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BOND ISSUE—339.01 R. C.—PURCHASE, APPROPRIATION, CONSTRUCTION OF COUNTY HOSPITAL—FIRST OR ADDITIONAL BUILDINGS—POWER OF COUNTY HOSPITAL TRUSTEES 339.03 R. C.—BOARD OF COUNTY HOSPITAL TRUSTEES TO ACT INSTEAD OF COUNTY COMMISSIONERS IN PROCEEDING WITH ACQUISITION OR CONSTRUCTION.

SYLLABUS:

When, under the terms of Section 339.01 Revised Code, the electors of a county approve a bond issue or tax levy for the original purchase, appropriation, or construction of a county hospital building, whether it be the first such building or an additional building added to an existing county hospital, the powers of the board of county hospital trustees with relation thereto are those enumerated in Section 339.03 Revised Code, and it is the duty of such board of county hospital trustees, not of the board of county commissioners, to proceed with such acquisition or construction.

Columbus, Ohio, January 14, 1957

Hon. Oliver R. Marshall, Prosecuting Attorney
Lake County, Painesville, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“You are aware from our previous correspondence that the voters of Lake County, Ohio have approved a bond issue and tax levy for the construction of an additional county hospital building in Lake County, Ohio. The question now arises as to

whether details of construction shall be handled by the Lake County Commissioners or by the Board of Trustees of the Lake County Memorial Hospital. I respectfully refer you to two opinions of the Attorney General which are apparently in conflict on this question, namely; 1954 OAG No. 3524, in which you advise the prosecuting attorney for Union County regarding the procuring of bids for hospital improvements by the trustees of the Greene County Hospital, and 1954 OAG No. 4030, in which you advise the prosecuting attorney for Greene County, Ohio, that the Board of County Commissioners has the authority to "enlarge, improve and re-build" an existing County Hospital. The questions considered in these opinions do not appear to be exactly parallel but they leave some doubt in our mind as to who should proceed. Accordingly, our question is as follows:

Where there is an established county hospital and the electors approve a bond issue for the construction of a new hospital building, acquiring and improving a site and providing furniture, furnishings and equipment, by whom should necessary land be acquired, architects be hired, plans be approved and construction and equipment contracts be advertised and let?"

In opinion No. 4030, Opinions of the Attorney General for 1954, page 356, to which you refer, I said, reading from the syllabus:

"A board of county commissioners has authority under the provisions of Section 339.01, Revised Code, to "*enlarge, improve, and rebuild*" an *existing county hospital*, and in exercising such power such board should act directly rather than by making funds for such purpose available to the board of trustees of such hospital." (Emphasis added.)

That opinion, you will observe, is concerned with a situation entirely different from that presently existing in Lake County. Opinion No. 4030 was concerned with permanent *improvements* to an existing hospital facility. It did not deal with circumstances such as the present situation in Lake County, where a bond issue has been approved in accordance with the terms of Section 339.01 Revised Code, and an entirely *new* hospital facility on a new site is to be built, but rather involved the authority of the county commissioners to expend *other funds* in improving an existing facility.

In Opinion No. 7100, Opinions of the Attorney General for 1956, I advised you that, although a county may have but one county hospital, that hospital may consist of several different facilities located on different sites. By approving a bond issue or tax levy under the provisions of Section 339.01 Revised Code, and proceeding with the construction of

an entirely new hospital building, a county is not merely enlarging, improving, or rebuilding an existing county hospital, but is in effect continuing the original construction of the county hospital. This is in accordance with the concept expressed in Opinion No. 7100, supra, that a county hospital is not just a building but an entity which may embrace several buildings. Accordingly, Opinion No. 4030, supra, does not apply to your situation.

The powers of the board of county hospital trustees with regard to original construction etc. of a county hospital are those enumerated in Section 339.03 Revised Code:

“The board of county hospital trustees shall have complete charge of selection and purchase of a site for a county hospital, taking title to such site in the name of the county, the selection of plans and specifications, the determination and erection of all necessary buildings on such site, and of the selection and installation of all necessary and proper furniture, fixtures, and equipment.

“The trustees shall serve without compensation, but shall be allowed their necessary and reasonable expenses incurred in the performance of their duties. Such expenses shall be paid out of the funds provided for such hospital. The board of county hospital trustees may employ such help as is necessary to perform its clerical work, superintend properly the construction of such hospital, and pay the expenses thereof, including the salary of the administrator as provided in section 339.06 of the Revised Code, out of the funds provided for such hospital.

“Each trustee shall give bond for the proper performance of his duties, in such sum as the board of county commissioners requires, with sureties to its approval.”

It is my opinion, and you are advised, that when, under the terms of Section 339.01 Revised Code, the electors of a county approve a bond issue or tax levy for the original purchase, appropriation, or construction of a county hospital building, whether it be the first such building or an additional building added to an existing county hospital, the powers of the board of county hospital trustees with relation thereto are those enumerated in Section 339.03 Revised Code, and it is the duty of such board of county hospital trustees, not of the board of county commissioners, to proceed with such acquisition or construction.

Respectfully,
C. WILLIAM O'NEILL
Attorney General