OFFICIAL OPINION NO. 68

December 6, 1961

Mr. B. B. McDonald
State Examiner
Indiana State Board of Accounts
912 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. McDonald:

This is in reply to your recent request for an Official Opinion regarding donations to county hospitals. Your letter making the request reads in part as follows:

> "1. If a cash donation is given to such a hospital and its use is restricted by the donor to a specific purpose, must it be appropriated in the manner provided by Burns 64-1331 before expenditure?
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> "2. If a cash donation is given to such a hospital and its use is not restricted by the donor, must it be appropriated in the manner provided by Burns 64-1331 before expenditure?"

The Acts of 1917, Ch. 44, Sec. 12, as amended, and as found in Burns' (1950 Repl.), Section 22-3231, insofar as it is material to your questions, reads as follows:

> "Any person, or persons, firm, organization, corporation or society desiring to make donations of money, personal property or real estate for the benefit of such hospital, *shall have the right to vest title of the money* or real estate so donated *in said county, to be controlled, when accepted, by the board of hospital trustees* according to the terms of the deed, gift, devise, or bequest. Such trustees shall be authorized to accept endowments of property both real and personal, for the use and benefit of such hospital, upon such conditions as may be made by the donor, and such trustees, before the receipt of any such property, shall file with the circuit court of the county full information concerning any such endowment including the value thereof and the conditions under which it is offered, and praying

> the court for a hearing on said matter, *and such trustees shall have authority to accept any such endowment* after authorization therefor by the court. * * *" (Our emphasis)

It is noted that Section 12 of the 1917 Act was amended in 1939 and again in 1947, and some confusion may have resulted from the interpretation of the control and expenditure of donated funds to hospitals as an outcome of these amendments. In such case, it may be helpful to review briefly the effect of the 1939 and 1947 amendments to the original act. Acts of 1939, Ch. 57, Sec. 1 reads in part as follows:

> "Any person * * * shall have the right to vest title to the money or real or personal property so donated * * * *when accepted by the board of hospital trustees and the board of county commissioners* and when accepted shall be controlled * * * by the board of hospital trustees, *without direction of the county commissioners, and without appropriation by the county council,* according to the terms of said deed, gift, devise, or trust. * * *" (Our emphasis)

The Acts of 1947, Ch. 96, Sec. 1 amended the language of the first sentence of the 1939 Act and restored the language of the original act. As this sentence is governing both as to vesting of title to the funds and control of the funds, it is set out in part below:

> "Any person * * * *shall have the right to vest title* of the money or real estate so donated in said county *to be controlled, when accepted, by the board of the hospital trustees according to the terms of the deed, gift, devise, or bequest* * * *." (Our emphasis)

The language of the original act (1917), the 1939 amendment and the 1947 amendment, is entirely compatible. Further it is noted that the provisions in the 1939 amendment did not permit title to the donation to vest until "accepted by the board of hospital trustees *and the board of county commissioners.*" (Our emphasis) It was therefore necessary in order to give effect to the intention of the original act, which permitted control of the funds by the board of hospital trustees,

to make provisions for control of the funds by them without the direction of the board of county commissioners and without an appropriation by the county council.

Generally speaking, public funds cannot be expended without an appropriation first being made by the proper governmental authorities, as indicated in

> Indiana Law Encyclopedia, Vol. 21, Municipal Corporations, § 543, pp. 195, 196;
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> 1944 O. A. G., page 419, No. 96,

and under the requirements of the Acts of 1905, Ch. 129, Sec. 56, as found in Burns' (1950 Repl.), Section 48-1411, which reads as follows:

> "No order or warrant for any purpose shall be drawn against the funds of any city, in the hands of the treasurer or other officer, unless an appropriation has been made by ordinance for such purpose and such appropriation is not exhausted, or unless such order or warrant shall be for a salary fixed by statute or ordinance, or in payment of a judgment which such city is compelled to pay, or for interest due on city bonds."

The Acts of 1889, Ch. 154, Sec. 15, as found in Burns' (1960 Repl.), Section 26-515, provides in part:

> "* * * The power of making appropriations of money to be paid out of the county treasury shall be vested exclusively in such council, and, except as in this act otherwise expressly provided, no money shall be drawn from such treasury but in pursuance of appropriations so made."

The appropriation of moneys by local units of government and the preparation of budgets are designed to afford to the taxpayers full information in regard to the financial affairs of local units, and the proper procedure to fully effectuate this legislative purpose would be for the municipalities to appropriate the full amount of the cost of the project and show the moneys as available to meet the appropriation.

> 1947 O. A. G., page 369, No. 74.

There are, however, situations involving special funds in which other appropriate safeguards of public moneys are maintained, and the administrative provisions of Burns' 48-1411, *supra,* can be avoided in the interests of flexibility and expediency.

In the case of State *ex rel.* Test v. Steinwedel *et al.* (1932), 203 Ind. 457, 180 N. E. 865 the Indiana Supreme Court citing language from State *ex rel.* Simpson v. Meeker (1914), 182 Ind. 240, 105 N. E. 906, stated at page 474:

> "Although it is true that the county council alone is authorized to make appropriations of money to be paid out of the county treasury (§ 5932 Burns 1914, Acts 1899 p. 343) that fact *does not prohibit the legislature from requiring the council, under stated conditions, to make such an appropriation and without reference to the usual procedure under the county council act.* The members of such council are officers of a political subdivision of the State and are subject to the mandate of the sovereign power." (Our emphasis)

The Public Depository Act, the same being Acts of 1937, Ch. 3, Sec. 1, as amended, and as found in Burns' (1959 Supp.), Section 61-622(e) is in harmony with such view when it provides:

> "(e) The term 'public funds' means and includes all funds coming into the possession of the treasurer of state, *treasurer of the board of trustees of any state benevolent, penal or educational institution,* and all funds coming into the possession of any state officer by virtue of such office, and all funds coming into the possession of any local officer by virtue of such office, but *shall not mean nor include funds* coming into the possession of any public officer *which are not impressed with a public interest nor designated for a public use:* * * *." (Our emphasis)

Admittedly, it is not always easy to classify funds in the possession of a public officer as to whether they are public funds or not public funds.

1942 O. A. G., pages 238, 239, 240.

Irrespective of whether the cash donation to the hospital is classified as public funds or not public funds, their control and expenditure are expressly provided for in Acts of 1917, Ch. 144, Sec. 3, as amended, and as found in Burns' (1961 Supp.), Section 22-3218, which reads in part as follows:

> "* * * The county treasurer of the county in which such hospital is located shall be the treasurer of the board of trustees. Except as provided in this act [§§ 22-3215, 22-3217, 22-3220, 22-3225, and 22-3238] *the treasurer shall receive and pay out all moneys under the control of the said board, * * * They shall have the exclusive control of the expenditure of all moneys* collected to the credit of the hospital fund * * * 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 only upon warrants drawn by the auditor of said county upon properly authenticated vouchers of the hospital board: * * *." (Our emphasis)

When the provisions of the above-quoted statute and the provisions of Burns' 22-3231, *supra,* are read together, it is clear that any gift of money received by the hospital must be deposited in the treasury of the county *to the credit of the hospital fund* and the board of hospital trustees may expend moneys from this fund by submitting properly authenticated vouchers to the county auditor so that he may draw the necessary warrant.

Questions concerning a situation substantially similar to the one here involved were considered in 1956 O. A. G., page 39, No. 10, and it was determined that where donations are maintained in a separate fund, the money logically is appropriated at the time the gift is transferred from the donor's possession and control.

Therefore, in view of the foregoing authorities, my answer to your first question is that an appropriation is not necessary before expenditure by the board of hospital trustees for the purposes designated by the donor in a cash donation to the hospital.

In answer to your second question, which concerns donations to hospitals which donations are not limited to a specific purpose, I am of the opinion that gifts to a hospital without restrictions as to use of the gift do not call for a different solution. A charitable gift, without direction from the donor as to how it should be spent, is valid inasmuch as it carries with it the implied provision that it is to be used for the purposes for which the charity was organized and is being maintained. Charitable gifts are favored and must be construed by the most liberal rules that the nature of each case will permit.

> Crawfordsville Trust Co., Exr., *et al.* v. Elston Bank & Trust Co., Exr., *et al.* (1940), 216 Ind. 596, 25 N. E. (2d) 626;
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> Quinn *et al.* v. Peoples Trust & Savings Co. *et al.* (1945), 223 Ind. 317, 60 N. E. (2d) 281.

In summary, it is my opinion that no further appropriation by other officials of government is necessary to expend moneys donated to a hospital for the specific purposes designated by the donor of the gift; or if the gift to the hospital is not limited by the donor to a specific purpose, the donor's act of giving to a hospital will raise the implied purpose that the moneys are to be expended for the purposes for which the hospital was organized and is being maintained.

OFFICIAL OPINION NO. 69

December 7, 1961

Mr. William J. Layton, Secretary
Indiana State Board of Barber Examiners
1003 Indiana State Office Building
Indianapolis 4, Indiana

Dear Mr. Layton:

Your letter requesting an Official Opinion reads in part as follows:

> "We would like an official opinion as to whether or not this Board may refuse to give an examination to