

211.

COUNTY TUBERCULOSIS HOSPITAL—TRUSTEES RENTAL OF OFFICE IN COUNTY SEAT, MAY NOT—EXPENDITURE OF PUBLIC MONEY—OFFICIALS CREATURES OF STATUTE—POWERS OF TRUSTEES — RENTAL NOT NECESSARY EXPENSE.

SYLLABUS:

When a county tuberculosis hospital is established by the county commissioners in accordance with the law, and the hospital buildings are located a considerable distance from the county seat, the trustees of such hospital may not rent a room in the county seat for the use of the trustees in the transaction of the business of the board.

The payment of such rental involves the expenditure of public money, requiring a strict construction of the statutory law relative thereto.

The trustees of a county tuberculosis hospital are creatures of statute having only such powers as are expressly delegated by statute and such incidental powers as are necessary to carry the express powers into effect.

Such expense is not "necessary expense" within the purview of Section 3151, G. C., as the law contemplates that when the institution was constructed the trustees provided an office for themselves therein, inasmuch as the business of the institution is the business of the board and the logical place for the conduct of the business of the institution is at the institution.

COLUMBUS, OHIO, March 4, 1937.

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

GENTLEMEN: I acknowledge receipt of your communication of recent date as follows:

"When a county tuberculosis hospital is established by the county commissioners in accordance with the law, and the hospital buildings are located a considerable distance from the county seat, may the trustees of the hospital rent a room in the county seat for the use of the trustees in the transaction of the business of the board?"

I likewise acknowledge receipt of your enclosure, as follows:

“In view of the information we received yesterday that the Attorney General’s Office had informally held that the board of trustees of a county tuberculosis hospital is without authority to rent an office away from the institution for the use of the board, it seems to me that something along the following lines might be appropriately presented to him in asking for a written opinion.

The board of trustees of such tuberculosis hospital did rent such an office for a specific period under the impression that it had full authority to do so under the wording of Section 3151, General Code, which reads in part:

‘ * * * The trustees shall serve without compensation, but their necessary expenses when engaged in the business of the board shall be paid.’

For ten years or more prior to, and for three years to date following the period in question, this office has been maintained almost solely for handling the business of the hospital. It was paid for personally by a member of the board. That is, the necessity for the office neither started when the period in question started, nor stopped when it closed. The ability of a member of the board to pay the expense of the office did cease for the period indicated; and the board never interpreted the word ‘shall’ in the law to prevent members of the board from paying necessary expenses from their own pockets when they desired to do so.

The office has been used by the board and by the management not only for formal meetings, but almost daily to transact institution business. Results of such business largely consummated in this office include gifts by fraternal organizations, of an X-ray machine and of a \$15,000 laboratory; and individual gifts and bequests to a trust fund to supplement tax-supported operations of the institution to the extent of about \$80,000. The trustees feel therefore that this office has been a demonstrably successful facility necessary to the effectiveness of their management of the institution.

The question then becomes; What section of the law or what other authority so modifies the section quoted as to deny the trustees the legal right to determine, at their discretion, that the rental of such office is a necessary expense of the trustees when engaged in the business of the board?

I understand that if this transaction proves to exceed their authority, the trustees are ready to reimburse the institution’s funds without question; but they are unwilling to make any

payment which might be construed as evidence of an acknowledgment of wrong-doing until it is clearly pointed out to them just how their interpretation of Section 3151 is in error.

Will you help us get an answer to this question?"

Your question is tersely stated in your communication and will not be repeated.

I take it that this institution was brought into existence under favor of Section 3148-1, General Code of Ohio, which provides in substance, that the county commissioners of any county having more than 50,000 population as shown by the last federal census may, with the consent of the state department of health, provide the necessary funds for the purchase or lease of a site and the erection and equipment or lease and equipment of the necessary buildings thereon for the operation and maintenance of a county hospital for the treatment of persons suffering from tuberculosis.

Section 3148-2, General Code, provides that the management and control of such tuberculosis hospital shall be vested in the board of trustees, which board of trustees shall have all the powers conferred by law upon the board of trustees of district hospitals for the care of persons suffering from tuberculosis, and all laws applicable to the levy of taxes for the erection, maintenance and operation of said district hospitals shall apply to the leasing, erection, operation and maintenance of said county hospital for the treatment of persons suffering from tuberculosis.

Section 3151, General Code, provides that, subject to the provisions of this chapter, such board of trustees shall prepare plans and specifications and proceed to erect and furnish the necessary buildings for the hospital. They shall appoint a suitable person as medical superintendent and, upon his recommendation, such nurses and other employes as may be necessary for the proper conduct of the hospital. They shall fix the compensation of the superintendent and other employes. *The trustees shall serve without compensation, but their necessary expenses when engaged in the business of the board shall be paid.*

Section 3152, General Code, provides that the boards of commissioners of counties jointly maintaining a district hospital for tuberculosis shall make annual assessments of taxes sufficient to support and defray the necessary expense of maintenance of such hospital.

Inasmuch as the laws applicable to district hospitals are made applicable to county hospitals, the county commissioners of Summit County must make provision for the maintenance of this hospital by the levy of necessary taxes.

The trustees of this institution are creatures of statute. They have

just such powers as are expressly delegated by statute and such incidental powers as are necessary to carry into effect the powers expressly delegated.

Your enclosure insists that the sentence contained in Section 3151, General Code: "The trustees shall serve without compensation, but their necessary expenses when engaged in the business of the board shall be paid" is ample warrant in law for the expenditure in question. The necessary expenses under the law can only be incurred in the performance of legal duties. If the board of trustees have the statutory authority to lease an office separate and apart from the institution, then of course the reasonable rental for such office is a necessary expense and the trustees have the incidental power to pay therefor. In other words, if the General Assembly has expressly delegated to the trustees of this hospital the authority to rent a room separate and apart from the institution for their use as an office, then the law would require them to pay the reasonable rental therefor as a necessary incident to the power to lease.

The trouble is that the only delegation of power in the sentence above quoted is the payment of the *necessary expenses* of the trustees when engaged in the business of the board. The business of the board is the business of the institution, and when the General Assembly authorized the trustees to erect and furnish necessary buildings upon the site purchased or leased by the county commissioners, it was the legal contemplation that such trustees would provide an office for themselves *at the institution*, as that is the logical place for the transaction of the business of the institution, and the trustees must transact such business. The leasing of this office separate and apart from the institution involves the expenditure of public moneys raised by taxation and must receive a strict construction. Your enclosure advances persuasive argument in favor of the contention made by the board of trustees, that they have the right under the law to rent the office in question. From the statements therein contained, such office has proven itself an asset to the institution instead of a liability. Such contention begs the question. However meritorious this office may have proven itself to be, its merit can not purchase legal authority.

With all due deference to the honesty of purpose of this board of trustees, it is my opinion that the rental of the office in question under all the circumstances was without authority of law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.