COUNTY COURT: Nurses' Home cannot be constructed under
COUNTY HOSPITAL AND levy for construction of a county hospital.
NURSES' HOME:

August 25, 1941

Honorable Mark Morris
Prosecuting Attorney
Pike County
Bowling Green, Missouri

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Dear Mr. Morris:

This will acknowledge receipt of your letter under date of August 7, 1941, requesting an official opinion which reads as follows:

> "I would appreciate an opinion on the following question: We have a County hospital here in Pike County established under Article 27 of Chapter 111 of the Revised Statutes of Missouri for the year 1919 which provides for the establishment and maintenance of County Hospitals. The trustees now desire to build a nurses' home in addition to the hospital as the nurses at present have rooms on the third floor of the hospital. It is almost imperative that the hospital get this added facility as they are in dire need of additional rooms. When they built the hospital the petition which was granted read as follows:
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> "'Petitioners ask that an annual tax be levied by your Honorable body at such a rate as may accord with the best judgment of the Court, not to exceed however, one mill on the dollar, for the establishment, maintenance and support of a public hospital at said

City of Louisiana, Pike County, Missouri.'

"How would the words 'maintenance and support' give the County Court and the trustees authority to use the annual tax to build a nurses' home?"

We are unable to locate Article 27, Chapter III, R. S. Missouri 1919, referred to in your letter. However, we assume that your reference is to Chapter III, Article 5, R. S. Missouri 1919. Section 12220, R. S. Missouri 1919 provides for the purchase of land and for the building of a hospital and reads as follows:

"Whenever any number, not less than one hundred, of the qualified voters of any such county, who are taxpayers therein, shall present to the county court of such county a petition, in writing, praying the county court that an election be held to authorize the incurring of an indebtedness, and the levying of a direct tax, or the issuing of bonds therefor, for the purpose of purchasing land and building thereon a county hospital for the poor of such county, such county court, upon the presentation of such petition, may, if it so determine, at a regular term thereof, and by order of record of said court, adjudge it necessary for such county to incur an indebtedness and levy a direct tax or issue bonds therefor, for the purpose of purchasing the land and building such a hospital; such county court may, at the same term, order a special election in said county, for the purpose of providing for the incurring of such indebtedness and levying a direct tax or issuing bonds therefor. In said order for such election there shall be recited the amount and purpose of the indebtedness proposed to be incurred, and the number of years during which a direct tax shall be levied, and the amount of

> such direct tax on each one hundred dollars' valuation each year to pay said indebtedness; or in case of the issuance of bonds, the length of time for which bonds shall be issued, the rate of interest, the rate of increase of the tax levy to pay the interest, and provide a sinking fund to pay the bonds; and the date on which the election is to be held shall also be recited in said order of the county court."

Counties are merely quasi corporations or political subdivisions of the State and neither the county or the county court has any power unless given by the Constitution of the State or a statutory enactment. In Ray County, to the use of the Common School Fund, v. Bentley et al., 49 Mo., 236, l.c. 242, the court in so holding said:

> "But counties have not the powers of corporations in general. They are merely quasi corporations, political divisions of the State, and they act in subordination to and as auxiliary to the State government. (Hann. & St. Jo. R.R. Co. v. Marion County, 36 Mo. 303; State v. St.Louis County Court, 34 Mo. 546; Barton County v. Walser, 47 Mo. 189.) They have no power to purchase land or hold the same unless it is given to them by statute.* * *"

The court, in holding the county court only exercised like powers, said, (l.c. 242):

> "The County Court does not derive its powers from the county, and it can exercise only such powers as the Legislature may choose to invest it with. Whatever jurisdiction is conferred upon it is wholly statutory. It acts directly in obedience to State laws, independently of the county. Where it

> acts for and binds the county, it exercises its authority by virtue of power derived from the State government, and it obtains authority from no other source. (Reardon v. St. Louis County,36 Mo. 555.)"

The first statutory enactment for the construction of county hospitals was in 1907, which provisions are very similar to the above quoted section of the R. S. Missouri 1919.

You inquire if the county is authorized to build a nurses' home on the annual tax as provided by the county court for the maintenance and support of this public hospital.

In construing a statutory provision one of the cardinal rules is to determine the intention of the Legislature at the time of such enactment. In Wallace et al. v. Woods, 102 S. W. (2d) 91, l.c. 95, the court said:

> "The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object, and 'the manifest purpose of the statute, considered historically,' is properly given consideration. * * * 2 Lewis, Sutherland on Stat. Const.(2d Ed.) Sec. 363; Endlich on Interpretation of Statutes, Sec. 329; and Maxwell on Statutes (5th Ed.) 425. Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. (2d) 920, loc. cit. 925."

Therefore, we must look to the word hospital in the above provisions which authorized the construction of a county hospital, and not as hospital may be interpreted at this writing. It was common knowledge when the above statutory provisions were enacted, that practically no hos-

pitals included nurses' homes. Today, it is not uncommon to have, either attached to the hospital or in a separate building on the same lot or adjoining thereto, a nurses' home.

Funk and Wagnall, New Standard Dictionary, defines "hospital" as follows:

> "An institution for the reception, care and medical treatment of the sick or wounded; also, the building used for that purpose."

Section 9832, R. S. Missouri 1939, subdivision 8, defines hospital in the narcotic act which was only enacted in 1937, and reads as follows:

> "'Hospital' means an institution for the care and treatment of the sick and injured, approved by the State Board of Health if operated by and for medical physicians or by the State Board of Osteopathic Registration and Examination, if operated by and for osteopathic physicians, as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist or veterinarian."

Now it is true that the modern version of hospital is quite different. The Encyclopaedia Britannica, Volume 11, 14th Edition, page 792, defines the modern version of hospital in this manner:

> "The evolution of the modern hospital affords one of the most marvellous evidences of the advance of scientific and humanitarian principles which the world has ever seen. Formerly the hospital was merely a building or buildings, very often unsuitable for the

> purposes to which it was put, where sick and injured people were retained and more frequently than not died. The hygienic condition, the methods of treatment and the hospital atmosphere were all so relatively unsatisfactory as to yield a mortality in serious cases of 40 %. At the present time in all large cities, great hospitals have been erected upon extensive sites which are so planned as to constitute in fact a village with many hundreds of inhabitants. This type of modern hospital has common characteristics. A multitude of separate buildings are dotted over the site, wards for male and female patients, residential blocks for medical officers, nurses, servants, administration block, store-rooms, kitchens, etc., and the whole institution may cover 20 acres or upwards. In one such institution, within an area of 20 acres, there are 6m. of drains, 29m. of water and steam pipes, 3m. of roof gutters, 42m. of electric wires."

In Johnson, City Tax Collector, v. Mississippi Baptist Hospital, 106 So., l.c. 3, the court in construing a tax statute exempting hospitals held this did not include a nurses' home on an adjoining lot. In so holding the court said the law provided:

> "'The following property, and no other, shall be exempt from taxation, to wit:
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> "'(f) Property appropriated to and occupied and used for any hospital or charitable institution.'
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> "(1) In our view the maintaining of a

home for the nurses employed by the hospital and for other employees of the hospital is not a hospital purpose within the meaning of the statute. The statute contemplates such uses as are reasonably necessary to an effective discharge of the powers and duties of the hospital under its charter powers. It is not necessary, for the proper operation of a hospital, that the corporation should furnish homes for the nurses when not on duty. They are no different from other people who work and pay for board and lodging or furnish their own homes when off duty and performing no service necessary for the proper operation of a hospital. It would be an unwarranted distinction, by construction of the language of the statute, to hold that buildings used merely as a rooming house for employees come within the meaning of the statute. See Thurston County v. Sisters of Charity, 14 Wash. 264, 44 P. 252; Phildelphia v. Jewish Hospital Ass'n, 148 Pa. 454, 23 A. 1135; Re Sisters of Blessed Sacrament, 38 Pa. Super. Ct. 640; Phi Beta Epsilon Corporation v. Boston, 182 Mass. 457, 65 N. E. 824; Calvary Baptist Church v. Milliken, 148 Ky. 580, 147 S. W. 12; People ex rel. v. Y. M. C. A., 157 Ill. 403, 41 N. E. 557; AuditorGeneral v. Woman's Temperance Ass'n, 119 Mich. 430, 78 N. w. 466; School District v. Howe, 62 Ark. 481, 37 S. W. 717; Baptist B. & M. Society v. Boston, 204 Mass. 28, 90 N. E. 572; All Saints Parish v. Brookline, 178 Mass. 404, 59 N. E. 1003, 52 L. R. A. 778; First Christian Church v. Beatrice, 39 Neb. 432, 58 N. W. 166.

"In the case of Phi Beta Epsilon Corporation v. Boston, 182 Mass. 457 at page 459, 65 N. E. 824, 825, the court said:

"'But the housing or boarding of students is not of itself an educational process any more than is the housing or boarding of any other class of human beings. The nature of the process, so far as respects its educational features, is not determined solely by the character of those who partake of its benefits. Suppose a number of students of the Institute of Technology should conclude to provide lodging and board for themselves on some co-operative plan, and for that purpose should buy and occupy a house not in any way connected with the grounds or property of the institution, could it be said that such a house was used for an educational purpose? Suppose again, that these students were incorporated for the purpose of providing board and lodging for themselves and others while students, could it be said that the use of the real estate for such purposes was and educational process? The trouble with the plaintiff's case is that the property may have been found, as above stated, to have been used as a dormitory or boarding house, that this was the dominant use and was in no way necessary or convenient for such slight and incidental education or scientific instruction as was furnished by the plaintiff, and therefore was in no proper sense a part of, or merely incidental to, such instruction.'

"We are therefore of the opinion that

> the nurses' home and the lot in which it is situated in the city of Jackson, assessed for taxation by the city, is subject to taxation, and that it was error to overrule the demurrer."

In Burke v. Kansas State Osteopathic Association, 111 Fed. (2) 250, l.c. 256, a suit was brought by an association of osteopaths against the collector of internal revenue to enjoin the collector from refusing to issue and reissue narcotic licenses to osteopathic physicians in the State of Kansas. The counsel for the association in this case contended that osteopaths were physicians as that word was used in the Federal Narcotic Act. The court held that under the Act of 1913, as the courts of Kansas had construed the Act, osteopaths did not practice surgery and further held that if osteopathic schools of good repute do now teach surgery and have abandoned their former opinion as to the necessity of surgery, the fact has never been recognized by the legislature or the courts of this state. In other words, the legislature has not amended said Act of 1913 and in view of the decisions rendered by the courts of the State of Kansas, as hereinafter mentioned, the word osteopath as used in the Act of 1913 still has the same meaning as it did at the time of the enactment. Therefore, in 1913 at the time of the enactment of this Kansas law, there was a definite meaning to the term "osteopathy" and that meaning was clearly stated in the opinion rendered by the Kansas Supreme Court as early as 1911, State v. Johnson, supra. In the above case the court quoted from State ex rel. v. Gleason, 148 Kan. 1, 79 Pac. (2) 917, wherein the Supreme Court of Kansas said in part, (l.c. 253-54; 1938):

> "The general use of a knife or other instruments in surgical operations was regarded as unnecessary and opposed to the osteopathic system of treatment. Apparently the legislative intent of the act of 1913 (Ch. 290) was to recognize the system of osteopathy as they taught in its schools and colleges of good repute, and to authorize its practice by those who believed in and conformed to its teachings. Our legislature recognized that there is a broad field

> for the use of such a system of the healing art. If, as is suggested by counsel for defense, osteopathic schools and colleges of good repute, and those who practice osteopathy, have abandoned their fundamental theory that surgery, in the main, should be confined to manipulation without the use of the knife and other instruments, that fact never has been recognized by the legislature or the courts of this State."

The above case supports our contention that the word hospital in the provisions providing for a county hospital shall have the same meaning as it had at the time said provision was enacted. If these provisions pertaining to the building of a county hospital were of recent enactment then a nurses' home might be considered as a necessary part of the county hospital, but since a hospital at the time of enacting the above provisions did not include a nurses' home then it is the opinion of this department that no nurses' home may be constructed out of this levy.

There is a well established rule that where an agent is clothed with general powers the means and measures necessary to effectuate the powers granted attend the grant of authority as inevitable incident. (State ex rel. Gates, 67 Mo., l.c. 143; Church v. Hadley, 240 Mo., l.c. 692-698.) There are also cases which hold that where authority is given for the building of a schoolhouse that the ground for said schoolhouse to be constructed upon may also be purchased and that the board in charge of the work is authorized to purchase said ground for the reason that it is an incidental power because indispensable to attain the end. (State v. Board of Education, 76, S. E. 127; Board of Education v. State, 67 Pac., 559, l.c. 560.)

However, there is a distinction between such line of authorities and the instant case for the reason that to

build the schoolhouse it was necessary to have some land on which to construct said schoolhouse. Naturally it was incidental thereto and indispensable, but in this case the nurses' home was not necessary and indispensable at the time these provisions were enacted. Therefore, we must hold that the nurses' home cannot be constructed out of the levy contemplated, and in the absence of any statutory or constitutional provision authorizing the building of said nurses' home the county cannot construct same.

Respectfully submitted,

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APPROVED:

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(Acting) Attorney General

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