

BOARD OF TRUSTEES OF  
COUNTY HOSPITALS:  
COUNTY COURTS:  
CONVEYANCE OF COUNTY  
HOSPITAL PROPERTY:

A board of county hospital trustees may not convey title to hospital property, title to which property is in the county; and further, that the county court of the county may convey title to such property when authorized to do so by the Board of Trustees of the County Hospital.

July 11, 1957



Honorable Charles A. Powell, Jr.  
Prosecuting Attorney  
Macon County  
Macon, Missouri

Dear Mr. Powell:

Your recent request for an official opinion reads:

"The County Court of this county has asked for an opinion respecting the inquiries put to them and me in the letter enclosed.

"The County Board of Health Center Trustees in our county has acquired quite a surplus of money and are desirous of spending some for the purchase of a portion of the hospital grounds (title to which is in the County of Macon) and erection of appropriate buildings.

"The questions put in the 5th and 6th paragraphs of the letter enclosed are the ones that the hospital board of trustees are desirous of having answered."

As being explanatory of your request and referred to in it is the letter of Paul D. Hess, Jr., member of the Board of Trustees of the Macon County Hospital addressed to the Judges of the Macon County Court, which reads:

"At the last meeting of our board of trustees of the Macon County Hospital, known as the Samaritan Hospital, it was directed that the following matter be referred to you for consideration and opinion.

"Attention is invited to the provisions of Paragraph 4 of Section No. 205.190, R.S.Mo.

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1949, where in part it is provided that: The Board of hospital trustees 'shall have exclusive control \* \* \* of the purchase of site \* \* \* and of the supervision, care and custody of the grounds \* \* \* purchased, constructed, leased or set apart for that purpose.' Nowhere among the statutory provisions concerning County Hospitals is it noted that express authority is set forth concerning the sale of any such properties.

"Attention also is invited to Paragraph 4 and 9 of Section 205.042, R.S.No. 1949, concerning County Health Centers, trustees for such a center having been selected and serving in Macon County for the last few years.

"It will be recalled that the land, upon which the Samaritan Hospital Building and improvements are located, was deeded to the County of Macon, Missouri, upon its purchase of such properties from the corporation which owned them before the hospital became a County Hospital.

"Recently the Board of Health Center Trustees contacted the Trustees of the County Hospital Board and inquired whether a portion of the hospital grounds could and would be sold and conveyed to the Health Center Board for the purpose of erecting health center buildings and improvements. At this time there are no specific plans concerning size or cost of any such health center improvements as it is unknown whether any such conveyance would be approved by the hospital board trustees, which board believes it essential that it be ascertained whether such conveyance legally could be made before such board as a matter of policy determines whether it would favor any such conveyance. Of course it is also unknown, as the land involved was conveyed to, and taken in the name of, the County of Macon, whether any such conveyance would be made by the hospital board trustees or the Macon County Court, or by both such groups acting concurrently.

"Please inform the Hospital Board of Trustees (1) whether the Macon County Hospital

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Board of Trustees has power to convey any of the hospital real estate to the Board of Health Center Trustees; and, if the answer to the last question be negative, (2), whether the Macon County Hospital Board of Trustees, acting concurrently with the Macon County Court, has power to convey any of the hospital real estate to the Board of Health Center Trustees.

"Accordingly, it is requested that the Macon County Court consider these matters and also refer such, for an expression of his official opinion, to Prosecuting Attorney Powell."

Your first question is whether the Macon County Hospital Board of Trustees has the power to convey any of the hospital real estate to the Macon Board of Health Center Trustees.

As you point out in your letter, paragraph 4 of Section 205.190, RSMo 1949, does not vest in the Board of Hospital Trustees any power of conveyance of hospital property. Neither do we find elsewhere in the statutes any such power, nor do we find any case which so holds. In addition to this is the fact that in the instant situation it seems obvious that such a conveyance could not be made by the county hospital board because, as stated in the Hess letter, "the land involved was conveyed to and taken in the name of the County of Macon \* \* \*." Manifestly, the board of hospital trustees could not convey title to land to which they, as a board, do not have.

Therefore, the answer to your first question is in the negative.

Your second question is whether the Macon County Hospital Board of Trustees, acting concurrently with the Macon County Court, has power to convey any of the hospital real estate to the Board of Health Center Trustees. We believe that the answer to this question is in the affirmative. Section 49.270, RSMo 1949, reads:

"The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

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It will be seen that the county court is vested with the power to sell and convey any real estate belonging to the county. We have previously noted that title to this particular real estate is vested in the county. Inasmuch as we are unable to see that any title or property right in this property is vested in the Board of Hospital Trustees, we do not believe that the meaning which should be given to your words "acting concurrently" is that the Board of Hospital Trustees should, together with the county court, sign a deed of conveyance. However, we do believe that such is their situation that their consent to such conveyance must first be obtained. Numbered paragraph 4 of Section 205.190, RSMo 1949, reads:

"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."

From the above, it will be seen that complete care and custody of the county hospital is vested in the Board of Trustees. Since this is true, we do not believe that a county court could convey a hospital away from the Hospital Board of Trustees at will. In the case of *State v. Trimble*, 293 S.W. 98, the Missouri Supreme Court, en banc, was considering a situation in which vouchers for the payment of money were drawn upon the hospital fund held by the county. The county refused to honor these vouchers and the suit followed. In the course of its opinion, the court set forth its interpretation of the relationship between the hospital board and the county. At l.c. 100, the court said:

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"The Court of Appeals held squarely that the function of the county court in respect to the claims was purely ministerial, that it had no duty to perform and no discretion in determining whether the claims were proper or whether the contracts out of which they arose were in accordance with the statute."

At I.C. 101, the court held further:

"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 moneymust 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. 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 quotation from the Arkansas case cited by the Court of Appeals is in accordance with the ruling of this court. County of Boone v. Todd, 3 Mo. 140. \* \* \*."

From the above, it will be seen that the holding of the court is that in this relationship of county to hospital board, the position of the county is ministerial in respect to the particular matter under consideration, i.e., the payment of

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vouchers issued by the hospital board. We believe that what is true in this particular area would be equally true in other aspects of this relationship.

As we said above, we do not believe that the board of hospital trustees should be parties to the conveyance, but we do believe that their consent to such a conveyance should be first obtained, probably in the form of a resolution by the board.

#### CONCLUSION

It is the opinion of this department that a board of county hospital trustees may not convey title to hospital property, title to which property is in the county; and further, that the county court of the county may convey title to such property when authorized to do so by the Board of Trustees of the County Hospital.

The foregoing opinion, which is hereby approved, was prepared by Assistant Attorney General Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

By

Robert R. Welborn  
Assistant Attorney General

HPW/bi