

Note from the Attorney General's Office:

1961 Op. Att'y Gen. No. 61-2397 was overruled as a result of legislative enactment by 2019 Op. Att'y Gen. No. 2019-006.

2397

BOARD OF TRUSTEES OF COUNTY HOSPITAL IS WITHOUT AUTHORITY TO CONTRACT WITH PRIVATE CONSULTING FIRM FOR SURVEY ON NEEDS AND FUTURE DEVELOPMENT OF HOSPITAL—§§339.01 TO 339.14, R.C.

SYLLABUS:

Under Sections 339.01 to 339.14, inclusive, Revised Code, a board of trustees of a county hospital is without authority to contract with a private consulting firm for the furnishing of a survey on the needs and future development of the hospital.

Columbus, Ohio, July 26, 1961

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Since receipt of your opinion No. 2188, rendered on May 18, 1961, the Board of Trustees of the Cuyahoga County Hospital as again consulted me about the matter.

“The Trustees advise me that they now would like to obtain professional help to guide them in determining how, for what purposes and to what extent the County Hospital should be developed in the future. They would like to establish a short and long-range plan to meet their needs. The Trustees feel that they need the assistance of a professional hospital consulting firm to make this study for them.

“Section 339.06, Revised Code, provides, inter alia, ‘A Board of county hospital Trustees shall have the entire management and control of the hospital,’ and ‘funds may be disbursed by the county hospital Board of Trustees for the use and purposes of such hospital.’ In your opinion No. 2188 you considered this statute with respect to the question there propounded as to the use of hospital consultants to survey *community-wide* hospital facilities and needs rather than only the needs of the *county hospital*.

“The Hospital Trustees now have requested me to seek your opinion upon the following narrower question :

“May the Board of Trustees of a county hospital contract with a professional hospital consulting firm to establish a short and long range plan to meet the needs of the hospital and to determine how, for what purposes and to what extent the county hospital should be developed in the future?”

In my Opinion No. 2188, Opinions of the Attorney General for 1961, issued on May 18, 1961, I held in the syllabus as follows :

“Under Sections 339.01 to 339.14, inclusive, Revised Code, dealing with county hospitals, a board of trustees of a county hospital is without authority to contract with a professional hospital consulting firm to survey community-wide hospital facilities and needs projected over a specified period.”

In said Opinion No. 2188 I noted that a board of county hospital trustees has only such powers as are expressly granted by statute or necessarily implied from those granted (37 Ohio Jurisprudence, Section 74, pages 933, 934). I further noted that I was unable to find any specific authority or implied authority for a board of hospital trustees to contract with a consulting firm to survey community-wide hospital facilities and needs projected over the next ten to fifteen years.

The instant question differs from that considered in Opinion No. 2188, *supra*, only in that it deals with a survey on the needs of the county hospital alone, while the question in said opinion related to a survey of community-wide hospital needs. It appears, however, that the same reasoning must apply since I find no authority, either express or implied, for a board of county hospital trustees to contract with a consulting firm for a survey on the needs of the hospital.

Section 339.06, Revised Code, does authorize the board to disburse hospital funds "for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquiring of or construction of permanent improvements to county hospital property." Of these purposes, only the one relating to "uses and purposes of such hospital" could be considered as having any bearing on the instant question. But as to this, as I noted in Opinion No. 2188, *supra*, I am of the opinion that those words must necessarily refer only to those uses and purposes authorized by law.

I note that Section 339.06, *supra*, directs that the board shall :

"* * * employ an administrator, and, upon the nomination by such administrator, shall confirm the employment of such physicians, nurses, and other employees are are necessary for the proper care, control, and management of such hospital and its patients * * *." (Emphasis added)

Thus, the law allows a full complement of personnel to carry out the purposes of the hospital.

In Opinion No. 3063, Opinions of the Attorney General for 1953, page 462, one of my predecessors had occasion to consider a question somewhat similar to that here presented. In that instance the question concerned the authority of a board of county commissioners or the county department of welfare to contract with a person or organization for the

purpose of making a survey of the welfare department. The conclusion of my predecessor, as found in the syllabus of the opinion, reads :

“Neither the director of the county department of welfare nor the commissioners of the county are authorized by law to contract with a person or organization outside of the staff of the welfare department or of the commissioners, for the purpose of making a survey of the welfare department.”

At page 464 of said Opinion No. 3063 it is stated :

“In ascertaining the powers that may be exercised by a county or by any of its boards or commissions, we are not permitted to indulge, in any degree, the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature, and the county commissioners and other officers of the county have only those powers which the legislature has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers granted. 11 Ohio Jurisprudence, page 332. This rule is particularly emphasized in matters involving the expenditure of public money. In 11 Ohio Jurisprudence, page 573, it is said :

“ ‘The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.’

“State ex rel. Locher v. Manning, 95 Ohio St., 97. These principles are, I believe, too well settled and recognized to require extensive citation of authority.”

In reaching his conclusion my predecessor also cited the case of *Gorman v. Heuck*, 41 Ohio App., 453, which concerned the authority of a board of county commissioners to enter into a contract with a private organization to make certain studies relative to county affairs. At page 458 of that case the court said :

“If then, there be no statutory authority permitting such expenditures out of public funds, all that is contended and introduced in evidence can be but strong and impelling matter for the consideration of the Legislature, but unavailing to a court limited to approval of drafts upon the treasury authorized by the statute laws of this state.”

In summary, a board of county hospital trustees has no specific authority to contract with a private consulting firm for a survey of hospital

needs. The board is, however, authorized to hire necessary employees for the purposes of the hospital and could hire such regular assistants as may be necessary to make the survey in question; and should such a survey be deemed necessary, the board has ample authority to so proceed, and there is no cause to imply a power to contract with private consultants.

Accordingly, it is my opinion and you are advised that under Sections 339.01 to 339.14, inclusive, Revised Code, a board of trustees of a county hospital is without authority to contract with a private consulting firm for the furnishing of a survey on the needs and future development of the hospital.

Respectfully,

MARK McELROY

Attorney General