

OPINION NO. 86-043**Syllabus:**

1. A joint township district hospital board may lease a joint township district hospital to a private, nonprofit corporation, which is to assume responsibility for the control and operation of the hospital, pursuant to either R.C. 140.05 or R.C. 513.171. The various requirements imposed by R.C. 513.171 in the case of a lease made pursuant to that section are not applicable in the case of a lease entered into under R.C. 140.05.
2. A board of hospital governors, appointed pursuant to R.C. 513.16 by a joint township district hospital board, may be dissolved in the event the joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 140.05.
3. In the event a joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 513.171, the board of hospital governors, appointed pursuant to R.C. 513.16 by the joint township district hospital board, retains all such powers, duties, and responsibilities expressly conferred upon it by R.C. 513.16-.171 and all such other powers, duties, and responsibilities as may be necessarily implied from those expressly granted, except to the extent that control and operation of the joint township district hospital vest in the private, nonprofit corporation as a result of such lease. The board of hospital governors should forward the annual accounting of receipts and expenditures and any rules and regulations it receives from the lessee nonprofit corporation

pursuant to R.C. 513.171 to the joint township district hospital board. The board of hospital governors may, pursuant to R.C. 513.171, examine such annual accounting and rules and regulations, and, on the basis of such examination, form its own conclusion with respect to whether the nonprofit corporation is faithfully and efficiently administering, maintaining, and operating the joint township district hospital. Further, the board of hospital governors should communicate its opinion in this regard to the joint township district hospital board.

To: Frederick D. Pepple, Auglaize County Prosecuting Attorney, Wapakoneta, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 25, 1986

I have before me your letter, submitted on behalf of a joint township district hospital board, requesting my opinion regarding the board's proposal to lease the joint township district general hospital to a private, nonprofit corporation, which is to assume responsibility for the control and operation of the hospital. Specifically, you have asked that I address the following questions:

1. Do R.C. 140.05 and R.C. 513.171 provide alternative sources of authority for a joint township district hospital board to lease a joint township hospital to a private non-profit corporation, such that if said board elects to lease a joint township hospital pursuant to R.C. 140.05, the requirements contained in R.C. 513.171 do not apply?
2. If a joint township district hospital board leases a joint township hospital pursuant to the authority granted in R.C. 140.05, may the board of hospital governors thereafter be dissolved?
3. If the hospital board of governors of a joint township hospital remains in existence after such hospital has been leased to a private non-profit corporation pursuant to authority granted in either R.C. 140.05 or R.C. 513.171, what are the duties and powers of the board of hospital governors other than the receipt of annual reports pursuant to R.C. 513.171? What actions, if any, are to be taken by the board of hospital governors once said reports have been received?

Before addressing your specific questions, I must first review those provisions of the Revised Code that authorize the formation of a joint township hospital district and the construction of a joint township district hospital for the benefit of inhabitants of the joint township hospital district, and the subsequent lease of such hospital to a private, nonprofit corporation. R.C. Chapter 513 authorizes a board of township trustees, acting singly or in conjunction with the boards of other townships, to establish and provide for the operation of a general hospital for the benefit of township inhabitants. R.C. 513.01; R.C. 513.07. In particular, R.C. 513.07 provides that the boards of township trustees of any two or more contiguous townships may "form themselves into a joint

township district hospital board for the purpose of establishing, constructing, and maintaining a joint township district general hospital or other hospital facilities as defined in [R.C. 140.01], and such townships shall be a part of a joint township hospital district." The members of all such boards of township trustees comprise the joint township district hospital board. Id. A joint township district hospital board is empowered, after proper approval by the electorate of the district, to issue and sell bonds in order to purchase a site, and to construct and equip a hospital. R.C. 513.12. R.C. 513.13 further provides for a tax levy, not to exceed one mill outside the ten-mill limitation, to provide funds for the payment of necessary expenses incurred in the operation of such hospital. The ownership of a joint township district hospital, including the title to all property, both real and personal, pertaining thereto vests in the joint township district hospital board. R.C. 513.15.

R.C. 513.16 addresses the appointment of a board of hospital governors to control the operation of the joint township district hospital, providing, in part, as follows:

The joint township district hospital board, as soon as possible after its organization, shall appoint one elector from each township represented and three electors-at-large from the district, one of whom shall be a doctor of medicine, to constitute a board to be known as "the board of hospital governors" and control the operation of such hospital and perform such other duties as are provided by section 513.17 of the Revised Code, except that, if a lease of the hospital is made pursuant to section 513.171 of the Revised Code, control of the operation of the hospital shall be vested in the lessee thereunder.

Any hospital governor may be removed, upon good and sufficient cause, by the joint township district hospital board, after a hearing upon written charges. Id. See generally 1972 Op. Att'y Gen. No. 72-117 at 2-450 ("the board of governors is a statutorily-created agency of the joint township district hospital board").

R.C. 513.17 describes the powers of the board of hospital governors, providing in pertinent part as follows:

The board of hospital governors shall, with the consent and approval of the joint township district hospital board and as provided by sections 513.07 to 513.18 and 3702.51 to 3702.67¹ of the Revised Code, prepare plans and specifications, and may employ technical assistance if necessary, and proceed to erect, furnish, and equip necessary buildings for a joint township general hospital. Except where the hospital of the district is leased pursuant to section 513.171 of the Revised Code, such board of governors shall appoint and fix the compensation of a suitable

¹ The provisions of former R.C. 3702.51-.67, which pertained to certificate of need requirements that must be satisfied by certain health care facilities before such facilities may offer their services to persons in need thereof, now appear in R.C. 3702.51-.62.

person to be superintendent of the hospital for such period of time as it determines, and shall employ and fix the compensation for such nurses and other employees as are necessary for the proper conduct of the hospital. (Footnote added.)

R.C. 513.17 further describes various fringe benefits the board of hospital governors may offer to hospital employees, and scholarships and other staff development programs the board of hospital governors also may provide for the purpose of recruiting and retaining qualified employees. In addition, the board of hospital governors may, with the approval of the county commissioners, employ legal counsel and institute legal action in its own name for the collection of delinquent accounts. Id. See 1980 Op. Att'y Gen. No. 80-068 (a board of hospital governors may establish, pursuant to R.C. 513.17, satellite facilities or outpatient clinics in townships that are not part of the joint township hospital district if such facilities or clinics are necessary to provide hospital services to inhabitants of the joint township hospital district); 1957 Op. Att'y Gen. No. 1003, p. 423 (the power vested in a board of hospital governors by R.C. 513.17 to erect, furnish, and equip a joint township district hospital includes, by implication, the power to make capital improvements to a joint township district hospital).

R.C. 513.171 permits a joint township district hospital board to lease a joint township district hospital to a nonprofit corporation in lieu of vesting the control and operation of such hospital in the board of hospital governors. In this regard R.C. 513.171 states as follows:

In lieu of vesting the control and operation of the hospital owned by a joint township hospital district in the board of hospital governors pursuant to sections 513.16 and 513.17 of the Revised Code, a joint township district hospital board may, upon such terms as are agreed upon between such 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 or counties in which said joint township hospital district is located, lease to such corporation for use as a general hospital, the lands, buildings, and equipment of any such joint township district general hospital, including any enlargements thereof, provided such lease is consistent with sections 3702.51 to 3702.67 of the Revised Code.

Such lease may be from year to year or may provide for a term of not more than thirty years and may provide that such board has the option to renew such lease at the expiration thereof for a further term of not more than thirty years upon such terms as are provided for in such lease. Such leasing agreement shall also make provisions for rendering at least annually to the board of hospital governors an accounting of all receipts and expenditures of such nonprofit corporation, for filing with said board of rules and regulations prescribed from time to time by said corporation, and for the due provision and maintenance of the facilities of such general hospital. In the event that the nonprofit corporation fails faithfully and efficiently to administer, maintain, and operate such hospital as a public

general hospital, admitting patients without regard to race, creed, or color, then, after an opportunity is given to be heard upon written charges, such agreement may be terminated and the control and management of such hospital, together with all additions, improvements, and equipment, shall revert to and become the property of the joint township hospital district board to be operated as provided by law.

Cognate authority to lease a joint township district hospital to a nonprofit corporation is also vested in a joint township district hospital board pursuant to R.C. Chapter 140 (hospital agencies), in particular R.C. 140.05. In this regard R.C. 140.05(A) states as follows:

A public hospital agency may lease any hospital facility to one or more hospital agencies for use as a hospital facility, or to one or more city or general health districts, community mental health boards, county boards of mental retardation and developmental disabilities, the department of mental health; or the department of mental retardation and developmental disabilities, for uses which they are authorized to make thereof under the laws applicable to them, or any combination of them, and they may lease such facilities to or from a hospital agency for such uses, upon such terms and conditions as are agreed upon by the parties, provided any action under this section is consistent with sections 3702.51 to 3702.67 of the Revised Code. Such lease may be for a term of fifty years or less and may provide for an option of the lessee to renew for a term of fifty years or less, as therein set forth. Prior to entering into such lease, the governing body of any public hospital agency granting such lease must determine, and set forth in a resolution or ordinance, that such lease will promote the public purpose stated in section 140.02 of the Revised Code and that the lessor public hospital agency will be duly benefited thereby.² (Footnote added.)

I now direct my attention to your first question, whether R.C. 140.05 and R.C. 513.171 provide alternative sources of authority for a joint township district hospital board to lease a joint township hospital to a private, nonprofit corporation, such that if the board elects to lease a joint township hospital pursuant to R.C. 140.05, the requirements contained in R.C. 513.171 do not apply. I believe the answer to this question is provided by the express language of R.C. 513.19, which makes it clear that, in leasing a joint township district

² As used in R.C. Chapter 140, "hospital agency" is defined as any public hospital agency or any nonprofit hospital agency, see R.C. 140.01(A), "public hospital agency" is defined as including any joint township hospital district that operates or is authorized to operate a hospital facility, see R.C. 140.01(B), and "nonprofit hospital agency" is defined as a corporation or association not for profit, which has authority to own or operate a hospital facility or which provides or is to provide services to one or more other hospital agencies, see R.C. 140.01(C).

hospital to a nonprofit corporation, which is to assume responsibility for the control and operation of the hospital, a joint township district hospital board may elect to proceed under R.C. 140.05 rather than under R.C. 513.171:

Sections 140.03 and 140.05 of the Revised Code are alternatives to sections 513.05, 513.06, 513.071, 513.08, 513.081, 513.09, 513.10, and 513.15 to 513.171, inclusive, of the Revised Code. Those sections of Chapter 513. of the Revised Code shall not be applicable with respect to hospital facilities and services provided for under leases and agreements entered into pursuant to section 140.03 or 140.05 of the Revised Code, except to the extent made applicable by section 140.03 or 140.05 of the Revised Code and the leases and agreements made thereunder. (Emphasis added.)

It is clear that a lease made pursuant to R.C. 140.05 may differ in several respects from a lease entered into pursuant to R.C. 513.171. A lease entered into pursuant to R.C. 140.05 may be for a term of fifty years or less and may provide for an option of the lessee to renew the lease for a term of fifty years or less. R.C. 140.05(A). In addition, before entering into a lease under R.C. 140.05, the joint township district hospital board must determine and set forth in a resolution or ordinance that the lease will promote the public purpose stated in R.C. 140.02 and that the joint township hospital district will be benefited thereby. *Id.* Further, such a lease must provide that it may be terminated in the event the lessee fails to faithfully and efficiently administer and operate the leased facilities as hospital facilities, or engages in discriminatory practices in the provision of hospital services. R.C. 140.05(B). Such lease may also provide for rentals commencing at any time agreed upon and continuing for such period as is provided therein, R.C. 140.05(C), and for the sale or transfer of the leased facilities pursuant to an option to purchase in the lessee, R.C. 140.05(D).

R.C. 513.171, on the other hand, states that a lease negotiated thereunder may be from year to year or may be for a term of not more than thirty years and may provide that the joint township district hospital board shall have the option to renew the lease upon its expiration for a term of not more than thirty years. Such a lease must also provide for rendering annually to the board of hospital governors an accounting of all receipts and expenditures of the lessee nonprofit corporation, for filing with the board of hospital governors rules and regulations prescribed from time to time by the nonprofit corporation, and for the due provision and maintenance of the leased hospital facilities. *Id.* R.C. 513.171 further provides that the lease may be terminated in the event the lessee nonprofit corporation fails to faithfully and efficiently administer, maintain, and operate the hospital as a public general hospital, admitting patients on a nondiscriminatory basis, and that upon termination of the lease control and management of the hospital, together with all additions, improvements, and equipment, shall revert to and become the property of the joint township district hospital board to be operated as provided by law.

Thus, R.C. 513.19 permits a joint township district hospital board, in entering into an agreement to lease a joint township district hospital to a private, nonprofit corporation,

to proceed under R.C. 140.05 rather than under R.C. 513.171. See Op. No. 72-117. Further, the various requirements imposed by R.C. 513.171 in the case of a lease made pursuant to that section are not applicable in the case of a lease entered into under R.C. 140.05.

Your second question asks whether a board of hospital governors may be dissolved if the joint township district hospital board enters into a lease of the joint township district hospital pursuant to R.C. 140.05. According to your letter, your question is prompted by an apparent concern on the part of the joint township district hospital board that it will be difficult to recruit and retain responsible individuals to serve on the board of hospital governors in the event the joint township district hospital is leased to a private, nonprofit corporation pursuant to R.C. 140.05, since R.C. 140.05 does not appear, by its express terms, to vest in the board of hospital governors any significant supervisory powers or duties with respect to a lease made thereunder. Cf. R.C. 513.171 (a leasing agreement made thereunder shall make provisions for rendering at least annually to the board of hospital governors "an accounting of all receipts and expenditures of such nonprofit corporation, [and] for filing with said board of rules and regulations prescribed from time to time by said corporation"). Thus, you wish to know whether the joint township district hospital board may simply dissolve the board of hospital governors after a lease has been entered into pursuant to R.C. 140.05, thereby alleviating the need to recruit individuals to serve on the board.

I conclude that a board of hospital governors, appointed by a joint township district hospital board pursuant to R.C. 513.16, may be dissolved in the event the joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 140.05. Again, I find that such result is consistent with the plain language and evident intent of R.C. 513.19, which provides, in part, that R.C. 513.15-.171 "shall not be applicable with respect to hospital facilities and services provided for under leases and agreements entered into pursuant to...[R.C.] 140.05," except as made applicable by R.C. 140.05 and the lease made thereunder. R.C. 513.16 establishes the board of hospital governors and R.C. 513.17 sets forth the duties of such board. R.C. 513.19 makes clear that these provisions are of no effect when a joint township district hospital board negotiates a lease pursuant to R.C. 140.05, except as such provisions are made applicable by R.C. 140.05 and the terms of the lease entered into thereunder. In this regard I believe it clear that the General Assembly has intended that a lease agreement, and all necessary arrangements incidental thereto, entered into pursuant to R.C. 140.05, shall be governed by the terms of that section, and that the requirements otherwise imposed by R.C. 513.15-.171 have no application in such circumstance. Thus, insofar as the express language of R.C. 140.05 does not address the role of the board of hospital governors and does not confer upon the board of hospital governors any discernible powers and responsibilities, thereby rendering nugatory the continued existence of the board, I conclude that a board of hospital governors may be dissolved in the event that the joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 140.05.

That the board of hospital governors may be dissolved in such a circumstance also appears to be in keeping with the purpose of R.C. Chapter 140, as expressed in R.C. 140.02. Broadly speaking, R.C. Chapter 140 authorizes hospital agencies and various governmental entities to cooperate in utilizing various hospital facilities and the medical services they provide, in order to enhance the "availability, efficiency, and economy" of those facilities and services. R.C. 140.02. See generally 1976 Op. Att'y Gen. No. 76-023. Insofar as a board of hospital governors is left without any significant powers and responsibilities in the case of a lease negotiated under R.C. 140.05, the board would appear to be unable, as a public body, to make any palpable contribution to the efficient and economical management and operation of a joint township district hospital leased pursuant to that section. Thus, it seems reasonable that a board of hospital governors may be dissolved in such a circumstance.

Your third question asks what are the powers and duties of a board of hospital governors, other than the receipt of annual reports pursuant to R.C. 513.171, in the event the board remains in existence after a joint township district hospital has been leased to a private, nonprofit corporation pursuant to R.C. 140.05 or R.C. 513.171, and further, what actions are to be taken by the board of hospital governors once it has received from the private, nonprofit corporation the annual reports required by R.C. 513.171. Since I have concluded that a board of hospital governors is left without any significant powers and responsibilities and may be dissolved in the event a joint township district hospital is leased to a private, nonprofit corporation pursuant to R.C. 140.05, a response to that aspect of your third question addressed to the board's powers and responsibilities under R.C. 140.05 is unnecessary.

It is well settled that townships and their trustees are creatures of statute and may exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted, to enable them to perform the duties imposed upon them. Board of Trustees of New London Township v. Miner, 26 Ohio St. 452 (1875). Since the joint township district hospital board and the board of hospital governors owe their existence to statute, their duties, powers, and responsibilities must also be drawn from statute. See generally State ex rel. Schramm v. Ayres, 158 Ohio St. 30, 106 N.E.2d 630 (1952); Op. No. 80-068.

In the case of a board of hospital governors, the duties, powers, and responsibilities conferred upon the board by statute are enumerated in R.C. 513.17 and R.C. 513.171. R.C. 513.17 confers upon the board of hospital governors the power and responsibility of preparing plans and specifications and proceeding therefrom to "erect, furnish, and equip necessary buildings for a joint township general hospital." The power to erect, furnish, and equip a joint township district hospital includes, by implication, the power to make capital improvements to a joint township district hospital, see 1957 Op. No. 1003 at 424, and in the event any such improvements or additions to a joint township district hospital become necessary, the board of hospital governors, acting with the approval of the joint township district hospital board, is the appropriate public body authorized by statute to undertake, manage, and supervise all such work. See Stegall v. Joint Township District Memorial Hospital, 20 Ohio App. 3d 100, 102, 484 N.E.2d 1381, 1383 (Auglaize County 1985) ("the Board of

Governors as defined and empowered by statute is a board, and it makes, with the consent and approval of the hospital board, decisions essential to the construction and equipping of a general hospital"). Further, insofar as it is the purpose of R.C. Chapter 513 to provide hospital services for township inhabitants, see, e.g., R.C. 513.01 (a board of township trustees may annually levy a tax in order to "furnish hospital service to the inhabitants of such township"); R.C. 513.05 (a board of township trustees may provide "for the treatment of the sick and disabled of the township"), a board of hospital governors may establish, pursuant to R.C. 513.17, satellite facilities or outpatient clinics in townships that are not part of the joint township hospital district if such facilities or clinics are necessary to provide hospital services to inhabitants of the joint township hospital district. Op. No. 80-068 at 2-269. In addition, the foregoing duties, powers, and responsibilities remain with the board of hospital governors notwithstanding the lease of a joint township hospital to a private nonprofit corporation pursuant to R.C. 513.171. Cf. R.C. 513.17 (stating that except where the joint township district hospital is leased pursuant to R.C. 513.171, the board of hospital governors "shall appoint and fix the compensation of a suitable person to be superintendent of the hospital," but providing no exception with respect to the other duties, powers, and responsibilities of the board of hospital governors in the case of a lease entered into pursuant to R.C. 513.171).

It is also evident that a board of hospital governors possesses supervisory oversight authority in the case of a lease entered into under R.C. 513.171. The board of hospital governors is responsible, pursuant to R.C. 513.171, for monitoring the performance of the lessee nonprofit corporation as it relates to the control and operation of the hospital. In this regard the board of hospital governors must receive an annual accounting of all receipts and expenditures of the nonprofit corporation, along with any rules and regulations prescribed from time to time by the nonprofit corporation. Id.

With respect to the actions a board of hospital governors must take after it has received from the lessee nonprofit corporation the annual accounting of receipts and expenditures, and any rules and regulations prescribed by the nonprofit corporation, as required by R.C. 513.171, it seems clear that the board should forward such accountings and rules and regulations to the joint township district hospital board in order that the joint township district hospital board may properly evaluate the lessee nonprofit corporation's performance as it relates to the management and operation of the hospital. In this way the joint township district hospital board will be better able to determine whether the nonprofit corporation is adequately fulfilling the various obligations it has assumed under the terms of its lease agreement with the board, and is faithfully and efficiently administering, maintaining, and operating the hospital. R.C. 513.171. I also believe it reasonable to infer that a board of hospital governors may, pursuant to R.C. 513.171, examine such accountings and regulations and, on the basis of such examination, form its own conclusion with respect to whether the nonprofit corporation is faithfully and efficiently administering, maintaining, and operating the hospital. Further, the board of hospital governors should communicate its

opinion in this regard to the joint township district hospital board.

Accordingly, it is my opinion, and you are advised that:

1. A joint township district hospital board may lease a joint township district hospital to a private, nonprofit corporation, which is to assume responsibility for the control and operation of the hospital, pursuant to either R.C. 140.05 or R.C. 513.171. The various requirements imposed by R.C. 513.171 in the case of a lease made pursuant to that section are not applicable in the case of a lease entered into under R.C. 140.05.
2. A board of hospital governors, appointed pursuant to R.C. 513.16 by a joint township district hospital board, may be dissolved in the event the joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 140.05.
3. In the event a joint township district hospital board elects to lease the joint township district hospital to a private, nonprofit corporation pursuant to R.C. 513.171, the board of hospital governors, appointed pursuant to R.C. 513.16 by the joint township district hospital board, retains all such powers, duties, and responsibilities expressly conferred upon it by R.C. 513.16-.171 and all such other powers, duties, and responsibilities as may be necessarily implied from those expressly granted, except to the extent that control and operation of the joint township district hospital vest in the private, nonprofit corporation as a result of such lease. The board of hospital governors should forward the annual accounting of receipts and expenditures and any rules and regulations it receives from the lessee nonprofit corporation pursuant to R.C. 513.171 to the joint township district hospital board. The board of hospital governors may, pursuant to R.C. 513.171, examine such annual accounting and rules and regulations, and, on the basis of such examination, form its own conclusion with respect to whether the nonprofit corporation is faithfully and efficiently administering, maintaining, and operating the joint township district hospital. Further, the board of hospital governors should communicate its opinion in this regard to the joint township district hospital board.