

HOSPITALS:
COUNTY HOSPITALS:

The board of trustees of a county hospital is authorized to purchase a tract of land for use as a hospital site with the sole consideration therefor being that the grantor be guaranteed lifetime hospitalization as may be required.

September 5, 1961



Honorable A. J. Anderson
Prosecuting Attorney
Cass County
Harrisonville, Missouri

Dear Sir:

We are in receipt of your request for an official opinion of this office, the relevant portion of which reads as follows:

"I would appreciate an official opinion from your office concerning the authority of the Board of Trustees of a County Hospital concerning the acquisition of a site for the location of a new county hospital.

"An individual has offered a tract of land to the Board for the location of the hospital, with the sole consideration therefor being hospitalization care as needed by her for her life in the county hospital, without charge. Is the Board of Trustees empowered to accept such a proposal, with consideration being given to Article 6, Section 26(a) of the Missouri Constitution of 1945, and of Section 205.270, VAMS, 1949? The donor could not be considered a pauper."

The statutory provisions relating to the establishment and maintenance of county hospitals are found in Sections 205.160 through 205.375, RSMo 1959. Section 205.190 reads in part as follows:

"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

Honorable A. J. Anderson

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; . . ."

This section clearly empowers the board of hospital trustees to purchase a hospital site and grants them exclusive control over such purchase. Necessarily, this includes the power to negotiate a suitable price. In the present instance the obligation imposed upon the board to provide hospitalization as needed constitutes valuable consideration such as to make the proposed transaction a purchase, and it would therefore be within the powers granted the board by the above-quoted statute.

Your letter inquires of the effect of Section 26(a) of Article VI, Constitution of 1945, on the proposed agreement. That section is as follows:

"No county, city, incorporated town or village, school district or other political corporation or subdivision of the state shall become indebted in an amount exceeding in any year the income and revenue provided for such year plus any unencumbered balances from previous years, except as otherwise provided in this Constitution."

The question arising from the above-quoted section is apparently whether the condition of lifetime care as needed by the grantor, contained in the proposal, constitutes an indebtedness within the meaning of the Constitution. In *State ex rel Hannibal v. Smith*, 74 SW 2d 367, a similar question was raised concerning the application of Section 12 of Article X of the Constitution of 1875, the predecessor of the above-quoted section and containing a substantially identical provision. In that case a city ordinance provided for the issuance of revenue bonds for the construction of a bridge. It further provided for the use of general revenue from taxation to pay for the maintenance of the bridge in the event that bridge revenues were insufficient for that purpose. The contention was made that this provision violated the constitutional inhibition against incurring an indebtedness in excess of the amount of the income in revenue for that year without the consent of the voters. Our Supreme Court said (l.c. 372):

"The question for us to determine is whether a contingent liability is a debt prohibited by article 10, §12, of our Constitution.

"In the case of Saleno v. City of Neosho, 127 Mo. 627, loc. cit. 639, 30 S.W. 190, 192, 27 L.R. A.769, 48 Am. St. Rep. 653, in an opinion by Burgess, J., we said: 'A debt is understood to be an unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in the future, depending upon a condition precedent, which may never be performed, and which cannot ripen into a debt until performed. Here the hydrant rental depended upon the water supply to be furnished to defendant, and, if not furnished, no payment could be required of it.'

"In the case of State ex rel. Smith v. City of Neosho, supra, Lamm, J., speaking for the court, quotes with approval Judge Burgess' definition of the word 'debt' as found in the Saleno Case.

"In 17 Corpus Juris, 1377, the author says: 'Every debt must be either solvendum in praesenti, or solvendum in futuro - must be certainly, and in all events, payable; whenever it is uncertain whether anything will ever be demandable by virtue of the contract, it cannot be called a "debt". While the sum of money may be payable upon a contingency, yet in such case it becomes a debt only when the contingency has happened, the term "debt" being opposed to "liability" when used in the sense of an inchoate or contingent debt.'

"In the case of Bell v. City of Fayette, supra [28 SW2d 356], we held that a contingent liability was not a debt.

"We think the case of Hight v. City of Harrisonville, supra [41 SW2d 155], relied upon by the respondent, is distinguishable from the case at bar. In that case the city made an unconditional promise to pay a sum that was certain. A part of this sum was to be paid by taxation. The payment did not depend upon a contingency. That case is typical of the other cases relied upon by the respondent.

"We hold that these bonds do not violate section 12, art. 10, of our Constitution."

Honorable A. J. Anderson

This holding has been reaffirmed in numerous subsequent cases. See *City of Maryville v. Cushman*, 249 SW2d 347, 352; *Kansas City v. Fishman*, 241 SW 2d 377, 379; and *City of Springfield v. Monday*, 185 SW2d 788, 791.

It seems clear from the facts set out in your letter that any liability to be incurred by the county in the acceptance of the proposal would necessarily be contingent and therefore not an indebtedness within the constitutional meaning, under the rule set out above. You state that the offer is conditioned on a guarantee of hospital care "as needed". It may well be that the need will never arise. The possibility of future sickness certainly cannot be predicted with accuracy. Even if the grantor is seriously ill at the time the property is purchased, the possibility of recovery, at least to a point where hospitalization is no longer necessary, cannot be ruled out. For these reasons, it is the opinion of the office that a purchase of the sort here considered does not give rise to an indebtedness within the meaning of Section 26(a) of Article VI.

We have also considered the effect of Section 205.270, RSMo 1959, to which you refer. It is our opinion that this section has no application to a transaction of this nature.

CONCLUSION

The board of trustees of a county hospital is authorized to purchase a tract of land for use as a hospital site with the sole consideration therefore being that the grantor be guaranteed lifetime hospitalization as may be required.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James J. Murphy.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

JJM:ms