

COUNTY HOSPITALS:
TAXATION:

County court must levy tax sufficient to provide fund required by board of trustees for annual operation of county hospital.

JOHN M. DALTON

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Honorable Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri



Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"I would appreciate having an opinion from your office as hereinafter described and based on following facts. On February 19, 1946 voters in third class county approved 2 mill tax for bond issue in amount of \$350,000, for a public hospital and maintenance of same. On March 15, 1949 the voters approved an additional bond issue in amount of \$200,000, for purpose of providing additional funds with which to establish, construct and equip a public hospital. Last year the County Court levied a total tax of 36 cents on the \$100. valuation for hospital purposes, 20 cents of that amount by reason of the first bond issue, and the additional 8 cents divided equally between second bond issue and funds for maintenance of hospital. The County Court doesn't desire to increase the tax levy. The hospital trustees are at this date asking for additional funds for maintenance of hospital. Question?

"Can the Board of Trustees obtain additional funds for maintenance and operation of the hospital and if so, what procedure should they adopt in order to accomplish this purpose."

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The county hospital in Dunklin County was established under the provisions of Article IV of Chapter 126, R.S. Mo. 1939. Section 15192 of that article provided for a petition for the establishment of a county hospital. Section 15192 provided that county court should submit to the voters the question of whether or not there should be levied a tax not in excess of two mills on the dollar, for the construction of a hospital, and the maintenance of the same. Section 15197 provided for the issuance of bonds as authorized by the election.

By an act of the Sixty-third General Assembly, approved April 10, 1946, the county hospital statutes were revised to read as they are presently found in Chapter 205, RSMo 1949. This revision was undoubtedly the result of the addition of Section 11(c) of Article X of the Constitution of Missouri, 1945, which provides, in part, as follows:

" * * *(A)ny county or other political subdivision, when authorized by law and within the limits fixed by law, may levy a rate of taxation on all property subject to its taxing powers in excess of the rates herein limited, for library, hospital, public health, recreation grounds and museum purposes."

Section 205.160, RSMo 1949, authorizes the county court to "establish, construct, equip, improve, extend, repair, and main-tain public hospitals." (Underscoring ours.) Bonds for such purpose are now authorized to be issued in accordance with the general law relative to incurring of indebtedness by counties. Sections 205.170 and 205.180, RSMo 1949, provide for the appointment and election of a board of trustees for the hospital. Section 205.190, RSMo 1949, provides for the organization of the board of trustees and sets forth their powers and duties. Among the provisions of this section are the following:

"2. The county treasurer of the county in which such hospital is located shall be treasurer of the board of trustees, and in counties which have no treasurer the county collector shall be the treasurer of the board of trustees. The treasurer shall receive and pay out all the moneys under the

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control of the said board, as ordered by it, but shall receive no compensation from such board.

* * * * *

"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, not inconsistent with sections 205.160 to 205.340 and the ordinances of the city or town wherein such public hospital is located. They shall have the exclusive control of the expenditures of all moneys collected to the credit of the hospital fund, and of the purchase of site or sites, the purchase or construction of any hospital buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose; provided, that all moneys received for such hospital shall be deposited in the treasury of the county to the credit of the hospital fund, and paid out only upon warrants ordered drawn by the county court of said county upon the properly authenticated vouchers of the hospital board.

"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 sections 205.160 to 205.340 in establishing and maintaining a county public hospital.

* * * * *

"7. One of said trustees shall visit and examine said hospital at least twice each month and the board shall, during the first week in January of each year, file with the county court of said county a report of their proceedings with reference to such hospital and a statement

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of all receipts and expenditures during the year; and shall at such time certify the amount necessary to maintain and improve said hospital for the ensuing year."

Section 205.310, RSMo 1949, authorizes the board of trustees to establish a nurses' training school in connection with the hospital. Section 205.320, RSMo 1949, requires the board to provide a suitable room for the detention of persons brought before the probate court for insanity proceedings, if the hospital is located at the county seat. Section 205.330, RSMo 1949, authorizes the board of trustees to determine which patients treated at the hospital are subjects of charity, and to determine the charges to be made other patients. Section 205.280, RSMo 1949, authorizes the board to prescribe rules and regulations for the operation of the hospital.

Section 205.200, RSMo 1949, as amended, 1951 Cum. Supp., RSMo., provides:

"Except in counties operating under the charter form of government, the county court in any county wherein a public hospital shall have been established as provided in sections 205.160 to 205.340, shall annually levy a rate of taxation on all property subject to its taxing powers in excess of the rates levied for other county purposes to defray the amount required for the maintenance and improvement of said public hospital, as certified to it by the board of trustees of the hospital; the tax levied for such purpose shall not be in excess of twenty cents on the one hundred dollars assessed valuation. The funds arising from the tax levied for such purpose shall be used for the purpose for which the tax was levied and none other."

If this section imposes a mandatory duty upon the county court to impose a tax levy, within the limits therein provided, sufficient to raise a sum equal to the amount which the trustees have estimated will be required for annual maintenance, a solution to your question would exist.

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From the foregoing statutory provisions relative to the establishment and maintenance of a county hospital, you will observe that control of the operation of the county hospital is left to the board of trustees. They do operate through the county treasurer in the handling of hospital funds, and the county court is required to draw warrants for the expenditure of such funds. In the case of State ex rel. Bell v. Holman, 293 S.W. 93, the Kansas City Court of Appeals held that the duty of the county court in the issuance of such warrants was purely ministerial. The court in that case stated (293 S.W. 1.c. 97):

"As we view the law and the facts presented herein, we must conclude that the duty of the county court was purely ministerial; and it was the duty of the county court to issue the warrant upon the voucher of the board of trustees as presented. * * *"

The decision of the Kansas City Court of Appeals was reviewed by the Supreme Court in the case of State ex rel. Holman v. Trimble, 316 Mo. 1041, 293 S.W. 98. The court refused to quash the opinion of the Court of Appeals and, in the course of its opinion, stated (293 S.W. 1.c. 101):

"The Court of Appeals construed these statutes to mean that hospital trustees have exclusive control of the expenditure of moneys collected to the credit of the hospital fund. The natural interpretation of that language excludes the intervention of any other official in determining what claims are to be paid and what accounts ought to be allowed. The plain words mean that full discretion is vested in the hospital board to pass upon and determine the validity of every claim presented. Relators call attention to the provision that the money must be deposited in the treasury of the county and must be paid out only upon warrants drawn by the county court, and argue that the county court is thus vested with some discretion, some function to determine whether or not the claims presented are valid, but that same sentence of the statute goes on to say that such payments are made upon properly authenticated vouchers of the hospital board.

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That seems to leave no doubt that the only judgment exercised by the county court is to determine whether the vouchers presented show proper authentication of the hospital board, and whether they are for purposes within control of the hospital board and for the purposes of the above statute. If such vouchers should show on their faces that they were issued for purposes foreign to the field controlled by the hospital board, the county court could deny warrants. * * *

The Supreme Court, in discussing the county hospital statutes, further stated at 293 S.W. 1.c. 102:

" * * * The insuperable objection to relators' position is that they have cited no case construing any statute similar to the hospital statutes relating to the powers given and the duties imposed upon the hospital board. No case cited construes any statute where the exclusive control of funds, such as are put into the hands of the hospital board, are given to any like body with similar authority and direction as to its management. Whether or not the construction of the Kansas City Court of Appeals is correct, it is not shown to be in conflict with any ruling of this court, in the absence of a case where some similar statute is construed in a different way.

"II. This construction of the hospital statute by the Kansas City Court of Appeals is the first that has occurred in any appellate court, so far as we are advised. It is a new statute, which creates a new function to be discharged by certain public officials. It defines the manner in which the officials charged with the practice under their management shall perform their duties, and we cannot hold that the Court of Appeals was without jurisdiction in construing it as they did. * * * (Emphasis ours.)

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In these cases the Supreme Court and the Kansas City Court of Appeals recognized that the Legislature had conferred upon the board of trustees for a county hospital complete authority to expend the funds available for the hospital. Whether or not this authority extends to the point of imposing a mandatory duty upon the county court to levy a tax, within the limits prescribed by Section 205.200, RSMo 1949, sufficient to raise the amount of money which the board determines will be necessary to operate the hospital for the year, has not been passed upon by the courts. In the case of State ex rel. Erwin v. Holman, 301 Mo. 333, 256 S.W. 776, the question was raised as to whether or not the county court had any discretion in levying the rate of tax provided by vote for the county hospital under the law as it formerly stood. (Section 15197, R.S. Mo. 1939.) The respondent in that case contended that unless discretion had been conferred upon the county court in levying such tax, the statute would have violated Section 36 of Article VI of the Constitution of Missouri, 1875 (Section 7, Article VI, Constitution of Missouri, 1945), which imposed upon the county court the duty of transacting the county business. The court, however, did not pass upon the contention.

In determining whether or not the Legislature intended the county court to have any discretion in levying the maintenance tax, the county hospital statutes must be considered as a whole. When so considered, as above pointed out, it is clear that the Legislature has entrusted their operation wholly to the board of trustees. The cases above cited have held that the county court is entirely lacking in authority to control the expenditures approved by the board of trustees for county hospital purposes. No provision is made in the county hospital law for the county court's passing upon the estimate of the board of trustees for the amount necessary to maintain and improve the hospital for the ensuing year. The proceeds of the hospital tax are placed in a separate fund to be used only for the purpose for which the tax is levied (Section 205.200, supra). Reference to the county budget law (Sections 50.670-50.750, RSMo 1949) reveals no provision in that act subjecting the county hospital fund to the regulation by the county court under that act. In view of these circumstances, and in view of the fact that the language used in Section 205.200, RSMo 1949, is that the county court "shall levy," we are of the opinion that the Legislature intended to confer upon the board of trustees the authority to determine the funds necessary for the maintenance of the hospital and to require the county court to levy a tax under said section, sufficient to raise such funds.

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In our opinion, the county court has no discretion in the matter, and therefore they could be required by mandamus to levy a tax within the twenty-cent limit, sufficient to raise the amount which the board estimates will be needed.

We also call attention to Section 205.230, RSMo 1949, which provides:

"In counties exercising the rights conferred by sections 205.160 to 205.340, the county court may appropriate each year, in addition to tax for hospital fund herein provided for, not exceeding five per cent of its general fund for the improvement and maintenance of any public hospital so established."

If the county court should see fit to appropriate under this section an amount from the general fund which would be sufficient, when added to the sum raised by the current levy, to supply the needs for the ensuing year as ascertained by the board of trustees, that would be a solution to your problem.

CONCLUSION

Therefore, it is the opinion of this department that the county court must, under the provisions of Section 205.200, RSMo 1949, as amended, 1951 Cum. Supp., RSMo., in counties where a county hospital has been established, levy a tax, not in excess of twenty cents on the one hundred dollars assessed valuation, sufficient to provide funds equal to the amount required for the maintenance and improvement of such county hospital for the ensuing year as certified to the court by the board of trustees for the county hospital, and that the county court has no discretion in levying a tax sufficient to raise the amount required.

This opinion, which I hereby approve, was prepared by my Assistant, Mr. Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

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