

“. . . 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.

760204.1

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

county should have explicit rather than merely implied authority to finance a medical clinic building for private physicians by tax supported bonds.

For the legislature to grant a county authority to carry out an activity, it must be for a public purpose. *City of Gaylord v City Clerk*, 378 Mich 273; 144 NW2d 460 (1966). The Michigan Court, however, has deferred to legislative determination of public purposes. The following quotation from 37 Am Jur, Municipal Corporations, § 120, pp 734, 735, appears in *Alan v Wayne County*, *supra* at 319; 681, and in *Gregory Marina, Inc v Detroit*, 378 Mich 364, 396; 144 NW2d 503, 516 (1966).

““The determination of what constitutes a public purpose is primarily a legislative function, subject to review by the courts when abused, and the determination of the legislative body of that matter should not be reversed except in instances where such determination is palpable and manifestly arbitrary and incorrect.””

The range of functions and activities that have been found as public purpose has been steadily broadened by the Michigan Courts. For example, the financing of an industrial building for use by a private enterprise under the Industrial Development Revenue Bond Act, 1963 PA 62, as amended by 1972 PA 75; 1973 PA 172; MCLA 125.1252 *et seq*; MSA 5.3533(22) *et seq*, was found to be a public purpose. *Gaylord v City Clerk*, *supra*. And, it does not constitute “an abuse of the legislative function” for the state legislature to declare that leases to professional sports organizations are a public purpose. *Alan v Wayne County*, *supra* at 319, 682. The encouragement of housing construction was also declared a public purpose, *Advisory Opinion re Constitutionality of PA 1966, No. 346*, 380 Mich 554; 158 NW2d 416 (1968). The financing of private nonprofit hospitals through a state operated hospital finance authority was found a public purpose in *Foote Memorial Hospital, Inc v Jackson Hospital Authority*, 390 Mich 193; 211 NW2d 649 (1973).

We cannot find any law or decision empowering counties to construct medical facilities with county funds for lease to private physicians or declaring that such activity is a public purpose. Although counties are authorized to build a “medical care facility,” 1939 PA 280, § 58; MCLA 400.58; MSA 16.458, “hospitals and sanatoria,”¹ the acts authorizing these facilities do not authorize medical clinics for lease to private physicians.

The Michigan Court has not considered the specific issue posed by your question, but an analogous situation was considered by the Alabama Court in *Hamilton v City of Anniston*, 248 Ala 396; 27 So2d 857 (1946). The Court held that, although a municipality can own and maintain hospitals, it is not authorized to construct, with municipal funds, a building for use in part by physicians for office space in their private practices. The Court found that a municipality was not authorized to construct such a building without specific statutory authority. The relevant statute gave authority for cities and towns to:

¹ 1909 PA 139; MCLA 331.101 *et seq*; MSA 14.1121 *et seq*; 1913 PA 350 as amended by 1933 PA 219, 1964 PA 242 and 1971 PA 167; MCLA 331.151 *et seq*; MSA 14.1131 *et seq*, 1945 PA 109 as amended by 1955 PA 55 and 1956 PA 168; MCLA 331.201 *et seq*; MSA 14.1150(1) *et seq*.

“ . . . 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. . . .” 1940 Ala Code. T 37, § 469.

The Court said that, based on this statute, a municipality could only use municipal funds to construct buildings which bear a reasonable relationship to a hospital. The Court found that a building for use for office space did not have such reasonable relationship.

In another situation, the Georgia Court found in *Petty v Hospital Authority of Douglas County*, 233 GA 109; 210 SE2d 317 (1974), that it was a public purpose for a hospital authority to erect a “medical office building” since the statute specifically authorized “office buildings” and because the office building would attract doctors to the community and contribute to full utilization of the medical facilities.

Therefore, in summary, it is my opinion that a county is prohibited from financing a building with tax supported bonds for use in part by doctors for office space in their private practice, such use not having been declared by the legislature to be for a public purpose.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Authority of board of commissioners to freeze capital outlay budget.

BUDGET: Authority of board of commissioners to freeze capital outlay budget.

A newly elected board of county commissioners may freeze capital outlay that had been budgeted by its predecessor board.

Opinion No. 4929

February 6, 1976.

Honorable Edward E. Mahalak
State Representative
The Capitol
Lansing, Michigan 48901

You have requested an opinion concerning the authority of a newly constituted board of county commissioners to override a decision of the previous board to expend funds for capital improvement. You have stated your question as follows:

“Can a newly elected Board of County Commissioners legally freeze all capital outlay that has already been budgeted for various departments in county government?”

The authority of a subsequent board of county commissioners to alter budgetary provisions set by a former board was discussed by the Michigan Supreme Court in *Atlas v Wayne County Board of Auditors*, 281 Mich 596; 275 NW 507 (1937). In that case, the annual salary for assistant