

COUNTY HOSPITALS: The premium on the bond of a county treasurer,
COUNTY TREASURER: which bond was required by the county court, to
BOND: secure moneys belonging to a county hospital
which are in his hands, may not be paid out of
the hospital money but must be paid from the general revenue fund
of the county.

April 6, 1960



Honorable Jay White
Prosecuting Attorney
Phelps County
Rolla, Missouri

Dear Mr. White:

Your recent request for an official opinion reads:

"The County Court of this county, Phelps County, County of the Third Class, has requested that I obtain your opinion regarding the permissive expenditure of the Phelps County Memorial Hospital.

"It appears that the hospital moneys in the hands of the County Treasurer must be bonded by law and this being a considerable amount of money, the bond's premium is rather high. The County Court is desirous to know if it is permissive that the bond premium for the hospital money in the hands of the Treasurer be paid out of the hospital funds instead of the general county funds. Section 205.190, RSMo 1949, would seem to be the section of law defining the control of expenditures of all moneys in the hospital funds. It was my thoughts that since the premium for this treasurer's bond was for the benefit of the hospital moneys that perhaps this section might be broad enough to permit the hospital board to make such an expenditure."

We wish to state, first, that this opinion is predicated upon the assumption that in this case the county court has required the county treasurer to secure a surety bond, because, unless it has done so, the county is not liable for the premiums. The department so held in an opinion rendered March 27, 1947, to W. C. Frank, Prosecuting Attorney, Kirksville, Missouri, a copy of which opinion is enclosed.

Honorable Jay White

The only question set forth by you is whether the premium on the bond which the county treasurer must give to secure the county hospital funds which he has in his possession may be paid out of those funds or must be paid out of the general revenue fund of the county.

We first note Section 54.070, RSMo 1949, which provides for the bond of the county treasurer. That section reads:

"The person elected or appointed county treasurer under the provisions of this chapter, shall, within ten days after his election or appointment as such, enter into a surety bond or bonds with a surety company or surety companies, authorized to do business in Missouri, to the county in a sum not less than twenty thousand dollars nor more than the highest amount of money held by the treasurer at any one time during the year prior to his election or appointment, to be fixed and approved by the county court, conditioned for the faithful performance of the duties of his office, and the cost of said bond shall be paid out of the general revenue fund of the county; provided, that the county treasurer in any county of the third class or fourth class may furnish either a personal bond or a surety bond and in case a surety bond is required by the county court in said county, said surety bond shall be paid for by said county."

It will be noted that the section provides that "the cost of said bond shall be paid out of the general revenue fund of the county."

We now turn to the law relating to county hospitals and note numbered paragraph 4 of Section 205.190, RSMo 1949, which 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

Honorable Jay White

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."

In regard to the above section, we note the case of State v. Holman, 293 SW 93. That case was engaged in the matter of construing the meaning of the above section, which at that time was Section 12.612, RSMo 1919. In regard to the matter of whether the county court, in disbursing county hospital funds, was in a position to exercise its discretion and judgment in the matter, the court stated (l.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. We find nothing convincing to the contrary in the citations of appellants."

From the above, it would clearly appear that the county court would not have the authority to expend county hospital funds to pay the premium on the treasurer's bond. Nor do we find anywhere in the law any authority residing in the hospital board of trustees to use any portion of the hospital funds for this purpose. In view of this absence and of the specific direction that the bond of the county treasurer is to be paid out of the general revenue fund, we do not believe that it can be paid from any other source.

CONCLUSION

It is the opinion of this department that the premium on the bond of a county treasurer, which bond was required by the county court, to secure moneys belonging to a county hospital which are in his hands, may not be paid out of the hospital money, but must be paid from the general revenue fund of the county

Honorable Jay White

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:ar
Enclosure