

**OPINION 65-54****Syllabus:**

Under the provisions of Section 339.31, Revised Code, a county tuberculosis hospital may receive for the use of such hospital, gifts, legacies, devises, and conveyances of real or personal property or money. However, the board of trustees of a county tuberculosis hospital does not have the authority to place liens on real estate, such as are provided for in Section 5105.24, supra, to secure obligations owing to the hospital.

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**To: David F. McLain, Trumbull County Pros. Atty., Warren, Ohio**  
**By: William B. Saxbe, Attorney General, April 12, 1965**

I have before me your request for my opinion which reads as follows:

"This office has been requested to seek your opinion with respect to the authority of a county hospital to impose a lien against real estate to secure the obligations of patients using hospital facilities.

"The Trumbull County Tuberculosis Hospital is also operating as a hospital for the chronically ill. Many of the patients do not have the present ability to pay their hospital expenses but are seized of real estate. They are willing to execute a lien in favor of the

county, which lien would be operative upon the decease of the patients.

"Specifically, would you answer the following question:

"Does the County Hospital Board have the authority to secure obligations of the patients using hospital facilities using a lien similar to that used by the Ohio Division of Aid for the Aged?"

The Ohio Division of Aid for the Aged pursuant to Section 5105.13, Revised Code, has a preferred claim, except for certain expenses, against the estate of a deceased who received benefits under Aid for the Aged provisions. The pertinent part of Section 5105.13, Revised Code, is as follows:

"Upon the death of a person the total amount of aid paid to said person\* \* \*shall be a preferred claim against the estate of the deceased. Such claim shall have priority over all unsecured claims, except a sum for the payment of the funeral and burial expenses of the person, which sum shall be computed by deducting from three hundred dollars whatever the amount the Division of Aid for the Aged has extended for the same purpose from the proceeds of other property or insurance which the recipient trusted to the division, costs of administration, taxes, statutory exemption of surviving spouse, costs of last illness, and the allowance made to the widow and minor children, or if there is no widow, to the minor children for their support for 12 months."

Section 5105.24 is the statute under which the Division of Aid for the Aged acquires a lien in its favor on the real estate of the recipient of aid from the state.

Section 5105.24, Revised Code, reads in part as follows:

"Aid paid to any recipient under sections 5105.01 to 5105.29, inclusive, of the Revised Code, is a lien as provided in this section and shall remain a lien until satisfied.

"When aid is granted to any person under such sections the name and residence of the recipient and spouse, the date when aid is granted, the legal description of all real estate owned by the recipient and spouse, and other information the division of aid for

the aged requires, shall be entered upon a certificate, signed by the recipient and spouse, the form of which shall be prescribed by the division. When the certificate describes real estate owned by the recipient or spouse, the division shall file for recording and indexing the certificate, or a certified copy, in the real estate mortgage records in the office of the county recorder in every county in which real property of the recipient or spouse is situated. From the time of filing the certificate in the office of the recorder, the lien attaches to all real property of the recipient or spouse described therein for all amounts of aid which thereafter are paid, and shall remain a lien until satisfied.

"\* \* \* \* \*"

"The lien shall take priority over any other lien subsequently acquired or recorded except tax liens.

"\* \* \* \* \*"

There is no statutory authority for county tuberculosis hospitals to impose liens upon real estate belonging to patients receiving care and treatment from the county tuberculosis hospital.

Section 339.31, Revised Code, reads as follows:

"The board of county commissioners of any county having more than fifty thousand population, as shown by the last federal census, may, with the consent of the department of health, provide the necessary funds for the purchase of sites and the erection and equipment of the necessary buildings thereon, for the operation and maintenance of one or more county hospitals for the care and treatment of persons suffering from tuberculosis, and for the purchase or lease of one or more municipal tuberculosis hospitals located in such county. The board maintaining a county tuberculosis hospital may receive for the use of such hospital, and in its name, gifts, legacies, devises, and conveyances of real or personal property or money."

Section 339.33, Revised Code, providing for the management and control of the county tuberculosis hospital states in part:

"\* \* \* \* \*"

"\* \* \*An accurate account shall be kept of all moneys received from patients or from other sources, which shall be applied toward the cost of maintaining the tuberculosis hospital.

"\* \* \* \* \*"

The statute does not mention either specifically or by implication that the board of trustees of the hospital has authority to impose liens on the property of patients using the hospital.

Section 339.35, Revised Code, states in part as follows:

"\* \* \*The management and control of such county tuberculosis hospital shall be vested in a board of trustees as provided by section 339.33 of the Revised Code. Such board of trustees shall have all the powers conferred by sections 339.21 to 339.30, inclusive of the Revised Code, upon the board of trustees of a district tuberculosis hospital.

"\* \* \* \* \*"

Pursuant to 339.35, Revised Code, the board of trustees of the county tuberculosis hospital have the same powers as the board of trustees of the district tuberculosis hospital. Such powers are set forth in section 339.30, Revised Code.

Section 339.30, Revised Code, states in part:

"\* \* \* \* \*"

"\* \* \*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. If, after such investigation, it is found that any such applicant or patient, or any person legally responsible for his support, is unable to pay the full cost of his care and treatment in the district hospital, the board of trustees, shall determine the amount, such applicant, patient, or person shall pay. The difference between such amount and the actual cost of care and treatment shall be paid by the county in which such applicant or patient has a legal residence, on the order of the board of county commissioners.

"\* \* \* \* \*"

The legislature could have provided for acquiring liens against real estate as security for the unpaid amounts charged for care and treatment. But they did not, the legislature clearly shifted the burden of payment to

the county of legal residence for any patient unable to pay the full cost of his care and treatment. Section 339.30, Revised Code, refers only to the "receipt" of payments from patients and makes no reference to collection. There are no statutes relating to tuberculosis hospitals which concern collecting unpaid debts from tuberculosis patients.

In view of the foregoing statutory provisions, laws concerning the care of tubercular patients seem to have been enacted for the protection of the public health, i.e., the prevention of the spread of tuberculosis. Such statutes manifest a somewhat different legislative purpose from those directed toward poor relief. The legislation has chosen to make different arrangements for payment in each area.

I am, therefore, of the opinion that under the provisions of Section 339.31, Revised Code, a county tuberculosis hospital may receive for the use of such hospital, gifts, legacies, devises, and conveyances of real or personal property or money. However, the board of trustees of a county tuberculosis hospital does not have the authority to place liens on real estate, such as are provided for in Section 5105.24, supra, to secure obligations owing to the hospital.