

OFFICIAL OPINION NO. 53

September 8, 1947.

Martha O'Malley, M.D., Director,
Hospital and Institutional Services,
Indiana State Board of Health,
Indianapolis, Indiana.

My dear Dr. O'Malley:

I am in receipt from you of certain correspondence relating to the proposed construction of a new hospital building and facilities for the Hamilton County Hospital. It appears that the present hospital was established in 1913 under provisions of Chapter 275 of the Acts of 1913. I further understand that after the establishment of the hospital under the above Act, this Act was repealed and superseded by Chapter 144 of the Acts of 1917. (Sec. 22-3215 *et seq.* Burns'). While it does not appear affirmatively it is assumed that since the passage of Chapter 144, *supra*, the hospital has been operated under its provisions and by a board of trustees appointed under, and acting in accordance with, the provisions of that Act.

In view of the need for additional hospital facilities in this community, action is now being considered for the construction of additional hospital facilities at an estimated cost of \$1,000,000.00. At the present time the board of county commissioners has purchased sixteen acres of land west of the City of Noblesville as a site for a proposed new building and is seeking advice with reference to the necessary proceedings to be taken in order to issue bonds to pay for the construction.

Upon the foregoing statement of facts I understand that an official opinion is desired on the following questions:

1. Will the construction of a new hospital at the new site constitute the "establishment" of a public hospital within the meaning of Chapter 144, Acts of 1917, as amended? (Burns' Indiana Statutes 1933, Sec. 22-3215.)

2. May a county operating an existing county hospital in conformity to the provisions of Chapter 66, of the Acts of 1947 issue bonds to finance the cost of construction of a new hospital building on a new site?

Section 22-3215, *supra*, reads in part as follows:

“Any county in this state may *establish* a public hospital in the following manner: * * *” (Emphasis supplied).

There then follows a series of provisions requiring submission of the question of establishment of such a hospital to the voters of the county, and upon a favorable vote, authorizing the issuance and sale of bonds to provide funds.

Chapter 66, of the Acts of the General Assembly of 1947, while not in form an amendment of Section 22-3215, *supra*, yet relates specifically in its first section to public hospitals established under Chapter 275, Acts of 1913 and operated under the provisions of Chapter 144, Acts of 1917.

Section 2 of Chapter 66, *supra*, reads in part as follows:

“Whenever the trustees of any such public county hospital, that was established under the provisions of Chapter 275 of the Acts of the Indiana General Assembly passed in the year 1913, shall deem it necessary to make improvements and *additions* to such hospital, * * * the general obligations bonds of the county * * * may be issued and negotiated to procure such funds after the taking of the following steps: (Emphasis supplied).

“(a) A petition shall be filed by such board of hospital trustees, * * * with the board of county commissioners, which petition shall specify the needed improvements or *additions* to the *existing hospital* * * *” (Emphasis supplied).

The Hamilton County Hospital was established in 1913 under the provisions of an Act of the session of the General Assembly of that year. It has been in continuous existence since that time and is in existence now. At the present time it is apparent that its facilities are outgrown and additional facilities are needed. It is also a fact that the present building is located near the center of the City of Noblesville and in a highly congested district. Further, the present structure has been condemned by the State Fire Marshal as a public

hazard, and its deteriorated condition will not permit the making of improvements and additions.

In view of this situation the Board of Commissioners of Hamilton County has purchased an adequate site for a proposed new building for the hospital.

It is important to note that the Hamilton County Hospital has been an "established" institution under the provisions of the laws of 1913 and 1917, *supra*, for more than thirty years, that it still exists as such an entity, and that no change in its identity is contemplated. All that is proposed at this time is the making of an "addition" at a new site, for the reasons stated above. It would lead to a ridiculous result if, in case the mere physical building or structure of a hospital were destroyed, it would be necessary again to "establish" the institution.

Normally, the word "addition" when used in a building or structural sense means physical contact.

- Mack v. Eyssell (1933), 332 Mo. 671;
- Judge v. Bergman (1912), 176 Ill. App. 42, 50;
- Henry Clay, etc. Co. v. Crider (1921), 191 Ky. 121;
- Kresge v. Maryland Casualty Co. (1913), 154 Wis. 627;
- Bickford v. Aetna Ins. Co. (1906), 101 Me. 124.

However, the meaning of the term must be extended or limited by reference to the use and purpose contemplated and may often be used to apply to buildings not in physical contact. Therefore, the facts in each case must be considered and in this case the intent of the legislature must be sought.

- Poe v. State (1921), 190 Ind. 356, 360;
- State *ex rel.* Bailey v. Webb (1939), 215 Ind. 609, 612;
- City of Indianapolis v. Evans (1939), 216 Ind. 555, 567;
- Steiert v. Coulter (1913), 54 Ind. App. 643, 652;
- Seeds v. Royal Ins. Co. (1921), 75 Pa. Super. 302, 304.

It seems clear that in using the words "may establish" a hospital in the 1917 Act and the words "hospital * * * that was established" in the 1947 Act, the legislature was referring to the fact of the bringing into existence of a hospital as an institution or entity, rather than to the mere building of a new structure for hospital purposes as an extension or addition. It further seems clear that the established hospital could consist of one or more buildings which might or might not be physically in contact or immediately adjacent, and that, therefore, in such a situation an addition would include an additional building, all the buildings or structures constituting the hospital as a whole.

Accordingly, in answer to question 1 above, it is my opinion that the above hospital was "established" some 34 years ago and as so established is now in existence; it is further my opinion that, owing to the existing conditions in Hamilton County, the construction of a new building on a new location does not constitute the "establishment" of a hospital within the meaning of that term as employed in Chapter 144, *supra*, and that, as in this case, where the "existing hospital" building is entirely inadequate to meet the needs of the county and the site thereof is unsuitable and inadequate for a new building, the construction of a new building as an addition comes within the intent of Chapter 66, Acts of 1947, *supra*.

In answer to question 2 above, it is my opinion that Hamilton County in the operation of its existing hospital may issue bonds to finance the cost of construction of a new hospital building on a new site in conformity to the provisions of Chapter 66, of the Acts of 1947.

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September 10, 1947.

Hon. C. E. Ruston, State Examiner,
State Board of Accounts,
304 State House,
Indianapolis, Indiana.

Dear Sir:

Your letter of August 25th received requesting an official opinion on the following questions: