

OPINION NO. 66-154**Syllabus:**

1. Surplus funds accumulated from normal hospital operations and from an operating levy may not be used for major repairs, painting, the useful life of which is five years or more, and alterations to county tuberculosis hospital buildings.

2. It is a question of fact whether an expenditure for the support of a county tuberculosis hospital should be classified as one for operation and maintenance or for improvements, a determination of which fact shall be resolved by application of the definitions in Section 5705.01 of the Revised Code.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, September 12, 1966

Your request for my opinion is as follows:

" 'May surplus funds accumulated from normal hospital operations and from an operating levy be used by the Board of County Commissioners for major repairs, painting and alterations to County Tuberculosis Hospital Buildings.'

"In addition, you may also answer the question of whether extensive plumbing repairs and replacement of windows are considered maintenance or capital improvements."

Although we are required to cast back some twenty odd years, it appears that your inquiry is answered by Opinion No. 5584, Opinions of the Attorney General for 1942, page 783, in which the second and third branches of the syllabus read:

"2. Under the provisions of Sections 3139-11 and 3139-12, General Code, the county commissioners and not the trustees of a county tuberculosis hospital are authorized to provide for major replacements and additions to such hospital.

"3. The trustees of a county tuberculosis hospital have authority to apply money received from patients and other sources, in addition to the amount appropriated from the general fund by the county commissioners, toward the operation and maintenance of such hospital."

A comparison of the then applicable sections of the General Code with the analogous sections of the Revised Code lead to the conclusion that there have been no changes which invalidate the pertinent portions of the 1942 opinion.

With respect to your second question, Section 5705.01, provides in paragraphs (E) and (F):

"(E) 'Permanent improvement' or 'improvement' means any property, asset, or improvement with an estimated life or usefulness of five years or more, including land and interests therein, and reconstructions, enlargements, and extensions thereof having an estimated life or usefulness of five years or more.

"(F) 'Current operating expenses' and 'current expenses' mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund, and retirement of bonds, notes, and certificates of indebtedness of the subdivision."

It is therefore my opinion and you are hereby advised that:

1. Surplus funds accumulated from normal hospital operations and from an operating levy may not be used for major repairs, painting, the useful life of which is five years or more, and alterations to county tuberculosis hospital buildings.

2. It is a question of fact whether an expenditure for the support of a county tuberculosis hospital should be classified as one for operation and maintenance or for improvements, a determination of which fact shall be resolved by application of the definitions in Section 5705.01 of the Revised Code.