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COUNTY TUBERCULOSIS HOSPITAL—MEDICAL SUPERINTENDENT EMPLOYED FULL TIME — MAY NOT BE AUTHORIZED TO COLLECT FEES AND RETAIN THEM—ADDITION TO OTHER SALARY—§339.30 RC AUTHORIZES THE BOARD OF DIRECTORS ALONE TO MAKE CHARGES OF PATIENTS OF SUCH HOSPITAL—§339.20 RC.

## SYLLABUS:

1. The board of trustees of a county tuberculosis hospital of more than 50 beds may not authorize the medical superintendent employed on a full-time basis, as provided in Section 339.30, Revised Code, or a qualified medical assistant so employed, to collect and personally retain fees in addition to his regular salary when such fees are for medical and surgical treatment rendered to “in” or “out” patients of such hospital.

2. Under the provisions of Section 339.30, Revised Code, the board of directors of a county tuberculosis hospital, *alone*, are authorized to make charges of patients for the services of the hospital, and as provided in Section 339.20, Revised Code, such hospital services include medical and surgical treatment.

Columbus, Ohio, October 15, 1957

Hon. C. H. Anderson, Prosecuting Attorney  
Trumbull County, Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We have been recently asked by both the Superintendent and the trustees of our Trumbull County Tuberculosis Hospital, which is of more than fifty beds, as to whether it is legally permissible for the trustees to authorize the medical superintendent to collect and personally keep fees, in addition to his regular salary, from either “in patients” or “out patients” as is more fully explained in the two letters enclosed herein.

We note that R. C. Sec. 339.30 provides that—Such superintendent—shall serve on a full time basis, except in such hospitals having less than fifty beds.”

The medical superintendent is appointed by the board of trustees of a county tuberculosis hospital pursuant to Section 339.33, Revised Code,

which grants to such board those powers contained in Section 339.30, Revised Code, the pertinent part of which section reads as follows :

“The board of trustees of a district tuberculosis hospital shall appoint a qualified physician as a medical superintendent, who shall not be removed except for cause. Such superintendent or a qualified medical assistant shall serve on a full-time basis, except in such hospitals having less than fifty beds. Upon the recommendation of such superintendent, the board of trustees shall appoint other physicians and nurses for service within and outside the hospital, and such other employees as are necessary for the proper operation of the hospital, and shall fix their compensation.”

It is to be observed that under the provisions of Section 339.30, *supra*, the superintendent “*or a qualified medical assistant* shall serve on a full-time basis, except in such hospitals having less than fifty beds.” The term “full-time” does not, of course, require the services of the superintendent or the assistant, as the case may be, to extend through twenty-four hours a day, although in certain circumstances, that may be necessary. On the other hand, it undoubtedly does require that while he is on duty at the hospital, the superintendent or such assistant, will devote his entire time to the service of such hospital and any service or treatment which he renders to a patient of the hospital is in effect a service or treatment rendered in the performance of his official duties. I can find no logical reason why the superintendent, or such full-time assistant should receive a fee for doing that which he was hired to do and for which he receives a salary derived from the county treasury.

Although you do not indicate whether in the instant case the superintendent has a qualified medical assistant who serves on a full-time basis, if that is the case then there would be no necessity for the superintendent to be employed on a full-time basis also. In such case there could be no objection to private medical practice by such superintendent at times when he is not on duty in the hospital. Indeed, even a full-time superintendent, or a full-time assistant, would be authorized, at times when not on duty for his hospital employer, to carry on a private practice to the extent that he finds time to do so. What they may *not* do, whether employed full-time or not, is to charge fees for services rendered tubercular patients of the hospital employer in the discharge of the function of the hospital to provide “medical and surgical \* \* \* treatment” as authorized in Section 339.20, Revised Code.

You will note in this connection that Section 339.30, Revised Code, authorizes the board of hospital trustees, *alone*, to charge for the services of the hospital. That portion of the statute here pertinent, reads as follows:

“\* \* \* The board of trustees may require payment from any applicant admitted from the counties maintaining the hospital not exceeding the actual cost of care and treatment, and including the cost of transportation. \* \* \*”

There can be no dispute that the words “care and treatment,” as used in Section 339.30, *supra*, include medical and surgical treatment, such words being defined in Section 339.20, Revised Code, reading in part:

“\* \* \* As used in this section, ‘maintenance, care and treatment’ means proper housing and nutrition, the use of approved and modern medical and surgical methods of treatment, skilled nursing attention, and such educational, prevocational rehabilitation, or other services, as the medical superintendent of each tuberculosis institution prescribes. \* \* \*”

I must conclude, therefore, that the medical superintendent, as a full-time employee of the hospital, or an assistant employed on a full-time basis, performs his medical and surgical functions in the form of care and treatment as defined above, *i.e.* in discharge of one of the functions of the hospital in providing “care and treatment,” for which the board of trustees, not the superintendent, is authorized by statute to receive payment.

From the information set forth in the letters accompanying your request, I gather that the medical superintendent is required to perform certain functions for “out-patients” as well as “in-patients.” Since his salary includes compensation for his services to both types of patients, I see no reason to draw any distinction between the two, especially as the examination and care of both is a *hospital* function.

I may observe in passing that all that has thus far been said is related to services rendered to persons who are in a “patient” status with respect to the hospital, and has no application to hospital employees who, in emergencies, are given medical treatment by physician staff members.

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

1. The board of trustees of a county tuberculosis hospital of more than 50 beds may not authorize the medical superintendent employed on a full-time basis, as provided in Section 339.30, Revised Code, or a quali-

fied medical assistant so employed, to collect and personally retain fees in addition to his regular salary when such fees are for medical and surgical treatment rendered to "in" or "out" patients of such hospital.

2. Under the provisions of Section 339.30, Revised Code, the board of directors of a county tuberculosis hospital, *alone*, are authorized to make charges of patients for the services of the hospital, and as provided in Section 339.20, Revised Code, such hospital services include medical and surgical treatment.

Respectfully,  
WILLIAM SANBE  
Attorney General