join with the Village of Hicksville in constructing a new hospital?”

2. It appears that townships may join for the purposes of constructing a hospital, passing bond issues, etc., but I fail to find any authority for the village to join with the townships.

3. If the village is unable legally to join with the townships, is there any procedure by which they may assist in the cost of construction and operation of the hospital?

4. In the event the village and townships may combine, would the vote be computed from the whole district or would it be necessary that the vote carry in each separate township or village of the district?

5. If the townships and village may join, how would the hospital board or board of trustees be selected?”

The statutes relative to the organization of joint township hospital districts, are found in Sections 3414-1 to 3414-8, inclusive, of the General Code, having been enacted in 1941 (119 O. L., 354). Section 3414-1 reads in part as follows:

“The trustees of any two or more contiguous townships in any county may by a two-thirds favorable vote of each of said board of trustees, form themselves into a joint township district hospital board for the purpose of establishing, constructing and maintaining a joint township district general hospital, and aforesaid contiguous townships wherein said two-thirds favorable votes shall have been taken, shall become and be a part of a joint township hospital district.

** * * All members of the boards of township trustees of all the townships so participating, shall comprise the joint district hospital board. * * **
(Emphasis added.)

It will be observed that the authority here given to local subdivisions to unite in establishing a hospital district is limited strictly to townships. There is no expression of any authority for a township to unite with a village or for a village to join with a township. While it might be conceded that a municipal corporation under its broad powers of home rule would

have sufficient authority, without an attempted grant from the General Assembly, to join with a township in the establishment of a hospital, yet the absence of express authority to a township to enter into such an arrangement with a village would clearly leave the township without any such power, since it is purely a creature of the legislature and its powers are only such as are expressly granted or necessarily implied.

Accordingly, I have no difficulty in reaching the conclusion that Section 3414-1 supra, gives no authority for the organization of a joint township-village hospital district. Substantially the same proposition was discussed in my opinion No. 1161, rendered August 21, 1946, wherein it was said :

“While it is true that the territory comprising the villages and school districts in the townships which form a joint township hospital district, is also township territory, there is nothing in Sections 3414-1 and 3414-2, nor in any other statute, which empowers or authorizes municipalities or school districts, as such, to participate in any manner in the establishment of the hospital district. Such establishment is a township matter, exclusively.”

Section 3414-2 contains provisions whereby the establishment of a joint township hospital may be financed. That section, in so far as pertinent, reads as follows :

“Upon the establishment of such township hospital district and after the organization of said township district hospital board, as aforesaid, *the joint township hospital board* of the joint township hospital district *shal determine the amount of bonds to be issued*, and such other matters as pertain thereto, *and shall issue and sell said bonds* to the extent and in the amount so determined *when approved by the vote of the electorate of said hospital district voting as a subdivision*, for the purchase of a site and for the constructing and equipping of a hospital building thereon. Such bonds shall be issued and sold under the same manner and conditions and within the limitations prescribed by the uniform bond act, Sections 2293-1 to 2293-86, inclusive, of the General Code of Ohio.

All necessary expenses for the operation of such general hospital may be paid out of any moneys derived from the special levy approved for such purposes by the voters of said joint township hospital district, *voting as a subdivision*, or out of any other moneys received from hospital income or services rendered, or from any unencumbered funds from any other source. The board

of trustees of the several townships participating in said hospital district are hereby authorized to appropriate and pay over to said joint township hospital board any unencumbered funds that they may have, for maintenance of said hospital. * * *

(Emphasis added.)

Section 3414-3 makes provision for the levy of a tax for the operation of such joint township hospital. That section reads:

“Upon request of such joint township district hospital board, by resolution approved by a two-thirds vote of the joint membership thereof, the board of elections of the county in which such district lies, shall place upon the ballot for submission to the electorate of said joint township hospital district, at the next primary or general election, occurring not less than thirty days nor more than ninety days after request is received from said joint board, the question of levying a tax not to exceed one (1) mill outside the ten (10) mill limitation, for a period not to exceed five (5) years, for the purpose of providing funds for the payment of necessary expenses incurred in the operation of said district hospital. If *sixty-five percent of the electors in said joint hospital district* voting on the proposition, vote in favor thereof, the county auditor shall annually place on the tax duplicate *against the property in said hospital district*, a levy in the amount required by the joint board of trustees of the joint township hospital district, but not to exceed one mill.” (Emphasis added.)

It will be noted that Section 3414-2 in providing for the issuance of bonds and a tax levy for operation clearly provides that the electors of the hospital district shall vote “as a subdivision”. For the purpose of the issuance of bonds, the General Assembly has expressly created a new subdivision in addition to those formerly recognized by the uniform bond law and has given it bond issuing authority as a separate and complete entity. In the same act by which these joint township hospital districts were provided for, the General Assembly saw fit to amend Section 2293-1 by changing the definition of “subdivision” to read as follows:

“(a) ‘Subdivision’ shall mean any county, school district except the county school district, municipal corporation, joint township hospital district or township in the state.”

It will be noted further that in the second paragraph of Section 3414-2 supra, there is a provision that the operating expenses of such general hospital may be paid “out of any monies derived from the special levy ap-

proved for such purposes by the voters of such joint hospital district *voting as a subdivision.*" Also in Section 3414-3 supra, it is provided that there may be submitted to the electors of the district the question of levying a tax for operating expenses of not to exceed one mill *outside the ten mill limitation*, for a period not to exceed five years, which if approved by the vote of sixty-five percent of the "electors in such joint hospital district," will require the county auditor to place the tax levy on the tax duplicate "against the property in said hospital district."

The General Assembly did not see fit to amend the definition of "subdivision", found in Section 5625-1, General Code, being a part of the uniform tax levy law. However, it appears to me quite clear that the effect of the statutes which I have quoted, is to make such joint township hospital district a subdivision for the purpose of the levy of the tax in question.

In the course of your letter, you raise this special inquiry :

"If the village is unable legally to join with the townships, is there any procedure by which they may assist in the cost of construction and operation of the hospital?"

If it be borne in mind that a village located within a township is a part of that township, that in every election held in such township the residents of the village have a right to vote, and that in every levy of tax by the township, such tax falls upon the property within the village the same as on that without, then it becomes quite evident that the electors and property owners residing in the village with which you are concerned, will have a direct part not only in establishing such joint hospital but in maintaining it. The cost of construction and operation will fall upon them the same as it will fall upon those residing outside of the vilage and in proportion to their respective property holdings.

You raise a further question as to the selection of the hospital board. That matter is governed by Section 3414-6, which provides as follows :

"As soon as possible after organization, the joint board shall appoint one elector from each township represented and the judge of the court of common pleas of the county shall appoint three electors at large, one of whom shall be a doctor of medicine, from the district, to constitute a board to be known as the board of hospital governors for the purpose of management and control of the operation of said hospital and for such duties as are hereinafter set forth. Each of said governors shall be appointed for a term of three years and until his successor is appointed and qual-

ified in a like manner. Any vacancy shall be filled by an appointment in like manner for the unexpired term of the original appointment.

The joint township district hospital board may by a majority vote of its members remove any such hospital governor for good and sufficient cause after a hearing upon written charges."

In view of my conclusion that the village as such, may not join in the plan in question, there can of course be no direct participation by the village as a corporation, in the management of a hospital established pursuant to the statutes under consideration. However, the electors of the village have the right to participate in the election of township trustees, and such township trustees are their representatives as well as representatives of those residing outside the village. There is, of course, no reason why township trustees should not be residents of the village or why the board of hospital governors should not include persons residing within the village.

In specific answer to your questions it is my opinion :

1. The trustees of two or more contiguous townships may under the authority of Section 3414-1 et seq. of the General Code, join in establishing a joint township hospital district.

2. There is no authority in law whereby a municipality as such, may join with one or more townships in establishing a joint township-village hospital district.

3. In determining the percentage of favorable votes cast by the electors of a joint township hospital district, in elections held pursuant to Sections 3414-2 and 3414-3, General Code, such votes are to be computed on the basis of the district as a whole, and it is not necessary that the required vote of sixty-five percent be found to have been cast in favor of the submitted proposition in each of the townships constituting such district.

4. The management and control of a joint township hospital are vested in a board of hospital governors appointed in the manner and having the qualifications set forth in Section 3414-6 of the General Code.

Respectfully,

HUGH S. JENKINS,
Attorney General.