

FEBRUARY 25, 1949.

HON. SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 2.

MY DEAR COMMISSIONER:

I have your letter of the 16th instant, with enclosures.

The matter referred to in your letter of June 28, 1948, was presented to the writer hereof by Mr. Urbaniak, of your Department.

The matter referred to in your letter of September 7, 1948, has never come to the writer.

Your first letter states that in the course of your investigations it has been brought out that in one instance, at least, a hospital which is incorporated as a nonprofit institution appears to be operating as a proprietary hospital with all of the profits benefiting certain individuals connected with the operation of the institution.

If I understand your question correctly it is whether you, as Commissioner, your Institutions Board, or the Hospital Licensing Board authorized to be appointed under Section 7 of Chapter 340 of the Laws of 1947, may inquire into the corporate status of a hospital to be licensed.

I find nothing in the act of 1947, which is amendatory of all of the sections of Chapter 11, of Title 30 of the Revised Statutes, save Section 2, with added new sections, which grants such power, and I know of no other statute which covers the same or similar subject matter. May I, however, respectfully suggest that if in the course of an investigation by your inspectors it is ascertained with certainty that an organization incorporated not for pecuniary profit is in fact conducting an establishment for profit, that the facts be forwarded to this department.

As you know, under the common law it is the duty of the Attorney General to see that corporations keep within their corporate powers, and that power still exists, although the prerogative writ of Quo Warranto no longer exists, but a complaint takes its place.

I believe your specific inquiry in respect to the above is whether your Department is authorized to question the corporate status of a hospital to be licensed. As indicated, I specifically advise you that no such power exists under the act of 1947.

I have only one other suggestion to make in respect to the nonprofit organizations which in fact conduct their institutions for profit; the question of exemption from taxation may arise, and where the facts obtained by your Department indicate that there may be fraud or deceit, at least with respect to taxation of property used for hospital purposes, that the facts be communicated to the local assessor and to the State Treasurer, who as such under the 1948 statutes succeeds to the powers heretofore conferred upon the Commissioner of Taxation.

Your last inquiry in your communication of June 28th apparently raises the question whether a nonprofit hospital may also be regarded as a charitable institution. Not necessarily. I cannot view "nonprofit" and "charitable" as truly synonymous, and it may well be that a nonprofit institution may not be able to meet all the tests ordinarily applicable to charitable institutions, in that the nonprofit institution may be limited in its purpose, so far as the public is concerned.

Now, as to your letter of September 7, 1948, you call my attention to the Surf Hospital, located at Sea Isle City, where apparently a group known as the Friends of that Hospital, are soliciting funds in the community to purchase equipment for the same, and that the doctor in charge has advised that he has no connection with the group raising the funds, and states that they are public spirited citizens who from time to time raise funds for that hospital. Your inquiry is whether the Hospital Licensing Board, under the act of 1947, has any jurisdiction in the matter.

In my opinion, it has not. If, however, you or the Licensing Board are satisfied from facts obtained that fraud or deceit is practiced in the matter named, or in fact in any similar matter, the facts should be submitted to the Prosecutor of the Pleas of the county where the hospital is located for his consideration and action, if warranted.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:S

MARCH 8, 1949.

MR. THOMAS E. HEATHCOTE, *Secretary-Director,*
State Board of Professional Engineers and Land Surveyors,
921 Bergen Avenue, Room 710,
Jersey City 6, New Jersey.

FORMAL OPINION—1949. No. 3.

DEAR SIRs:

I have your letter of the 2d instant requesting to be advised whether the Secretary-Director of your board may, subject to the approval of the Attorney General, employ such assistants as may be required to perform the work of your office without receiving approval from the Civil Service Commission. The authority to make appointments is conferred by R. S. 45:8-29, subject, however, to the provisions of Section 33 of Chapter 439 of the Laws of 1948, creating the Department of Law and Public Safety, which require that future appointments shall be subject to the approval of the Attorney General.

All your employees, I believe, have temporary status and have never been covered by civil service. This may happen in the future either by direct legislation or by a competitive examination ordered by the Civil Service Commission.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: THEODORE BACKES,
Deputy Attorney General.

TB:B