OPINION NO. 73-017

Syllabus:

A county hospital is a public agency within the purview of R.C. 143.29 and is, therefore, bound to comply with the provisions of that Section.

To: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
By: William J. Brown, Attorney General, March 7, 1973

I have before me your predecessor's request for an opinion, which reads in pertinent part as follows:

> As you will see from the copy of the letter dated July 1, 1971, our Edwin Shaw Hospital is operating an employee illness policy different from Section 143.29 Ohio Revised Code. Edwin Shaw Hospital was originally a county tuberculosis hospital, but has recently become a county hospital, serving chronic ill patients as well as TB patients. This hospital is operated through a board of trustees, and has a special tax levy for financing.
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> We, therefore, request consideration of the following question:
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> > "May the board of trustees of a county hospital adopt a policy for employee sick leave different from that prescribed in Section 143.29 Ohio Revised Code?"

R.C. 143.29, which provides sick leave benefits for all state, county and municipal employees, reads in its entirety as follows:

> Each employee, whose salary or wage is paid in whole or in part by the state, each employee in the various offices of the county service and municipal service, and such employee of any board of education for whom sick leave is not provided by section 3319.141 of the Revised Code, shall be entitled for each completed eighty hours of service to sick leave of four and six-tenths hours with pay. Employees may use sick leave, upon approval of the responsible administrative officer of the employing unit, for absence due to personal illness, injury, exposure to contagious disease which could be communicated to other employees, and to illness, injury, or death in the employee's immediate family. Unused sick leave shall be cumulative up to one hundred twenty work days, unless more than one hundred twenty days are approved by the

> responsible administrative officer of the employing unit. The previously accumulated sick leave of an employee who has been separated from the public service may be placed to his credit upon his re-employment in the public service, provided that such re-employment takes place within ten years of the date on which the employee was last terminated from public service. An employee who transfers from one public agency to another shall be credited with the unused balance of his accumulated sick leave up to the maximum of the sick leave accumulation permitted in the public agency to which the employee transfers. The appointing authority of each employing unit shall require an employee to furnish a satisfactory written, signed statement to justify the use of sick leave. If medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave. Falsification of either a written, signed statement or a physician's certificate shall be grounds for disciplinary action including dismissal. This section shall be uniformly administered as to employees in each agency of the state government by the director of state personnel. No sick leave may be granted to a state employee upon or after his retirement or termination of employment.
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> This section does not interfere with existing unused sick leave credit in any agency of government where attendance records are maintained and credit has been given employees for unused sick leave.

As originally enacted in 1947, R.C. 143.29 extended only to employees of the state. 122 Ohio Laws, 368. Soon after its passage, however, it was amended so as to also include county, municipal and board of education employees. 123 Ohio Laws, 657-658. The obvious intent was to provide a comprehensive sick leave program which would, in the absence of express statutory authority to the contrary, uniformly apply to all the employees of such public agencies within the state.

In interpreting the words "public agency", as they are used in R.C. 143.29, my predecessor, in Opinion No. 3643, Opinions of the Attorney General for 1954, said:

> As to the meaning of the words, "public agency," it seems unnecessary to devote time to an analysis of this phrase, since it is very clear that the legislature regarded the state, a county, a municipal corporation, and a board of education as being public agencies, within the purview of this section and both the title above and the text appear to bear out this conclusion.

It would seem clear, therefore, that the employees of a hospital operated by the county government are employees of a public agency within the purview of R.C. 143.29.

Nevertheless, several contentions have been raised in an attempt to uphold the legality of a sick leave program administered by a county hospital which is at variance with the one prescribed in R.C. 143.29.

Great emphasis is placed upon the fact that previous Opinions issued by my predecessors have specifically exempted certain public agencies from the provisions of R.C. 143.29. These Opinions are, however, distinguishable.

Opinion No. 1302, Opinions of the Attorney General for 1960, stated that a health district is not a county agency. In reaching this conclusion, my predecessor quoted from Opinion No. 4244, Opinions of the Attorney General for 1932, as follows:

> It is apparent that a general health district is a separate and distinct department or branch of the state sovereignty and that the legislature has placed no authority, jurisdiction or control over it in the county commissioners.

On the other hand, although a general health district is an agency of the state, its employees are not paid, either in whole or in part, by the state but rather by the county. Consequently, since the employees of a general health district are not full-time employees in the county service, and since they are not paid either in whole or in part by the state, my predecessor concluded that they were exempt from the provisions of R.C. 143.29. Whatever may be thought of the correctness of my predecessor's conclusion it has no bearing on a county hospital which is clearly a county agency and subject to R.C. 143.29.

In Opinion No. 2038, Opinions of the Attorney General for 1961, my predecessor concluded that the employees of a board of trustees of a county library district created pursuant to R.C. 3375.19 or 3375.20, are not employees entitled to sick leave under R.C. 143.29. Once again, the principles underlying such a conclusion are inapposite in the case of a county hospital. R.C. 3375.33 confers upon the board of library trustees of a county library district the status of a body politic. The court in the case of Miller v. Akron Public Library, 60 Ohio L. Abs. 364 (1951), discussed the significance of this status as follows:

> Under [R.C. 3375.33] the legislature made all the various library boards bodies politic and corporate, and as such capable of suing and being sued, contracting and being contracted with, acquiring, holding, possessing and disposing of real and personal property, and of exercising such other powers and privileges as are conferred upon them by law thus making them separate and distinct entities or bodies politic and corporate, separate and apart from the municipality, the county, the school board, etc., and not agents of said bodies politic.
> (Emphasis added.)

There is, however, no similar statute conferring such an independent status upon a county hospital. The principles set forth in this Opinion, therefore, are inapplicable to the precise issue at hand.

It has also been suggested that, since the Edwin Shaw Hos-

pital is directed by a board of hospital trustees possessing broad powers, it is not, in the strict and primary sense, a county agency, and that it is, therefore, free to adopt its own sick leave program. Such a contention is, however, clearly untenable.

Admittedly, R.C. Chapter 339 confers broad discretionary powers upon the board of hospital trustees with reference to the establishment, management and control of the hospital. The method by which the internal affairs of an institution may be governed, however, neither affects nor alters the essential character of that institution. A county hospital is no less a county agency merely because its management is conferred by statute upon an independent and subordinate body.

In this respect, I direct your attention to Opinion No. 854, Opinions of the Attorney General for 1951, in which my predecessor, discussing the status of county hospital employees, said:

> This board of trustees is under the terms of Section 3131, General Code, appointed by the county commissioners, together with the probate judge and the senior common pleas judge. However, it is clear that the county hospital is, and remains a county institution. Accordingly, the employees of the hospital are county employees. (Emphasis added.)

And it should be noted that in the case of Wierzbicki v. Carmichael, 118 Ohio App. 239 (1963), the court stated quite unequivocally that a board of county hospital trustees is an agency of the county. In holding that the board, because of its status, was immune from a suit for negligence, the court said at page 243:

> The appellant attaches importance to the pleaded fact that the hospital was operated for profit. Whether it was so operated or not is of no importance except to the taxpayer. It is an agency of the state and county governments, and as such is not an operation for profit as that phrase is used in the world of private business. (Emphasis added.)

In light of the foregoing, I think it quite clear that a county hospital is a public agency within the purview of R.C. 143.29, and that employees of such a hospital are covered by the provisions of such statute.

It is contended finally that, because the particular hospital involved here was originally established as a tuberculosis hospital, and because the trustees of such a hospital are authorized, under R.C. 339.33 and 339.30, to grant additional vacation time to its employees, the hospital is now somehow excused from complying with the provisions of R.C. 143.29. Such a contention is wholly without merit. I am able to find no authority supporting the proposition that the original status of the hospital in question could affect in any way its present status as a county hospital. Moreover, even if such a change in status were of legal consequence, I fail to see how a statute relating to vacation leave could affect, either directly or peripherally, a program providing for sick leave benefits.

In specific answer to your question it is my opinion, and you are so advised, that a county hospital is a public agency within the purview of R.C. 143.29, and is, therefore, bound to comply with the provisions of that Section.