

March 11, 1975

OPINION LETTER NO. 29
Answer by letter-Wood

Honorable John W. Reid, II
Prosecuting Attorney
Madison County
148 East Main Street
Fredericktown, Missouri 63645



Dear Mr. Reid:

This is in response to your request for our legal opinion on the following questions:

- "1. May the trustees of a County hospital established under 1969 R.S.Mo. 205.160 contract with Doctors for Emergency Room duties for weekends, paying said Emergency Room doctors out of the County hospital funds on an hourly rate and providing for uniforms, meals, paid vacations.
- "2. If the answer to the first question is in the affirmative, then may the contract limit the doctors practice to only Emergency Room duties and prohibit the Emergency Room doctors to admit patients to the hospital in the name of the Emergency Room doctor."

The Madison Memorial Hospital Administrator advises us that the hospital will bill patients for emergency room services, including a charge for the physician's treatment, and that the physician will not bill the patient separately for such emergency room treatment.

You state that the first question is prompted by a concern as to the constitutionality of the scheme, due to Article VI, Section

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23, Constitution of Missouri, as well as whether there is statutory authority for it.

Article VI, Section 23, places the following restriction on local governmental entities:

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution."

Article VI, Section 25, is to the same effect. This restriction on granting public money or property, or lending public credit to any private person or corporation, is also placed on the General Assembly by Article III, Section 38(a). It has been ruled under both constitutional provisions that appropriations of public funds for the support of the financially destitute are proper expenditures, Jasper County Farm Bureau v. Jasper County, 286 S.W. 381, 383 (Mo. 1926). Therefore, we think that a county may constitutionally expend its funds for medical treatment of indigent inhabitants of the county.

The County Hospital Law, Sections 205.160-205.340, RSMo (L.Mo. 1917, p. 145) provides for the construction, maintenance, and government of a county hospital by an elected board of trustees. The law stipulates the following powers that may be exercised by the board of trustees and their responsibilities in undertaking the operation of the county hospital:

"4. The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, . . .

"5. Said board of hospital trustees shall have power to appoint a suitable superintendent or matron, or both, and necessary assistants and fix their compensation, and shall also have power to remove such appointees; and shall in general carry out the spirit and intent of [this law] . . . in establishing and maintaining a county public hospital." (Section 205.190, RSMo)

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"Every hospital established under [this law] . . . shall be for the benefit of the inhabitants of such county and of any person falling sick or being injured or maimed within its limits, but every such inhabitant or person who is not a pauper shall pay . . . for such county public hospital, a reasonable compensation for occupancy, nursing, care, medicine, or attendants, according to the rules and regulations prescribed by said board, . . ."
(Section 205.270, RSMo)

"The board of hospital trustees shall have power to determine whether or not patients presented at said public hospital for treatment are subjects for charity, and shall fix such price for compensation for patients, other than those unable to assist themselves, as the said board deems proper, . . ."
(Section 205.330, RSMo)

In our opinion, these statutes are adequate authority for the board of trustees of a county hospital to contract with physicians for the rendering of professional medical services to persons admitted to the hospital. We believe that the board of trustees must charge and attempt to collect for such services from all persons receiving the services and who are able to pay for the services. We also believe the board of trustees can properly expend its funds for professional medical services rendered in the hospital to persons unable to pay for the services. We further believe that the board of trustees may agree to compensate physicians for these services in the form of direct monetary payments and by providing uniforms, meals, paid vacations, or other benefits either alone or in conjunction with direct payments.

In regard to your second question, consideration must be given to the following sections of the County Hospital Law:

"1. In the management of such public hospital no discrimination shall be made against practitioners of any school of medicine recognized by the laws of Missouri, and all such legal practitioners shall have equal privileges in treating patients in said hospital.

"2. The patient shall have the absolute right to employ at his or her own expense his or her own physician, and when acting for any patient in such hospital the physician employed by such patient shall have exclusive charge of the care

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and treatment of such patient, and nurses therein shall as to such patient be subject to the directions of such physician; subject always to such general rules and regulations as shall be established by the board of trustees under the provisions of [this law]. . . ." (Section 205.300, RSMo, (L.Mo. 1917, p. 149))

"1. The board of hospital trustees shall include in its bylaws that every physician, a [sic] podiatrist and dentist requesting permission to practice in its hospital shall submit an application for staff membership in writing to it upon forms approved by the board. In his application each applicant shall give specifically his training and qualifications, his willingness to accept the board as the supreme governing authority of the hospital, his willingness to abide by the bylaws of the board and the staff in all respects, and his determination to practice his profession in a manner which is legal, moral, and ethical. . . .

"2. The professional staff of the hospital shall be an organized group which shall initiate and, with the approval of the board, adopt bylaws, rules, regulations, and policies governing professional activities in the hospital. General practitioners may practice in the hospital in accordance with their competence as recommended by the professional staff and as authorized by the board." (Section 205.195, RSMo Supp. 1973, (L.Mo. 1971, p. 269))

In Attorney General's Opinions No. 51, July 19, 1961, Lauer and No. 210, June 5, 1962, Toohey, this office expressed the view that by virtue of Section 205.300, RSMo, any physician currently licensed by the State Board for the Registration of the Healing Arts under Chapter 334, RSMo, had the right to treat the physician's own patients in a public county hospital. It does not appear that the 1971 legislation, Section 205.195, RSMo Supp. 1973, withdrew this right. No facts are given in the request which allegedly justify the board of trustees in denying the doctor the right to treat patients in the hospital other than in the emergency room. Consequently, we do not believe the board of trustees

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can through a contract with an emergency room physician abridge the right of such physician to treat patients in the hospital.

Yours very truly,

JOHN C. DANFORTH
Attorney General