

pressing difficulty was to resolve constitutional doubts over the validity of the program. The act permitted loans to religiously affiliated hospitals, and the bonds could not be sold until the underlying First Amendment question was answered: Could public funds be used for such a purpose?

To resolve that issue a test case was arranged. The commission recommended that the board approve loans to three hospitals with varying degrees of religious affiliation—Greater Baltimore Medical Center (GBMC), which had a historical but very loose tie with the Presbyterian Church; Church Home and Hospital in Baltimore, which had a somewhat stronger and more direct affiliation with the Episcopal Church; and St. Joseph's Hospital in Baltimore, owned and operated by an order of Catholic nuns. The board approved nominal loans of \$25,000 to each hospital and so set the stage for the challenge.³³

As it turned out, the case involved more than just the church–state issue, which the Court of Appeals had little difficulty in resolving in favor of the act.³⁴ Also at issue was the scope of the delegation of final approval authority to the board and an unanticipated conflict of interest question arising from the fact that the state treasurer, John A. Luetkemeyer, who voted for the three loans, happened to be on the board of trustees of one of the hospitals. These matters also were decided in the board's favor, but in reaching that result the court, for the first time in many years, was forced to take a good look at the kind of agency the board had become.

The court had some difficulty with what appeared to be the unbridled discretion vested in the board. Although there were fairly definite statutory criteria governing the commission's decision-making process, neither those criteria nor the commission's recommendations themselves were binding on the board. Indeed there were no standards set forth in the act governing the board's approval or disapproval of an application.

The court observed that the role of the board in choosing among applications and fixing the amounts to be awarded was characteristic of the functions of an administrative agency and that the fact that it was comprised of three important elected officials did not exclude the board "from the operation of the legal principles applicable to administrative agencies." The general delegation of power "in regard to the creation of State debt," said the court, might not suffice if it were construed as authorizing a delegation to the board "without the imposition of any standards to canalize its discretion." In the end, however, after what looks like some fancy judicial footwork, the court found an implied directive that the board "should be guided by the same broad criteria for the public welfare" as guided the commission. Thus it said:

That, in the delegation of authority to the board, there is no express statutory provision that its decisions cannot be arbitrary or unreasonable is immaterial. Such a limitation is implied as a necessary condition of the validity of the delegation. We find that there are implied limitations upon the exercise of the board's authority under the Act that its decisions should be made in consideration of the adequacy of hospital facilities throughout the State, that the recommendations of the Commission, while not binding upon the board, are to be taken as a guide to it in its determinations, and that its decisions are not to be arbitrary or capricious but to be made in the public interest.³⁵

These expressions would seem to have meaning beyond the particular statute under scrutiny. As we have seen, most of the authority delegated to the board is extremely broad. Whether in terms of superintending the sale of bonds, managing state property, or carrying out the myriad of other duties imposed on it, rarely does the legislation authorizing the delegation provide clear and specific standards to guide the board's action. Perhaps it was in tacit and fearful recognition of this void that the court reached way down and brought up some "implied" standards.

33. BPW Minutes, 17 September 1965, pp. 171-72, MdHR 40281-127.

34. *Truitt v. Board of Public Works*, 243 Md. 375 (1966).

35. *Ibid.*, pp. 388, 389, 390, 391-92.