

Note from the Attorney General's Office:

1966 Op. Att'y Gen. No. 66-127 was overruled by
1997 Op. Att'y Gen. No. 97-009.

OPINION NO. 66-127

Syllabus:

1. Under the provisions of Section 339.06, Revised Code, the Board of Trustees of the Cuyahoga County Hospital may acquire or construct a permanent improvement to provide out-patient facilities for the treatment of maternal and infant diseases.

2. That portion of Section 339.06, Revised Code, granting to a board of county hospital trustees authority to expend moneys from the hospital operating fund for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquisition of or construction of permanent improvements to county hospital property, does not vest in such board the power to enter into a lease agreement for property to be used as an out-patient facility by the county hospital.

To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio
 By: William B. Saxbe, Attorney General, July 22, 1966

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

"The Board of Trustees of the Cuyahoga County Hospital is presently considering the leasing of a building for use as an out-patient facility of the Hospital. This out-patient facility would be used by the Board of Trustees in connection with its administration of the Maternal and Infant Care Project which has been initiated by a major grant from the U. S. Children's Bureau. This project provides for the establishment of out-patient service facilities within neighborhood poverty areas in which the percentage of maternal and infant disease and mortality is disproportionally higher than in other areas. I have been informed by the Board of Trustees that a search for quarters within the target area that has been chosen for this project has made it quite clear that any building in this area which may be leased will require extensive alterations to make it suitable for the purpose of the proposed out-patient facilities.

"The above recited facts present the following questions upon which your opinion is respectfully requested.

"1. Does the Board of Trustees of the Cuyahoga County Hospital have legal authority to establish an out-patient service facility of the kind above described under the broad powers conferred upon the Board in Section 339.06 Revised Code of Ohio? This office has taken the position that the Board would have such authority under the applicable reasoning of the 1956 Opinion of the Attorney General of Ohio, No. 7100, Page 651.

"* * *

* * *

* * *"

Section 339.06, Revised Code, to which you have made reference in your letter of request, provides in part here pertinent as follows:

"The board of county hospital trustees shall, upon completion of construction and equipping of the county hospital, assume and continue the operation of such hospital. The board of county hospital trustees shall have the entire management and control of the hospital, * * *

"The board of county hospital trustees has control of the property of the hospital, and all funds used in its operation. The board of county hospital trustees shall deposit all moneys received from the operation of the hospital or appropriated for its operation by the board of county commissioners, or

resulting from special levies submitted by the board of county commissioners, as provided for in Section 5705.22 of the Revised Code, to its credit in banks or trust companies designated by it, which fund shall be known as the hospital operating fund. * * * The board of trustees shall not expend such funds until its budget for that calendar year is submitted to and approved by the board of county commissioners. Thereafter such funds may be disbursed by the board of county hospital trustees 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, on a voucher signed by the administrator, provided for in this section, regularly approved by the board of county hospital trustees and signed by two members of the board of county hospital trustees. * * *

Section 339.06, supra, provides that upon the completion of construction and equipping of a county hospital, the board of county hospital trustees shall assume and continue the operation of the hospital. It is further provided therein that the board has control of the property of the hospital, and all of the funds used in its operation. All moneys received from the operation of the hospital, appropriated for its operation by the board of county commissioners, or resulting from special levies submitted by the board of county commissioners under Section 5705.22, Revised Code, are to be deposited to the credit of the board of county hospital trustees in banks or trust companies designated by it, and the fund so established is to be known as the hospital operating fund. The board of trustees may not expend such funds until its budget for that year is submitted to and approved by the board of county commissioners, but thereafter such funds may be disbursed by the board for the uses and purpose of such hospital, for the replacement of necessary equipment, or for the acquiring of or construction of permanent improvements to county hospital property.

In posing the questions presented in your letter of request, you have not mentioned any problem with respect to the transfer of moneys to the hospital operating fund, or the insufficiency of such operating fund to accomplish the intended purpose; and so for the purposes of answering your questions I have assumed that money in an amount sufficient to fulfill the proposed plan is presently contained in the hospital operating fund, or may be so transferred without raising additional problems.

The only problem then presented by question number 1 contained in your letter of request is whether or not the establishment of such an out-patient service facility might be said to constitute an expenditure for the "acquiring of or construction of permanent improvements to county hospital property," so as to authorize such action on the part of the board of trustees of the county hospital under Section 339.06, supra.

In support of the position that the board of county hospital trustees may establish such an out-patient service facility, you have called to my attention Opinion No. 7100, Opinions of the Attorney General for 1956, in which the syllabus reads as follows:

"Section 339.01 et seq., Revised Code, author-

ize for each county only one county hospital and only one board of county hospital trustees, but a county hospital may consist of several branches, providing hospital facilities in different parts of the county."

The questions upon which that opinion was rendered were whether or not county commissioners are authorized to have more than one county hospital in any one county, and, if more than one county hospital is authorized, must each additional hospital have a separate board of trustees and administrator.

While it is true that the Opinion last cited stands for the proposition that a county hospital may have more than one building upon more than one site, I cannot agree that it also stands for the proposition that a board of county hospital trustees may undertake a plan such as that contemplated by your letter of request, pursuant to the provisions of Section 339.06, supra.

In connection with the question of whether or not the plan suggested by your letter of request might be said to constitute an "acquiring of or construction of permanent improvements to county hospital property", so as to authorize the county hospital board of trustees to effectuate this plan pursuant to the provisions of Section 339.06, supra, it should be noted that prior to the 1959 amendment of Section 339.06, supra, it contained no specific provision for the acquisition of a construction of permanent improvements to county hospital property, and the same was accordingly prohibited under that section of the Code by Opinion No. 330, Opinions of the Attorney General for 1957. Subsequent to the 1959 amendment, however, (128 Ohio Laws 737), Opinion No. 330, supra, was overruled to this extent by Opinion No. 3532, Opinions of the Attorney General for 1963, in which the syllabus reads:

"Under Section 339.06, Revised Code, hospital operating funds may be used for the acquiring of or construction of permanent improvements to county hospital property (paragraph 3 of Opinion No. 330, Opinions of Attorney General for 1957, page 103, overruled)."

While it may be contended that there is no statutory authority for the establishment of a facility to treat only a specific class or type of patients, such as is apparently contemplated in your letter of request, it is my opinion that in this age of specialized treatment, when nearly all of our hospitals have floors, wings or branches devoted solely to the treatment of cardiac patients, psychiatric cases, surgery, obstetrical cases, etc., to take such a position would be to defy both reason and necessity.

Therefore, it is my opinion that under the provisions of Section 339.06, supra, as amended in 1959, and in view of Opinion No. 3532, supra, the Board of Trustees of the Cuyahoga County Hospital may acquire or construct a permanent improvement to provide out-patient facilities for the treatment of maternal and infant diseases.

The second question upon which you have requested my opinion

is whether or not the board of trustees of a county hospital has the authority to lease a building for the purposes previously described herein. My research of this question has disclosed no other instance in which this office has been asked to determine whether or not a board of trustees of a county hospital has the authority to enter into a lease agreement to procure hospital facilities, and it will therefore be necessary to look to the provisions of Chapter 339 of the Revised Code in determining the answer to your question.

Section 339.03, Revised Code, provides in pertinent part that:

"The board of county hospital trustees shall have complete charge of the selection and purchase of a site for a county hospital, taking title to such site in the name of the county, the selection of plans and specifications, and determination and erection of all necessary buildings on such site, and of the selection and installation of all necessary and proper furniture, fixtures, and equipment."

As was previously seen, Section 339.06, *supra*, provides in part that funds may be disbursed by the board of county hospital trustees as follows:

"* * * 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, * * *."

Section 339.09, Revised Code, provides in part here pertinent as follows:

"When the county hospital has been fully completed and sufficiently equipped for occupancy, in lieu of sections 339.06 to 339.08, inclusive, of the Revised Code, the board of county commissioners of any county may, upon such terms as are agreed upon between the board and a constituted and empowered nonsectarian Ohio corporation, organized for charitable purposes and not for profit, a majority of whose members reside in the county, lease for use as a general hospital, the lands, building and equipment of any general hospital owned by said county. Such agreement shall provide for a term of not more than ten years, or may be from year to year, and shall be subject to renewal. * * *"

Section 339.12, Revised Code, provides in part as follows:

"The board of county commissioners may, upon such terms as are agreed upon between such board and the legislative authority of the municipal corporation, lease, acquire, operate, and maintain, as and for a county hospital, the lands, buildings, and equipment of a general hospital owned by any such municipal corporation in the county. * * *"

Section 339.14, Revised Code, provides in pertinent part that:

"(A) Upon application to the board of county commissioners by an Ohio corporation or corporations, organized for charitable hospital purposes and not for profit, in this section called participating hospital corporations, the board of county commissioners may, after a determination that the preservation of the public health requires additional hospital facilities in the county, appoint a hospital commission of not less than three members, in this section called the county hospital commission. * * *

"(B) The county hospital commission after consultation with participating hospital corporations and agreement as to their respective needs and the needs of the public of the county for hospital service may, with the consent of the board of county commissioners, accept conveyances of land, situated within the county, from any person and may, with the consent of the board of county commissioners, enter into an agreement before or after such conveyance with such person or with any Ohio corporation organized for charitable hospital purposes to lease to such corporation upon such terms as may be agreed upon such land together with buildings thereafter constructed thereon and furniture, fixtures and equipment therein for use as a general hospital or facility thereof, said lease shall be for a period not to exceed fifty years, * * *"

It should be first noted that Section 339.03, supra, provides that the county hospital board of trustees shall have complete charge of the selection and purchase of a site for a county hospital and that they shall take title to such site in the name of the county. There is no provision therein stating that the board of trustees may lease such a site.

Section 339.06, supra, provides that the board of county hospital trustees may expend funds for the acquisition of or construction of permanent improvements to county hospital property, but there is no provision made therein for leasing such property.

Section 339.09, supra, provides that when a county hospital has been fully completed, the board of county commissioners may lease such hospital facilities to a charitable Ohio corporation for use as a general hospital. However, there is no provision contained therein permitting such board, or any other board, to lease property for hospital purposes in the first instance, nor is this contemplated by a provision to the effect that the county commissioners may sub-let a completed hospital to a charitable Ohio corporation.

Section 339.12, supra, provides that the board of county commissioners may lease, acquire, operate and maintain as a county hospital the lands, buildings and equipment of a general hospital owned by a municipal corporation. However, there is no provision therein to the effect that property other than

that described might be leased, nor is there provision made therein whereby the board of county hospital trustees might lease any kind of property.

Section 339.14, supra, provides for the appointment of a county hospital commission in certain instances, and such commission may, in certain instances, lease hospital buildings, furniture, and fixtures to a charitable Ohio corporation, upon approval of the board of county commissioners. This section does not, however, give the board of county hospital trustees the authority to enter into a lease agreement, nor does it permit any such body to lease property for the purpose of constructing a hospital thereon.

In Opinion No. 3063, Opinions of the Attorney General for 1953, it was stated at page 458:

"In ascertaining the powers that may be exercised by a county or by any of its commissioners or boards, 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.' "

See States, ex rel., Locher v. Menning, 95 Ohio St. 97.

As noted in the review of the pertinent sections of Chapter 339, Revised Code, there is no provision therein which might be said to authorize a board of county hospital trustees to lease land or buildings for hospital purposes. Furthermore, it is the opinion of this writer that such power need not be necessarily implied from the powers expressly granted by Section 339.06, supra, since the powers of acquisition and construction expressly granted therein may be effectuated by a direct purchase.

I also feel that there are inherent dangers in construing the provisions of Section 339.06, supra, so as to permit a board of county hospital trustees to enter into a lease agreement for property to be used for hospital purposes, since the only moneys which that section authorizes to be expended for the enumerated purposes are those contained in the hospital operating fund. While it may be true that this fund would be sufficient to sustain the payments on the lease in this particular case, it would be overly presumptive to assume that

this would hold true in every situation, since operating funds by their very nature are subject to substantial fluxuations.

Your attention is further directed to Opinion No. 1232, Opinions of the Attorney General for 1957, in which it was held that boards of township trustees, acting under authority of Section 505.26, Revised Code, have no authority to lease a building to be used as a township hall. The provisions of the section of the Revised Code there under scrutiny stated that such board may:

"* * * purchase, appropriate, construct, enlarge, improve, rebuild, repair, furnish, and equip a township hall, * * *"

In the course of that opinion I commented at page 639 as follows:

"In Opinion No. 4806, Opinions of the Attorney General for 1955, p. 68, my predecessor held that authority of the board of county commissioners to purchase automobiles did not imply the power to lease. Insofar as the grant of authority is concerned, I deem the reasoning in that opinion to be correct and adopted herein."

I might add that I am still in agreement with this line of reasoning, and I feel that it is equally applicable to the situation which you have presented, even though Section 505.26, supra, has since been amended to permit township trustees to enter into such a lease.

I might also point out that the legislature must have considered the possibility of leases and lease agreements when it enacted Chapter 339 of the Revised Code, since it did provide for the leasing of completed hospital facilities to charitable Ohio corporations, for use as general hospital facilities, and it did specifically provide that the board of county commissioners might lease general hospital facilities owned by a municipality. Furthermore, it is to be noted that in giving the boards of county commissioners powers under Section 307.02, Revised Code, the General Assembly specifically provided that such body could enter into lease-purchase agreements, lease with option to purchase, and lease. In view of these numerous instances upon which the power to enter into a lease agreement was specifically granted to county boards and commissions by the General Assembly, I am of opinion that their failure expressly to grant such a broad power to a board of county hospital trustees is tantamount to a denial of such power to that body of the county government, notwithstanding the recognized principle that where powers are conferred upon a board to operate and manage an institution intended for the public welfare, a large amount of discretion must be invested in such trustees, and the statute can not undertake to enumerate in detail every movement that they may make.

I am, therefore, of the opinion that the provisions of Section 339.06, supra, granting a board of county hospital trustees the authority to expend moneys from the hospital operating fund 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, do not give such board the power to enter into a lease agreement for property to be used as an out-patient facility for the county hospital.

Since questions number three through eight contained in your letter of request seem to depend upon an affirmative answer to question number two, I have not here undertaken to answer these questions.

Therefore, it is my opinion and you are hereby advised that:

1. Under the provisions of Section 339.06, Revised Code, the Board of Trustees of the Cuyahoga County Hospital may acquire or construct a permanent improvement to provide out-patient facilities for the treatment of maternal and infant diseases.

2. That portion of Section 339.06, Revised Code, granting to a board of county hospital trustees authority to expend moneys from the hospital operating fund for the uses and purposes of such hospital, for the replacement of necessary equipment, or for the acquisition of or construction of permanent improvements to county hospital property, does not vest in such board the power to enter into a lease agreement for property to be used as an out-patient facility by the county hospital.