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TUBERCULOSIS HOSPITAL, OHIO—EXPENSES OF PATIENTS—REQUIRED TO BE PAID BY COUNTY COMMISSIONERS OF COUNTY WHERE PATIENTS RESIDE—EXPENSES MAY NOT BE PAID OUT OF FUNDS APPROPRIATED FOR CARE OF TUBERCULAR PATIENTS IN COUNTY TUBERCULOSIS HOSPITAL—SECTIONS 1236-25, 1236-26 G.C.

SYLLABUS:

The expenses of patients admitted to the Ohio Tuberculosis Hospital pursuant to Section 1236-25, General Code, are required by Section 1236-26, General Code, to be paid by the county commissioners of the county in which such patients reside, and are not to be paid out of funds appropriated for the care of tubercular patients in a county tuberculosis hospital.

Columbus, Ohio, January 21, 1952

Hon. John Rossetti, Prosecuting Attorney
Stark County, Canton, Ohio

Dear Sir:

I have before me your communication requesting my opinion, and reading as follows:

"We would like an opinion as to the interpretation of the recently enacted Section 1236-22 of the General Code as supplemental to Sections 3139 to 3139-24 of the General Code.

"Since Section 1236-26 provides that the charge for care and treatment of patients admitted to the Ohio Tuberculosis Hospital shall be borne by the county in which such patient lives, should such expense be paid from funds other than those appropriated or levied for the care of tubercular patients in the county tuberculosis hospital or is the county general fund liable for such additional expense incurred under provisions of Section 1236-25 of the General Code?"

Section 3139 et seq., of the General Code, make provision for the establishment of tuberculosis hospitals either by joint action of two or more counties or by a single county. Section 3139-3, General Code, provides for the appointment by the county commissioners of two or more counties, of a board of trustees "in whom shall be vested the management and control of such district tuberculosis hospital."

Section 3139-11, General Code, authorizes the county commissioners of any county having more than 50,000 population, to provide for the purchase or erection of a county tuberculosis hospital. Section 3139-13, General Code, authorizes the county commissioners to appoint a board of trustees for the management and control of such county tuberculosis hospital, and further provides that where such hospital has less than fifty beds, the board of county commissioners "may serve as a board of trustees." In each case the board of trustees of a tuberculosis hospital is given full control of the operation and management of the hospital.

In the case of joint hospitals it is provided by Section 3139-6, General Code, that all taxes levied by the county commissioners for the support of such hospital shall, when collected be turned over to the trustees of such hospital. The boards of county commissioners of counties jointly

maintaining a district hospital are authorized by Section 3139-5, General Code, to "make annually an appropriation or otherwise provide sufficient funds to support and to defray the necessary expense of the maintenance of such hospital." A like provision is contained in Section 3139-13, General Code, as to funds for the support of a county hospital.

In Section 3139-23, General Code, we find the following provision relative to a subsidy by the state:

*"On and after July 1, 1947, the state shall pay to the board of trustees, or the board of county commissioners serving as a board of trustees, of any county, district, or municipal tuberculosis hospital approved by the Ohio department of health the sum of two dollars and fifty cents (\$2.50) per day for each patient hospitalized for the treatment of tuberculosis in such hospital by any county for whose care and treatment the county was legally obligated to pay. One dollar and twenty-five cents (\$1.25) of such sum received by such trustees, or county commissioners serving as a board of trustees, shall be expended only for the care and treatment of tuberculosis, or the operation, maintenance or improvement of such tuberculosis hospital. The remaining one dollar and twenty-five cents (\$1.25) of such sum shall be retained by the said trustees, or board of county commissioners serving as a board of trustees, for the use and credit of the county in which the patient has legal residence to be applied as part of the per diem cost of the hospitalization of such patient. * * *"*

(Emphasis added.)

It will thus be seen that the management of tuberculosis hospitals, whether operated by one or several counties, and the custody and disposition of the funds resulting directly from a levy of taxes or from appropriations by the county commissioners, are placed solely in the hands of the hospital trustees, with the single exception of the case above mentioned, wherein the county commissioners are to act as a board of hospital trustees in a hospital having less than fifty beds. Even here, it appears to me the county commissioners in the management of such hospitals are not acting as county commissioners, but as hospital trustees, within the contemplation of the law.

Turning then to the statutes relating to the Ohio Tuberculosis Hospital, I note the provisions of Section 1236-25, General Code, relative to the admission of patients to such hospital. That section provides as follows:

"* * * Application for admission to said hospital shall be made to the director of health. Such application shall be subject to the recommendations of the health commissioner of the health district in which the applicant lives and the medical superintendent of the approved district, county, or municipal tuberculosis hospital, if any, for the area in which the applicant lives, and the application for admission to said hospital, however, *shall be approved by the county commissioners of the county in which the applicant lives.*" (Emphasis added.)

It will be observed that admissions to such hospital must be approved by the county commissioners of the county in which the applicant lives. There is no reference whatever to the trustees of the county tuberculosis hospital. We find in Section 1236-26 provision for the charge for the care of such patients, that section reading in part as follows:

"The charge for care and treatment of patients admitted to said tuberculosis hospital herein provided for shall be borne by the county in which such patient lives. Such charge shall be at the per diem rate as determined by the director of health. The director of health shall certify to the auditor of state the amounts due from each county for the care and treatment of patients hospitalized under the provisions of this act. The auditor of state shall transmit to the commissioners of each such county a statement of the amount due for such care and treatment less a credit of one dollar and twenty-five cents per patient per day. * * *"

It will be observed that there is here provided a subsidy by the state to the county similar to that provided by Section 3139-23, supra, to the hospital trustees.

Coupled with the above quoted provision as to the admission on the approval of the county commissioners, there can be no doubt but that the responsibility for paying for the care of these patients rests upon the county commissioners, and not in any degree upon the trustees of the county tuberculosis hospital. Such being the case, it is obvious that the county commissioners could only pay such charge out of funds at their disposal, and in view of the statutes above referred to, relative to the funds in the hands of the trustees of the county hospital, it is quite certain that such funds are not under the control or subject to disposal by the county commissioners.

Accordingly, it is my opinion and you are advised that, the expenses of patients admitted to the Ohio Tuberculosis Hospital pursuant to Section

1236-25, General Code, are required by Section 1236-26, General Code, to be paid by the county commissioners of the county in which such patients reside, and are not to be paid out of funds appropriated for the care of tubercular patients in a county tuberculosis hospital.

Respectfully,

C. WILLIAM O'NEILL
Attorney General