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HOSPITALS: Hospital Finance Act

HOSPITALS: Doctors' Office Space

BONDS: Hospitals

STATUTES: Ejusdem generis

A hospital authority may not authorize expenditure of hospital finance bond proceeds to finance facilities to be used by doctors for private practice of medicine.

Opinion No. 4923 February 4, 1976.

Honorable Anthony Derezinski
State Senator
The Capitol
Lansing, Michigan

You have asked for a response to the following two questions:

(1) "Under the Hospital Finance Act 1969, P.A. 38, can a hospital authority issue tax-exempt bonds and lend the proceeds thereof to a hospital for the construction of a project which would include facilities to be leased to staff members for use as doctor's office space in the private practice of medicine?

(2) "If the doctor's office building was physically detached from the other facilities under construction pursuant to the hospital authority action, could this detached separate office building be constructed using such bonds?"

Since your first and second questions are interrelated, they will be considered together.

The legislature in the enactment of the Hospital Finance Act provided for two types of hospital authorities, a single state hospital finance authority and local hospital authorities. MCLA 331.31; MSA 14.1220(1). The purpose of the hospital authorities, as stated in the act, is essentially to provide assistance to hospitals in the construction, acquisition and leasing of hospital facilities, primarily through the issuance of revenue bonds.[1] MCLA 331.32; MSA 14.1220(2).

A "hospital" is defined in section 3(e) of the Act as follows:

". . . a nonpublic corporation, association, institution, or establishment, located within the state, for the care of the sick or wounded or of those who require medical treatment, operated without profit to any individual corporation or association. It also includes nonprofit corporations or other organizations engaged solely in some phase of hospital activity or in providing a supporting service to hospitals or public corporations which operate or own hospital facilities." MCLA 331.33(e); MSA 14.1220(3)(e).

[1] The Act provides that revenue bonds, their transfers, and income therefrom including any profit made from the sale thereof, are at all times exempt from taxation of every kind by the State of Michigan except for state inheritance and gift taxes and taxes on transfers. MCLA 331.81; MSA 14.1220(51).

As a general rule, the proceeds of bonds issued by a hospital authority must be applied solely to purposes for which the bonds were issued and the funds may not be diverted for other purposes or uses. 15 McQuillin, Municipal Corporations (3rd ed) Cum Supp, § 43.22, p 509; *Mayor of Port Huron* v *City Treasurer of Port Huron*, 328 Mich 99; 43 NW2d 77 (1950); *McArthur* v *City of Cheboygan*, 156 Mich 152; 120 NW 575 (1909).

More specifically, a "hospital" must, among other things, covenant with the hospital authority that proceeds derived from such bond issue will be used solely for project cost,[2] that can be said to constitute a public purpose for which expenditures may properly be made with bond proceeds.

Since the legislature has declared by statute what constitutes a public purpose,[3] the character of the improvement which a hospital authority undertakes to finance will hinge on the statutory definition of hospital facilities used by a hospital.[4] 1969 PA 38, § 3(f) defines "hospital facilities" as:

> ". . . *any building or structure suitable and intended for, or incidental or ancillary to, use by a hospital* and includes *outpatient clinics, laboratories, laundries, nurses', doctors' or interns' residences, administration buildings,* facilities for research directly involved with hospital care, maintenance, storage or utility facilities, parking lots, and garages and all necessary, useful or related equipment, furnishings, and appurtenances and all lands necessary or convenient as a site for the foregoing." MCLA 331.33(f); MSA 14.1220(3)(f). (Emphasis supplied.)

A basic rule of statutory construction that general words or phrases used in a statute which precede or follow an enumeration of specific things are to be construed to refer to things of the same general character as those specified. This doctrine is commonly referred to as the rule *ejusdem generis*. *Evanston YMCA Camp* v *State Tax Commission*, 369 Mich 1; 118 NW 956 (1962); *People* v *Powell*, 280 Mich 699; 274 NW 372 (1937); *US* v *Certain Lands in the City of Detroit*, 12 F Supp 345 (ED Mich, 1935). See also, the case of *People* v *Hall*, 391 Mich 175; 215 NW2d 166 (1974), in which it was reiterated that absent of intent to the contrary, general words used after or preceding specific terms in a statute are to be confined to things of the same kind, class, character or nature as those specifically enumerated. In arriving at this conclusion, the Court stated at p 190; 174, that:

> ". . . One of our most honored and longstanding such principles is that literal interpretations, and the inference drawn therefrom, arising from general provisions of a statute or statutory section must be read so as to be limited and controlled by clear and express language found in other sections of the same statute. *Bidwell* v *Whitaker*, 1 Mich 469 (1850); *McDade* v *People*, 29 Mich 50 (1874). . . ."

In applying this fundamental rule of statutory interpretation to the definition of "hospital facilities," 1969 PA 38, *supra*, I find that the specific pro-

[2] MCLA 331.33(h); MSA 14.1220(3)(h).
for which expenditures may properly be made with bond proceeds.

[3] MCLA 331.32; MSA 14.1220(2).

[4] 1969 PA 38, *supra*.

visions in this section, such as outpatient clinics, laundries, nurses', doctors', interns' residences and administration buildings, expressly reference the kinds of facilities or buildings commonly related to the trade or business of a hospital. While the clause preceding these specific provisions uses the general expressions "any building or structure suitable and intended for, or incidental or ancillary to, use by a hospital," it fails to distinctly and expressly confine itself to a special and determinate type of facility or building. Accordingly, the general provisions of the definition must be construed in conjunction with the narrowed scope of its specific provisions, covering the kind of hospital facilities and services which are necessary for the efficient operation of a hospital.

The Supreme Court of Alabama in *Hamilton* v *City of Anniston,* 248 Ala 396; 27 So 2d 857 (1946), was faced with analogous situations. The Court in interpreting § 469, Title 37, Alabama Code of 1940,[5] which parallels with the definition of "Hospital facilities" in § 3(f) of 1969 PA 38, *supra,* concluded that the statute authorizing a municipal corporation to own and maintain public hospitals and to purchase and provide for things deemed advisable or necessary thereto does not authorize a municipality to erect a building with municipal funds for use in part by doctors for office space in their private practice.

Similarly, in *Jacobs* v *McClain,* 262 SC 425; 205 SE2d 172 (1974), the Court held that an office building to be constructed and financed, through general obligation bonds, by a hospital district and leased to doctors who were members of the active medical staff of hospitals owned and operated by the district was not a "public building."

In reaching this conclusion, the Court relied upon McQuillin, Municipal Corporations (2d Ed) Vol 3, p 1045 for the following proposition:

> ". . . that the discretion of municipal authorities in this instance was necessarily limited to those things having a reasonable relationship to a public hospital, and that a building used by doctors for office space in private practice would not bear such reasonable relation." *Jacobs* v *McClain, supra* at 428; 173.

In summary, the Court stated:

> "The conclusion is inescapable that the primary beneficiaries of the building erected with public funds and leased for office space are the physicians and dentists." *Jacobs* v *McClain, supra* at 429; 174.

In contrast to the above-cited authorities, the Court's opinion in *Petty* v *Hospital Authority of Douglas County,* 233 GA 109; 210 SE2d 317 (1974), hinged, *inter alia,* on the explicit reference in the statute to the terms "office building" for use of patients, officers and employees which are necessary or convenient to promote the health needs of the community. In construing this statute, in light of its public purpose, the Court at 109; 317, held:

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[5] " 'All cities and towns of this state shall have the power * * *; to own, establish, maintain and regulate public hospitals, and to purchase and provide for any and all things which may be deemed advisable or necessary thereto, * * *.' " *Supra,* at 400; 861.

". . . that the medical office building was necessary *to attract doctors to the community, to insure maximum use of the hospital facilities, to insure higher degree of utilization of special equipment in the new hospital,* and *to insure that adequate special care would be accessible and available on an emergency basis demonstrated that the office building was being constructed for a valid public purpose in promoting the public health needs of the country.*" (Emphasis supplied.)

In light of the foregoing, it is my opinion a municipality is not authorized to expend bond proceeds to finance a building to be used by doctors for private practice of medicine.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Bonds

BONDS: Counties

WORDS AND PHRASES: Public purpose

A county is prohibited from financing a building by the issuance of bonds where a portion of the space in the building is to be used by physicians in their private practice.

Opinion No. 4941 February 4, 1976.

Honorable Joseph S. Mack
State Senator
The Capitol
Lansing, Michigan

You have written indicating that the Gogebic County Board of Commissioners is considering building, adjacent to the county hospital, a medical clinic building which would be at least partially funded by tax revenues. You have requested an opinion on the following question:

"CAN A LOCAL UNIT OF GOVERNMENT SELL BONDS TO BUILD A MEDICAL CLINIC BUILDING TO RENT OR LEASE TO PRIVATE PHYSICIANS AND RAISE, BY TAXATION, FUNDS TO RETIRE SAID BONDS?"

You have also asked whether a public question on building such a facility can be presented to the electorate.

In *Alan* v *Wayne County*, 388 Mich 210, 306; 200 NW2d 628, 675 (1972), the Michigan Supreme Court concluded in part:

". . . we must also pay heed to the historic rule that powers of municipalities involving the imposition of public burdens should be strictly construed, . . ."

The indebting of a municipality is the imposition of a public burden. *Bogart* v *Lamotte Township*, 79 Mich 294; 44 NW 612 (1890). Therefore, a