

2876

WHERE A MUNICIPALITY HAS DONATED PROPERTY FOR HOSPITAL PURPOSES AND THE MANAGEMENT OF SAID HOSPITAL IS IN A BOARD OF TRUSTEES THE MUNICIPALITY HAS NO AUTHORITY TO DIVEST THE BOARD OF ITS AUTHORITY—THIS ALSO APPLIES TO VILLAGE HOSPITAL WHEN THE VILLAGE BECOMES A CITY—§§749.02, 749.19, 749.24 R.C.

SYLLABUS:

1. Where a municipality is donated property for hospital purposes under Section 749.20, Revised Code, the management and operation of the hospital is in a board of hospital trustees under Section 749.24, Revised Code, and the legislative authority of the municipality does not have authority to divest a board of hospital trustees of this authority.

2. Where a hospital is donated to a village for hospital purposes under Section 749.20, Revised Code, and the village later attains the status of a city, the director of public safety of the city has no authority with respect to the control and management of the municipal hospital, such control and management remaining in the board of hospital trustees.

Columbus, Ohio, March 16, 1962

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads:

“The transition of a village to city status raises a question of the control and management of the municipal hospital owned and operated by a municipality in the southern part of the State.

“In the municipality in question, a hospital had been erected and operated for a number of years by a private corporation which, in August of 1942, conveyed the premises to the then village for hospital purposes. The conveyance was accepted for these purposes and since extensive remodeling was necessary, the control and operation of the hospital was under the direction of a board of hospital commissioners. When the remodeling was completed a number of years later, control of the hospital operation and management thereof was vested in a board of hospital trustees.

“On January 1, 1962, the village assumed full city status, having elected in 1961 its first city officials; and council has purported to empower the director of public safety to manage and control the municipal hospital, to the exclusion of the existing board of trustees.

“In view of the foregoing statement of fact, your opinion is requested with respect to the following questions:

“1. Does council of a municipality upon advancement to city status have authority to divest a board of hospital trustees of authority to manage and operate hospital property, said property having been donated to the municipality for hospital purposes?

“2. Does the director of safety have any authority with respect to the control and management of a municipal hospital under Section 749.15, Revised Code, upon the advancement of the municipality from village to city status, where the property used for hospital purposes was originally donated to the municipality for hospital purposes?”

Provision for municipal hospitals is made in Chapter 749., Revised Code, which provides for two kinds of municipal hospitals: (1) those created by the municipality through an agreement with private organizations; and (2) those acquired by gift.

Sections 749.02 through 749.19, Revised Code, authorize a municipality to agree with a charitable non-profit corporation for the erection and management of a hospital or for an addition to such a hospital. The agreement must be approved by the electors of the municipality under Section 749.03, Revised Code; and a board of hospital commissioners, whose duties are to rebuild, erect, or repair the hospital, must be appointed under Section 749.04, Revised Code. Thereafter, in the case of a city, the management and control of the hospital is in the director of public safety under Section 749.15, Revised Code; or, in the case of a village, in the legislative authority of the village under Section 735.27, Revised Code.

When a hospital is donated to a municipality, Sections 749.20 through 749.34, Revised Code, apply. Under Section 749.20, Revised Code, when a municipality receives property for hospital purposes by a deed or gift, devise or bequest, the property or fund should be managed according to the terms of the gift. Under Section 749.24, Revised Code, the management of such hospitals must be placed in a board of hospital trustees—no distinction is made here between hospitals owned by cities and those owned by villages.

Accordingly it is apparent that the answer to your question depends upon the facts surrounding the village's acceptance of the hospital. If the village acquired the hospital through the kind of agreement called for under Section 749.02, *supra*, and the execution of that agreement was submitted to the electors as required by Section 749.03, *supra*, the management of the completed hospital should have been in the village legislative authority pursuant to Section 735.27, *supra*, and upon the village's accession to the status of city, authority to manage would devolve upon the city safety director.

As you did not describe such facts and as you state that the hospital had been donated to the village for hospital services, I assume that the village acquired the hospital under Section 749.20, *supra*. Accordingly, in regard to the management and operation of the hospital property, Section 749.24, *supra* applies. It reads:

"The board of hospital trustees shall, subject to any ordinance of the municipal corporation, have the entire management and control of the property or funds mentioned in section 749.20 of the Revised Code, and shall establish such rule for the government thereof as it deems expedient. Such board shall also have the entire control of the expenditure of all moneys therefrom and they shall be disbursed by the treasurer of the municipal corporation only upon the warrant of the municipal auditor or clerk, drawn in accordance with the order of such board.

"The board may apply, control, invest, and reinvest the funds coming or arising from any gift, devise, or bequest according to the terms on which it was acquired."

While under this section the management and operation of the hospital is clearly placed in a board of hospital trustees, subject to any ordinance of the municipal corporation, I cannot conceive that this ordinance making authority can be construed in such a way as to allow the municipal corporation to pass ordinances contrary to the effect of the statutes. As authority to operate and manage the hospital is repeatedly given to a board of hospital trustees this function could not be taken away by the legislative authority of the municipality.

In answer to your specific question, it is my opinion and you are advised:

1. Where a municipality is donated property for hospital purposes under Section 749.20, Revised Code, the management and operation of the

hospital is in a board of hospital trustees under Section 749.24, Revised Code, and the legislative authority of the municipality does not have authority to divest a board of hospital trustees of this authority.

2. Where a hospital is donated to a village for hospital purposes under Section 749.20, Revised Code, and the village later attains the status of a city, the director of public safety of the city has no authority with respect to the control and management of the municipal hospital, such control and management remaining in the board of hospital trustees.

Respectfully,

MARK McELROY

Attorney General