

SYLLABUS:

1. The director of public safety or board of governors succeeding to his authority of a municipal hospital cannot legally enter into an agreement for deferred compensation with a key employee in order to provide insurance payable to the hospital, proceeds of which shall subsequently be paid to such key employee or his beneficiaries.

2. The director of public safety or board of governors succeeding to his authority of a municipal hospital does not have the authority to purchase contracts of insurance covering the lives of key employees, which provide for payment to the hospital of determinable amounts in the event of the death, disability, or retirement of the subject employee.

Columbus, Ohio, March 22, 1963

Hon. Roger W. Tracy
Auditor of State
State House
Columbus, Ohio

Dear Sir:

The request of former Auditor Rhodes addressed to my predecessor for an opinion reads as follows:

"I enclose for your reference copies of correspondence of recent date. Our correspondent inquires of this office as to the authority of a municipal hospital to provide deferred compensation for various key employees, according to a plan which is outlined in the enclosures.

"The specific questions posed relate to a hospital under the supervision of a municipal corporation in Ohio. The questions are:

"1. Does such a hospital have the authority to grant deferred compensation for key employees?

"2. Does such a hospital have the authority to purchase contracts of insurance covering the lives of key employees, which provide for payment to the hospital of determinable amounts in the event of the death, disability, or retirement of the subject employee?

"It is apparent that your opinion on these points will be of interest to municipal corporations throughout the State. Therefore, your formal opinion is requested."

Your questions involve the interpretation of several statutes relating to the operation and management of municipal hospitals.

Section 749.15, Revised Code, reads in part:

“The director of public safety shall have the entire management and control of a hospital erected under sections 749.02 to 749.14, inclusive, of the Revised Code * * *. Such director may employ a superintendent, steward, physicians, nurses, and such other employees as are necessary, and fix the compensation of all such persons, which compensation shall be subject to the approval of the legislative authority. * * *”

Section 749.16, Revised Cde, reads as follows:

“The legislative authority of a municipal corporation may, under agreement with a joint township hospital district board, or with the board of county commissioners, accept participation by such district or county in the erection or enlargement of a municipal hospital, or in the maintenance and operation of such a hospital, or both. Such agreement may provide for the amounts to be contributed by such district or county, as the case may be, for the construction and enlargement of such hospital, for its maintenance and operation, the rights and privileges to be enjoyed by the district and its inhabitants, or by the county and its inhabitants, by virtue of such contributions, and its rights of representation upon the municipal corporation’s board of hospital commissioners or board of governors.”

Section 749.18, Revised Code, reads in part:

“Where an agreement under Section 749.16 of the Revised Code concerns or includes participation of a joint township hospital district, or of a county, in the maintenance and operation of a municipal hospital, the municipal corporation may establish a board of governors to exercise, subject to such further limitations as are imposed by the agreement, the powers vested under section 749.15 of the Revised Code in the director of public safety, * * *.”

It is not necessary to consider whether a municipal hospital is operated and managed independently or under an agreement of participation with a joint township hospital board, or with the board of county commissioners as authorized by Section 749.16, *supra*, inasmuch as the powers, duties and limitations imposed by statute are the same whether devolving upon the director of public

safety by authority of Section 749.15, *supra*, or a board of governors created under Section 749.18, *supra*, as is indicated by the following excerpts from Opinion No. 341, Opinions of the Attorney General for 1951, page 140, paragraph two of the syllabus which states:

“In the operation and management of a municipal hospital * * * the board of governors has the same powers as are conferred on the director of public safety of a city by this section. * * *”

Paragraph four of the syllabus further states:

“Under the provisions of Sections 4035 and 4035-3, General Code (Sections 749.15 and 749.18, Revised Code), such board of governors has the power to determine the number of employees for such municipal hospital and fix their compensations.”

At page 145 of the above quoted opinion of the Attorney General, it is further stated:

“Keeping in mind, therefore, that we are dealing with a municipal hospital and that the director of public safety has full control of such hospital and the power to fix the compensation of all employees therein, and that the board which is given authority to manage such hospital is endowed with all the powers of the director of public safety, it would seem that most of the questions which you raise are readily answered by according to such board all powers which the law confers upon such director and making the board subject to such procedure as would be followed by the director of public safety if he were engaged in the management of a municipal hospital. * * * Since he is authorized to employ a superintendent and other necessary employees as he deems necessary, and to fix the compensation of all persons so employed, it seems plain that the board that succeeds to his powers would have the same authority.”

In view of the above quoted statutes and opinion, I must consider the limitations which are imposed upon directors of public safety in their capacity regarding matters of employment and compensation to employees of a municipal hospital inasmuch as such limitations would attach to the board of governors of such hospital.

Section 737.03, Revised Code, reads in part:

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* * * In making, altering, or modifying such contracts, the director shall be governed by sections 735.05 to 735.09, inclusive, of the Revised Code, except that all bids shall be filed with and opened by such director. * * *
Section 735.05, Revised Code, reads in part:

* * * When an expenditure within the department, other than the compensation of persons employed therein, exceeds one thousand dollars, such expenditure shall first be authorized and directed by ordinance of the legislative authority of the city. * * *

Section 731.48, Revised Code, reads as follows:

"The legislative authority of a municipal corporation shall not enter into any contract which is not to go into full operation during the term for which all the members of such legislative authority are elected."

I believe that in answering the second part of your inquiry, the question propounded in part one becomes moot inasmuch as the purpose for the deferred compensation referred to is to invest such funds in an insurance contract in which the municipal hospital would become the beneficiary.

If a contract such as is proposed in the second part of your inquiry were to be considered favorably by the board of governors, it would necessarily be subject to the provisions of section 735.05, Revised Code, *supra*, inasmuch as it would ultimately involve the expenditure of more than \$1,000.00. In applying the restrictions contained in Section 731.48, *supra*, we believe that such a contract could not meet the statutory requirement of going into full operation during the term for which all the members of such legislative authority are elected. In my appraisal, I am mindful of the fact that an additional contract would be involved by which the municipality would be obligated to pay to a key employee or his beneficiaries the proceeds of such insurance contract at some indeterminate future date.

I have also considered the fact that, under ordinary circumstances, a contract would be in full operation upon its execution; however, I distinguish the situation presented in this problem

because of the inseverability of the contracts involved. I also wish to advise that exhaustive research on the part of this office has failed to reveal any statute or legal precedent for such action on the part of a municipal hospital.

It also occurs to me that the board of governors of a municipal hospital under the circumstances you recite might conceivably be in the position of a co-insurer, a situation not contemplated by the statutes relating to its powers and limitations. It is also conceivable that, in the event of insolvency of an insurance company with which a director of public safety or a hospital board of governors had a contract such as you describe, a liability for funds withheld under a deferred compensation agreement might attach to the hospital in favor of the key employee involved or his beneficiaries.

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

1. The director of public safety or board of governors succeeding to his authority of a municipal hospital cannot legally enter into an agreement for deferred compensation with a key employee in order to provide insurance payable to the hospital, proceeds of which shall subsequently be paid to such key employee or his beneficiaries.

2. The director of public safety or board of governors succeeding to his authority of a municipal hospital does not have the authority to purchase contracts of insurance covering the lives of key employees, which provide for payment to the hospital of determinable amounts in the event of the death, disability, or retirement of the subject employee.

Respectfully,
WILLIAM B. SAXBE
Attorney General