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HOSPITAL, MUNICIPAL — BOARD OF TRUSTEES — MAY LEGALLY EXPEND FUNDS FOR SERVICES, CREDIT RATING ASSOCIATION — DIRECT CHARGE OR PERIODICAL PAYMENT OF FIXED AMOUNT — WHERE CITY CHARTER GRANTS CONTROL AND MANAGEMENT AND AUTHORITY TO ESTABLISH RULES FOR GOVERNMENT AND ADMISSION TO PRIVILEGES AS IT DEEMS EXPEDIENT.

SYLLABUS:

The board of trustees of a municipal hospital, having under the city charter the entire control and management of such hospital and the authority to establish such rules for its government and admission of persons to its privileges as it deems expedient, may legally expend funds under its control for services rendered by a credit rating association, either in the form of a direct charge for such services or by the periodical payment of a fixed amount therefor.

Columbus, Ohio, July 14, 1942.

Bureau of Inspection and Supervision of Public Offices,
Columbus, Ohio.

Gentlemen:

This will acknowledge receipt of your communication of June 30, 1942, which reads as follows:

> "We are submitting herewith a letter received from the Director of Law, City of Lakewood, in which he requests advice concerning the authority of a municipally owned and operated

hospital to expend funds for services rendered by the Retail Credit Men's Association.

We have had similar requests from the management of other municipal hospitals, but as our files fail to disclose any prior rulings by which we might properly answer said inquiries, may we request that you examine the inclosure and give us your opinion in answer to the following question:

Can the city, through its board of hospital trustees, legally expend funds under their control for services rendered by the Retail Credit Men's Association, either in the form of a membership or in the form of a direct charge for said service?"

Attached thereto is a communication from the Director of Law of Lakewood, in which he says:

"It appears to me this question involves practically the same principle as that of entering into a joint purchasing service with the Hospital Council. In 1940 O.A.G. No. 3132, the Attorney General discusses the question of expenditures for such purposes. Among other authorities, the Attorney General cites Article VIII, Section 6, of the Ohio Constitution as prohibiting such an arrangement with private associations.

In State ex rel. Thomas v. Semple, 112 O. S. 559, the Supreme Court held that the City of Cleveland did not have authority to contribute to the 'Conference of Ohio Municipalities,' stating in part that the charter did not contain any 'general provision from which authority may be inferred to expend the funds of the city to assist in creating and maintaining an organization with offices and officers entirely separate from those of the city, selected by representatives of various municipalities of the state, with salaries and expenses also fixed by them.'

At its last meeting the Board of Trustees took action, requesting me as Director of Law 'to solicit an opinion from the Attorney General as to the legality of an agreement between the Hospital and the Retail Credit Men's Association solely in regard to credit standings.'

The desire then of the Board is to secure information as to the credit standing of those people with whom the hospital deals and the question is as to the legality of any such expenditure."

I note also the extract from the charter of the city of Lakewood relating to the establishment and management of a municipal hospital. Such charter provisions read in part as follows:

"Any such hospital shall be operated, controlled and managed by a Board of Trustees consisting of eight members. * * * "

> "The said Board of Trustees shall have the entire control and management of such hospital and shall establish such rules for its government and the admission of persons to its privileges as it deems expedient, and shall annually appoint the professional staff as determined by approved hospital administration. Said Board shall also employ a superintendent, who shall not be under civil service, and such assistants, nurses, physicians and surgeons and such other employees as said Board deems necessary, and fix their compensation, which compensation shall, however, be subject to the approval of the Council."

The case of State ex rel. v. Semple, 112 O.S. 559, above referred to, has been the basis for numerous holdings by this office that, in the absence of express provision in its charter or general provision therein from which the power is clearly to be implied, a municipality has no power to expend public funds to pay a membership fee in an organization whose service is intended to furnish general information of interest or value to a municipality or to advise or educate its officers and employes in performing their duties.

Similar holdings have been made relative to the payment of expenses of municipal officials, or officers or employes of other corporations, in attendance on conventions of municipal or other public officers; also as to expenses of lobbyists endeavoring to secure desired legislation. It does not seem necessary to review at length the rather numerous opinions holding such expenditures illegal.

In order to understand the scope of the Semple case, it is well to quote from the opinion of the court as to the nature and purpose of the organization there under consideration.

> "The constitution of the so-called 'Conference of Ohio Municipalities' indicates that it is an organization of the municipalities of the state, the purpose and object of which is to serve as an agency of common action in all matters of common concern to municipalities of Ohio. The dues of municipalities becoming members range from $10 to $500 per year. Those of Cleveland would be the latter figure. Provision is made for the election of officers and an executive committee, including an executive secretary to be in charge of headquarters of the conference. Among other services to be rendered is the maintenance of a headquarters, and therewith a bureau of information, through which it is proposed to keep the members advised of pending litigation, as well as legislation and other matters affecting their interests, and to publish a periodical."

The conclusion of the court is expressed in the following language:

> "It does not follow, from the broad powers of local self-government conferred by Article XVIII of the Constitution of the state, that a municipal council may expend public funds indiscriminately and for any purpose it may desire. The misapplication or misuse of public funds may still be enjoined, and certainly a proposed expenditure, which would amount to such misapplication or misuse, even though directed by a resolution of council, would not be required by a writ of mandamus."

In my opinion rendered to your Bureau on December 18, 1940 (Opinions Attorney General, 1940, p. 1061), the question was presented relative to the right of this same Lakewood Hospital to enter into a contract with the Cleveland Hospital Council, composed in part of private institutions, at a cost of $420.00 per year for the joint purchase of supplies. The syllabus of this opinion was as follows:

> "A municipal hospital may not expend funds for a joint purchasing service accomplished through the agency of a hospital council which purchases supplies and equipment for all hospitals within a certain locality."

This holding, based largely on the Semple case, was on the general ground of impropriety of expenditure by reason of the lack of any charter provision conferring such authority, and on the further ground that purchases so made might or probably would violate the law requiring advertisement for all contracts involving the expenditure of more than $500.00.

It was also pointed out that the city, through the agency of those responsible for the management of the hospital, in joining with private institutions in purchasing through the hospital council, attempts a thing prohibited by Section 6 of Article VIII of the Ohio Constitution. That section in part is as follows:

> "No laws shall be passed authorising any county, city, town or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association."

This section, as pointed out in that opinion, has been construed by our Supreme Court as being intended to prevent anything in the nature of a business partnership between a municipality or other subdivisions of the state and individuals or private corporations or associations. Walker v. Cincinnati, 21 O.S. at p. 54; Wyscaver v. Atkinson, 37 O.S. at p. 97.

Coming now to the consideration of the proposition presented by your present inquiry, do the rulings above referred to deny to the trustees of the Lakewood Hospital, in the performance of their responsibilities in the operation and maintenance of the hospital, the right to make expenditure of funds at their disposal in ascertaining the financial credit of their pay patients or those who obligate themselves to pay for their treatment? Or may they in obtaining such information use the methods that are ordinarily employed by private individuals or associations in obtaining such information, viz., by subscribing to the services of a credit organization or obtaining and paying for special reports in individual cases?

The papers submitted with your letter of inquiry do not explain the exact nature of the Retail Credit Men's Association nor the precise obligations that a membership would involve on the part of the hospital trustees. However, from information which I believe to be reliable, I understand that in consideration of a certain fee paid annually, a subscribing member is entitled to such reports as he or it may require relative to the financial standing and credit of any person, and that the association is prepared, through its affiliations with like associations in other cities to furnish such information in detail.

It may be observed that the statutes of Ohio, in defining the powers of municipal corporations and in distributing these powers to various officers and departments, almost without exception are expressed in very general terms and contain very little detail as to the precise method by which these powers are to be exercised, excepting, of course, the limitations imposed by the Legislature under authority of the Constitution, limiting the incurring of debts and borrowing money, prescribing in certain cases advertising for bids, and requiring certification of the fiscal officer as to funds available.

The general authority for the establishment and maintenance of hospitals is found in Section 3646 of the General Code, which provides:

> "To provide for the public health, to secure the inhabitants of the corporation from the evils of contagious, malignant and infectious diseases, and to purchase or lease property or buildings for pest houses and to erect, maintain and regulate pest houses, hospitals and infirmaries."

The management of hospitals is committed by the municipal code

to the director of public safety in cities. Section 4370 provides:

> "The director of public safety shall manage, and make all contracts in reference to the police stations, fire houses, reform schools, houses of correction, infirmaries, hospitals, workhouses, farms, pest houses, and all other charitable and reformatory institutions. In the control and supervision of such institutions, the director shall be governed by the provisions of this title relating to such institutions."

Section 4371, General Code, requires the authorization of council where a proposed expenditure by the director exceeds five hundred dollars, and commenting on this provision the court in State ex rel. v. Noble, 12 C.C. (N.S.) 305, says:

> "In order to operate as a restraint upon the directors of public service and public safety, council has authority to pass upon the wisdom and necessity of any expenditure of more than five hundred dollars."

The plain implication from this statement is that the wisdom and necessity of such expenditure, if not exceeding that sum, lies with the director; assuming, of course, that the purpose of the expenditure is legal.

It is stated in 28 Ohio Jurisprudence, p. 905:

> "Where particular authorities are invested with the general power to control and manage particular subjects, they are generally held to possess the power to contract with respect to such incidental matters as are reasonably necessary for the purpose."

In an opinion which I rendered relative to the Metropolitan Housing Authority (1940 Opinions of Attorney General, p. 1147), I held that the funds of such corporation could not be expended in payment of traveling and other expenses of members and employes incurred in attending conventions or in employing a professional publicity man for educational purposes. On the other hand, I held that such authority could legally expend its funds in compensating real estate agents in appraising and purchasing land, for compensating agents for securing tenants and for employing a detective agency to guard property owned, leased or managed by such authority.

The powers of such housing authority conferred by Section 1078-34,

General Code, are in very general language, the pertinent part of that section being as follows:

> " * * * to lease, and/or operate any project and establish or revise schedules of rents for any projects or part thereof; * * *
>
> d. To do all things necessary or convenient to carry out the powers expressly given in this act."

Referring specifically to the item relative to the employment of a detective agency, the opinion says:

> "Question (4) H. must be answered in the affirmative. It goes without saying that it is as important to guard and preserve property once it has been constructed as it is to construct the property in the first instance. Certainly employing a detective agency is an appropriate method toward accomplishing a lawful end, and whether a metropolitan housing authority determines to have its property guarded by a detective agency or by the direct employment of guards is a matter within the discretion of such authority."

In my opinion relative to the powers of the state bridge commission (Opinions Attorney General, 1939, p. 1131), I applied the rule in the Semple case holding that the commission could not legally expend funds derived from tolls for the purpose of paying dues in the National Toll Bridge Association or the expense of its members in attending conventions in such association; and also that it could not expend such funds for a bronze plaque commemorating the names of the commissioners who were in office when the bridge was built. Referring to the latter purpose the opinion states:

> "I do not hesitate to answer this question in the negative. In so far as repair or maintenance is concerned, the mere statement of the question furnishes its own answer. Nor do I see how it can be said that such expenditure is a legitimate operating expense. Certainly the placing of the kind of plaque described by your Bureau would in nowise serve to lessen the necessary overhead, and it is inconceivable that it would cause a greater use of the bridge by the traveling public. Any expenditure reasonably tending to decrease operating expenses or increase operating revenue would undoubtedly be legitimate to the end that the retirement of the outstanding revenue bonds and the reduction or abolishment of the tolls might be quickened."

In State of Ohio ex rel Marani v. Wright, 17 O.C.C. (N.S.) 396, the court, while holding that a municipality is not liable for the traveling

expenses of its officials incurred in attending a convention of like officials of other municipalities, said in its opinion at page 397:

> "We hold that in the absence of any specific statutory provision for such cases, the test of the city's liability must be deemed to be: is the trip or journey in which the expenses were incurred necessarily implied in or reasonably or directly incident to the prescribed duties of the municipal officer who undertakes such journey?
>
> It has been pointed out in the argument that a municipal officer may properly undertake a journey at the city's expense to inspect materials or supplies, for the purchase of which, on behalf of the city, he is authorized to negotiate, if such journey is reasonably necessary for that purpose.
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> This is upon the ground that the object of the journey is directly related to the duties of his office."

My immediate predecessor, in an opinion rendered relative to the powers of the State Bridge Commission (1938 Opinions of the Attorney General, p. 1373), held that such commission had such authority to expend its funds for advertising on bill boards or maps, if such maps were used for advertising purposes.

The true test of the legality of municipal expenditures is thus stated by one of my predecessors (Annual Reports, Attorney General, 1910-1911, p. 942), where it is said:

> "The purposes for which a director may authorize money, appropriated for the use of his department, to be expended, must be *public;* they must be *municipal* purposes; they must be *departmental* purposes. The jurisdiction, or the scope of the power of a local board or officer, whether the same be characterized as executive or as administrative, are defined by law, and obligations may not be incurred by any such board or officer in the furtherance of objects not within such jurisdiction or within the scope of such actual authority."

Neither the general statutes nor the Lakewood charter contain any affirmative authority to receive and charge for patients able to pay for their services; neither do the statutes nor said charter contain any restrictions against doing so.

In the case of Taylor, Admr., v. Protestant Hospital Ass'n., 85 O.S. 90, 96 N.E. 1089, it was said:

"1. The fact that a public charitable hospital receives pay from a patient for lodging and care does not affect its character as a charitable institution, nor its rights or liabilities as such in relation to such a patient.

2. A public charitable hospital organized as such and open to all persons although conducted under private management is not liable for injuries to a patient of the hospital resulting from negligence of a nurse employed by it."

In that case it appears that the decedent was a pay patient in the hospital and met her death by the negligence of a nurse in the hospital.

In the case of O'Brien, Treas., v. The Physicians Hospital Association, 96 O.S. 1, 116 N.E. 975, it was held:

"A public charitable hospital may receive pay from patients who are able to pay for the hospital accommodations they receive, but the money received from such source becomes a part of the trust fund, and must be devoted to the same trust purposes and cannot be diverted to private profit. (Taylor, Admr., v. The Protestant Hospital Assn., 85 Ohio St., 90, approved and followed.)

It is true that in both of the above cases the hospital under consideration, while referred to as "public charitable hospital," was in fact privately managed. However, a like holding was made in the case of a municipal hospital where it appears that patients who were able to pay for their services were received as well as charity patients (Lloyd v. City of Toledo, 42 Oh. App. Rep., 36). The second branch of the syllabus in this case reads:

"Operation with municipal funds of hospital for public charitable treatment of sick and injured being 'governmental function,' notwithstanding some patients pay for service, city held not liable to patient for torts of hospital employees."

On the subject of implied powers, it is held in the case of Federal Gas Co. v. Columbus, 96 O.S. p. 530:

"Where a statute grants the power to a municipality to grant a franchise, either upon 'terms and conditions' or 'regulations and restrictions' that it may prescribe, large latitude must be allowed for the discretion of the municipality and its officers in the provisions made in such franchise contract; and unless expressly limited by the statute authorizing the grant, the municipality may exercise its discretion in any reasonable manner compatible with the best service and the greatest ad-

vantage, pecuniary or otherwise, to the municipality and its inhabitants."

It is my opinion that the proposed expenditure of the trustees of the Lakewood Hospital falls within the clearly implied powers which flow from the express power stated in the charter, viz., "said Board of Trustees shall have the entire control and management of such hospital and shall establish such rules for its government and the admission of persons to its privileges as it deems expedient."

Answering your question specifically, I am of the opinion that the city of Lakewood, through its board of hospital trustees, can legally expend funds under its control for services rendered by the Retail Credit Men's Association, and assuming that the so-called "membership" involves nothing more than an agreement to pay a certain fee for the privilege of obtaining credit reports, such service may be obtained either in the form of a membership or a direct charge.

Respectfully,

THOMAS J. HERBERT
Attorney General.