September 17, 2010

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

SYLLABUS: 2010-024

1. Pursuant to R.C. 339.06(F), a board of county hospital trustees may borrow money from a bank, savings and loan association, or savings bank. A board of county hospital trustees is not authorized to borrow money from a port authority or a private loan company that is not a bank, savings and loan association, or savings bank.

2. Pursuant to R.C. 339.06(C), a board of county hospital trustees may sell its accounts receivable to an entity that is in the business of collecting on such accounts. (1962 Op. Att'y Gen. No. 3199, p. 631, overruled.)

RICHARD CORDRAY
OHIO ATTORNEY GENERAL

September 17, 2010

OPINION NO. 2010-024

The Honorable Jessica A. Little
Brown County Prosecuting Attorney
200 East Cherry Street
Georgetown, Ohio 45121

Dear Prosecutor Little:

You have requested an opinion on several questions related to the authority of a county hospital to borrow money or to sell its accounts receivable. Specifically, you ask:

1. May a county hospital borrow money from a port authority established under R.C. Chapter 4582? If so, may the hospital give the port authority a security interest where the hospital already has a secured line of credit with a bank?

2. May a county hospital borrow money from a "private loan company" other than a bank, savings and loan association, or savings bank? If so, may the hospital use the hospital's accounts receivable as collateral for the loan?

3. May a county hospital sell its accounts receivable to a private loan company or other entity that is in the business of collecting on such accounts?

For the reasons discussed below, I conclude that a county hospital is not authorized to borrow money from a port authority or a "private loan company" that is not a bank, savings and loan association, or savings bank. Because I have concluded that a county hospital cannot borrow money from a port authority or a private loan company, it is not necessary to address whether a county hospital may give the port authority a security interest or whether a hospital

may use its accounts receivable as collateral for a loan with a private loan company. Additionally, I conclude that a county hospital may sell its accounts receivable to a private loan company or to an entity in the business of collecting on such accounts.

Provisions governing the establishment and operation of county hospitals are set forth in R.C. Chapter 339. *See* R.C. 339.01-.17. A board of county commissioners has the authority to "purchase, acquire, lease, appropriate, and construct a county hospital or hospital facilities thereof." R.C. 339.01(B). Once a board of county commissioners decides to establish a county hospital, a board of county hospital trustees must be created pursuant to R.C. 339.02 if a board is not already in existence. R.C. 339.02(B). The board of county hospital trustees assumes control of the hospital upon completion of construction or leasing and equipping of the hospital. R.C 339.01(B); R.C. 339.06(A).

R.C. 339.03 and R.C. 339.06 set forth the powers and duties of a board of county hospital trustees. As a creature of statute, a board of county hospital trustees may exercise only those powers as are expressly conferred upon it by statute or that may be necessarily implied therefrom. *Roberto v. Brown County Gen. Hosp.*, No. CA87-06-009, 1988 Ohio App. LEXIS 372, at *8 (Brown County Feb. 8, 1988); 1985 Op. Att'y Gen. No. 85-005, at 2-12.

R.C. Chapter 339 confers broad authority on a board of county hospital trustees. For example, a board of county hospital trustees has authority over the "entire management and control of the county hospital." R.C. 339.06(B). This includes the authority to select and purchase or lease a site for the county hospital, to select the plans and specifications, to erect all necessary buildings, and to select and install all necessary furniture, fixtures, and equipment. R.C. 339.03. The board also has control of the hospital's property as well as control of "all funds used in the county hospital's operation." R.C. 339.06(C); R.C. 339.06(F)(2).

County hospitals are supported by general fund appropriations, special levies, and money received from the operation of the hospital. *See* R.C. 339.06(D). The board of county hospital trustees also may receive "any gift, bequest, or devise of real or personal property in trust for the erection, improvement, or support of the county hospital." R.C. 339.08. If the board needs additional funds, R.C. Chapter 339 authorizes the board to take several different actions. The board may issue revenue obligations pursuant to R.C. 140.06 or R.C. 339.15, or it may issue revenue bonds pursuant to R.C. 133.08. R.C. 339.03; R.C. 339.15.

Additionally, the General Assembly has authorized a board of county hospital trustees to borrow money. A board of county hospital trustees may "enter into a contract for a secured line of credit with a bank, savings and loan association, or savings bank" if the contract meets the requirements set forth in R.C. 339.06(F)(2). R.C. 339.06(F) specifies that a board of county hospital trustees may borrow from a "bank, savings and loan association, or savings bank" as those entities are defined in Title 11 of the Revised Code. R.C. 339.06(F); R.C. 1101.01; R.C. 1151.01; R.C. 1161.01. In order to take a secured line of credit authorized under R.C. 339.06(F)(2), a board of county hospital trustees is permitted to grant a security interest in "its tangible personal property and intangible personal property, including its deposit accounts,

accounts receivable, or both." R.C. 339.06(F)(4). The statute also plainly states that "[n]o board of county hospital trustees shall at any time have more than one secured line of credit under division (F)(2) of this section." R.C 339.06(F)(5).

Your first two questions ask whether a board of county hospital trustees may borrow from either a port authority or a "private loan company" that is not a bank, savings and loan association, or savings bank. I conclude that R.C. Chapter 339 does not provide such authority.

While a board of county hospital trustees does have broad statutory authority to manage and operate a county hospital, including control of "all funds used in the county hospital's operation," R.C. 339.06(D)(1), this authority does not necessarily imply the authority to borrow money or incur debt. *See* 1993 Op. Att'y Gen. No. 93-039, at 2-203 ("[t]he power to borrow money or to incur debt is not necessarily to be implied from the authority conferred upon a board of township trustees to expend funds for particular purposes"). Indeed, "financial powers given to public bodies are construed strictly, and there must be clear authority to enter into financial transactions." 2006 Op. Att'y Gen. No. 2006-008, at 2-71 n.3. Any doubt regarding such authority must be resolved against its exercise. *See, e.g.,* 2004 Op. Att'y Gen. No. 2004-005, at 2-44.

The provisions of R.C Chapter 339 indicate that the General Assembly carefully limited the authority of a board of county hospital trustees to borrow money. No provision in R.C. Chapter 339 authorizes a board of county hospital trustees to borrow money from either a port authority or from a private loan company that is not a bank, savings and loan association, or savings bank. Rather, the language of R.C. 339.06(F) is plain and direct regarding the methods of borrowing available to a county hospital. The provisions clearly state that a board of county hospital trustees may borrow from a bank, savings and loan association, or savings bank when certain specified conditions are satisfied.

Further, in those instances where the General Assembly intended to grant governmental entities the authority to borrow money from other governmental bodies or private sources beyond a bank, savings and loan association, or savings bank, it has expressly so provided. *See, e.g.,* R.C. 152.08(A)(9) (building authority may borrow from "any federal agency or *other governmental or private source*") (emphasis added); R.C. 154.06(G) (public facilities commission may borrow from "any governmental agency or person"); R.C. 175.05(B)(9)(a) (housing finance agency may borrow from "any federal, state, local, or other government source"); R.C. 303.37(E) (board of county commissioners may borrow money from "the federal government, this state, *or any other public body, or from any sources,* public or private") (emphasis added); R.C. 306.04(C)(8) (county transit board or board of county commissioners operating a transit system may borrow from "any federal, state, *or other governmental or private source*") (emphasis added).

If the General Assembly had intended to authorize a board of county hospital trustees to borrow from sources other than a bank, savings and loan association, or savings bank – including from another government entity such as a port authority or from a private source such as a

"private loan company" – it could have done so in language comparable to that used in other sections of the Revised Code. *See, e.g., Lake Shore Elec. Ry. Co. v. Public Utilities Commission of Ohio*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (if the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose" having used that language in other provisions); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result). The fact that R.C. 339.06(F) does not employ similar language indicates that the General Assembly did not intend for a board of county hospital trustees to borrow from any sources other than a bank, savings and loan association, or savings bank. I therefore conclude that a county hospital may borrow money only from a bank, savings and loan association, or savings bank. Accordingly, a board of county hospital trustees may not borrow money from either a port authority or a "private loan company" that is not a bank, savings and loan association, or savings bank.

This conclusion is not altered by the General Assembly's recent enactment of Am. Sub. H.B. 393, 128th Gen A. (2010) (eff. June 18, 2010) (section 3, uncodified), which authorizes a port authority to "assist" facilities such as county hospitals but does not authorize a county hospital to take a loan from a port authority. Specifically, uncodified section 3 of Am. Sub. H.B. 393 authorizes a county solid waste management district to "loan money" to a port authority located in the same county. In order to make such a loan, the solid waste management district's fund must have a balance of greater than one million dollars and the amount of the loan cannot exceed seventy-five percent of the balance of the district's fund. The port authority must repay the loan within 180 days after the loan is made. After receiving the loan, the port authority is required to use the money "*to assist* facilities that provide general health services and that are located in the same county as the port authority." *Id.* (Emphasis added.)

By this enactment, the General Assembly clearly authorizes a loan from the solid waste management district to the port authority. The General Assembly did not, however, use similar language authorizing a loan from the port authority to a county hospital (or to "facilities that provide general health services"). Rather, the General Assembly has instructed the port authority "to assist" facilities that provide general health services. Had the General Assembly intended to authorize the port authority to loan money to a county hospital, it could have explicitly granted this authority as it did with the solid waste management district and the port authority. Although the enactment of Am. Sub. H.B. 393, section 3 (uncodified) does not change my conclusion that a board of county hospital trustees may not borrow money from a port authority, to "assist" is broadly defined as to "give support or aid." *Merriam-Webster's Collegiate Dictionary* 74 (11th ed. 2005). While the legislation does not encompass a loan from a port authority to a county hospital, it does encompass other types of financial support or aid such as grants or donations.

Because I have concluded that a board of county hospital trustees may not borrow from a port authority or a "private loan company," it is not necessary to address whether a board of county hospital trustees may give a port authority a security interest or whether a board may use its accounts receivable as collateral for a loan with a private loan company.

Your final question is whether a board of county hospital trustees may sell the hospital's accounts receivable to a private loan company or to another entity that is in the business of collecting on such accounts. Because a board of county hospital trustees is a creature of statute, it must be determined whether there is any such statutory grant of authority.

I conclude that R.C. 339.06(C) provides the authority for a board of county hospital trustees to sell its accounts receivable. This provision gives a board of county hospital trustees "control of the property of the county hospital." R.C. 339.06(C). Accounts receivable are a type of intangible personal property. Accordingly, this provision gives a board of county hospital trustees authority over its accounts receivable. The only limitation placed on a board's control of its property is related to real estate, which does not apply here. R.C. 339.06(C) (control of county hospital property includes the power to dispose of surplus property other than real estate). Because no explicit limitation is placed on the authority of a board of county hospital trustees to manage its accounts receivable, it is reasonable to conclude that a board of county hospital trustees may sell those accounts.

This conclusion is supported by several other provisions of R.C. Chapter 339. First, R.C. 339.06(E)(1) authorizes a board of county hospital trustees to donate to a nonprofit entity "moneys and other financial assets determined not to be necessary to meet current demands of the hospital." Because accounts receivable are "other financial assets," R.C. 339.06(E)(1) authorizes a board of county hospital trustees to donate its accounts receivable if those accounts are not necessary to meet the current demands of the hospital. It is unreasonable to presume that the General Assembly would give a board of county hospital trustees the power to donate its accounts receivable but would not authorize a board to sell those accounts receivable, particularly when the sale is necessary to meet the financial demands of the hospital. *See* R.C. 1.47(C) (in enacting a statute, it is presumed that the General Assembly intended a just and reasonable result); *Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, 242 N.E.2d 566 (1968) (syllabus, paragraph four) ("the General Assembly will not be presumed to have intended to enact a law producing absurd or unreasonable results").

Additionally, R.C. 339.06(F)(4) authorizes a board of county hospital trustees to use accounts receivable as collateral to secure a loan. This provision reinforces the conclusion that the General Assembly intends a board of county hospital trustees to exercise broad authority over its accounts receivable. Finally, as noted previously, a board of county hospital trustees has authority over the "entire management and control of the hospital" and its funds. *See* R.C. 339.03; R.C. 339.06. Inherent in those powers is the authority to manage the hospital's accounts, including its accounts receivable, and to make financial decisions that are in the best interest of the hospital. *See, e.g.*, 1984 Op. Att'y Gen. No. 84-054, at 2-179 (a public body has the implied power to dispose of personal property "if it is integrally related to an express duty of the board").

For these reasons, I conclude that a board of county hospital trustees may sell its accounts receivable. I am aware that this conclusion contradicts a prior Attorney General opinion. In 1962 Op. Att'y Gen. No. 3199, p. 631, one of my predecessors considered whether a board of county hospital trustees could sell its "bad accounts" to finance companies and advised that a

board of county hospital trustees had no authority to sell or assign its delinquent accounts. That opinion, however, did not directly address accounts receivable regardless of their status. Rather, that opinion's analysis and the statutory provision it considered were limited to "delinquent accounts." To the extent, however, that the earlier opinion conflicts with the advice offered here, it is overruled.

At issue in 1962 Op. Att'y Gen. No. 3199, p. 631 was former R.C. 339.03, which has been recodified as R.C. 339.06(L). This provision authorizes a board of county hospital trustees to "employ legal counsel and institute legal action in its own name for the collection of delinquent accounts. The board may also employ any other lawful means for the collection of delinquent accounts." R.C. 339.06(L). The statutory provision does not, however, specify what "other lawful means" may be employed for collecting delinquent accounts.

The prior opinion concluded that "any other lawful means" referred only to means "such as" employing counsel and instituting legal action, which were referenced in R.C 339.03 (now R.C. 339.06(L)). 1962 Op. Att'y Gen. No. 3199, p. 631 at 632. The opinion, however, provided no examples of other types of actions a board of county hospital trustees might pursue under this constrained reading of the statutory language. I cannot endorse this reading, and conclude that "any other lawful means" reasonably includes selling delinquent accounts to an entity that is in the business of collecting such accounts. Because R.C. 339.06(L) specifically authorizes a board of county hospital trustees to employ counsel or institute legal action, the conclusion of the 1962 opinion renders the "any other lawful means" language superfluous. Unless this language is to be considered redundant, "any other lawful means" demonstrates an intention by the General Assembly to permit a board of county hospital trustees to use collection methods *other than* employing counsel or instituting legal action. *See East Ohio Gas Co. v. P.U.C.O.*, 39 Ohio St. 3d 295, 299, 530 N.E.2d 875 (1988) ("words in statutes should not be construed to be redundant, nor should any words be ignored").

The 1962 opinion also reasoned that a board of county hospital trustees had only the authority "to collect" delinquent accounts and offered definitions of "collection" and "collect." 1962 Op. Att'y Gen. No. 3199, p. 631 at 632. Specifically, the opinion asserted that the term "[c]ollection" meant "*the securing of payment* of a check, bond coupon, or other credit instrument by presentation to the payor for cash," and the term "[c]ollect" meant "to present as due and *receive payment for* (a bill)." *Id.* (Emphasis added.) A sale of delinquent accounts results in a payment to the seller, that is, the county hospital, and therefore comes within the definitions of "collect" and "collection" adopted in the 1962 opinion. I hereby overrule the 1962 opinion and conclude that a board of county hospital trustees may sell its delinquent accounts pursuant to R.C. 339.06(L).

In sum, it is my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 339.06(F), a board of county hospital trustees may borrow money from a bank, savings and loan association, or savings bank. A board of county hospital trustees is not authorized to borrow money from a port authority or a private loan company that is not a bank, savings and loan association, or savings bank.

2. Pursuant to R.C. 339.06(C), a board of county hospital trustees may sell its accounts receivable to an entity that is in the business of collecting on such accounts. (1962 Op. Att'y Gen. No. 3199, p. 631, overruled.)

Respectfully,

RICHARD CORDRAY
Ohio Attorney General