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ATTORNEY GENERAL OPINION NO. 2015- 13

The Honorable Don Hill
State Representative, 60th District
1720 Luther
Emporia, KS 66801

RE: Counties and County Officers—Hospitals and Related Facilities; Definitions; Deposit of Hospital Moneys, Transfer of Money to Not-for-Profit Corporation; Title to Property

Synopsis: The board of county commissioners has the authority to establish a county hospital and an additional hospital or clinic under the Hospital and Related Facilities Act. Such hospital or clinic must be located within the territorial boundaries of the county. The title for the property of the hospital and clinic is vested in the name of the county where they are located. The board that operates and manages the county hospital cannot use hospital moneys to fund directly a clinic located outside the territorial boundaries of the county where the county hospital is located. The board also is limited in the types of hospital moneys that it can transfer to a not-for-profit corporation and must first determine if such transfer is in the best interests of the hospital and the residents within the county that the hospital serves. Cited herein: K.S.A. 13-14b01; 13-14b08; 14-693; K.S.A. 2014 Supp. 14-695; K.S.A. 19-101; K.S.A. 2014 Supp. 19-101a; K.S.A. 19-4601; 19-4603; 19-4605; 19-4606 K.S.A. 2014 Supp. 19-4608; 19-4610; K.S.A. 19-4611; 19-4613; 19-4624; 19-4625; 80-2503.

* * *

Dear Representative Hill:

As State Representative for the 60th District, you ask for our opinion on several questions regarding county hospitals. Your questions can be summarized as whether a county hospital can directly, or indirectly through a not-for-profit corporation, establish,

fund, and operate a clinic located outside of the boundaries of the county's territorial boundaries; if so, does the title to such clinic vest in the county where the hospital is located or in the county where the clinic is located.

County hospitals are created and operated under the Hospital and Related Facilities Act (Act), K.S.A. 19-4601 *et seq.* To answer your questions, we considered several provisions of the Act. In doing so, we follow the rules used by the courts.

[A] fundamental rule of statutory construction, to which all other rules are subordinate, [is] that the intent of the legislature governs if that intent can be ascertained. The legislature is presumed to have expressed its intent through the language of the statutory scheme it enacted. . . . Courts ascertain the legislature's intent behind a particular statutory provision from a general consideration of the entire act.¹

When "construing several statutes and determining legislative intent, several provisions of an act or acts, *in pari materia*, must be construed together with a view of reconciling and bringing them into workable harmony if possible. Effect must be given, if possible, to the entire act and every part thereof."²

Your questions refer to the authority of the "county hospital." However, the Act grants authority to two different entities—the board of county commissioners (commission) and the hospital board (board). Thus, we must first determine the authority that the Kansas Legislature granted to the commission and to the board.

The Authority of the Commission and Board

K.S.A. 19-4603 authorizes the commission to establish a county hospital and issue general obligation bonds after having been "presented with a petition signed by not less than 5% of the qualified electors of the county requesting the establishment and maintenance of a hospital." The commission "shall adopt a resolution authorizing the issuance of general obligation bonds for the purpose of constructing, purchasing, leasing or otherwise acquiring a hospital building or buildings, equipping the same, and acquiring the necessary site or sites therefor, or for any or all such purposes." Then, the electors of the county must vote on the resolution.³

Once it has created a county hospital, the commission must establish a hospital board.⁴ The board is responsible for the management and control of the county hospital⁵ and for the supervision, care, and custody of all hospital property.⁶ The board also has "the

¹ *McIntosh v. Sedgwick County*, 282 Kan. 636, 642 (2006). Internal quotations and citations omitted.

² *State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas*, 275 Kan. 763, 768 (2003). Internal quotations and citations omitted.

³ K.S.A. 19-4603.

⁴ K.S.A. 19-4605(a). The board members can be appointed by the commission or elected by the voters of the county on a nonpartisan basis. K.S.A. 19-4605(c).

⁵ K.S.A. 19-4605.

⁶ *Id.*

exclusive control of the expenditures of all hospital moneys," except those acquired through the issuance of revenue bonds.⁷ The board can enter into written leases for personal property or real property used for hospital purposes.⁸

Arguably, the above provisions authorize the board to create a clinic by leasing real and personal property. However, the board's management and control of the hospital must be consistent with the Act or other state and local laws.⁹ Because other statutes limit the board's authority over hospital property, we also examine those provisions in the Act.¹⁰

The title to any real or personal hospital property vests in the county where the hospital is located.¹¹ If the board and the owner of real property cannot agree on the price for real property that the board desires to use for hospital purposes, the commission may initiate condemnation proceedings.¹² The authority to close and terminate the operation of a county hospital rests with the commission after the electors of the county have approved such closure and termination.¹³ The commission can sell any hospital property and determine if the board or the county retains the proceeds from that sale.¹⁴

More important, K.S.A. 19-4606 provides for the establishment of an additional hospital. For purposes of the Act, the terms "hospital" and "clinic" are synonymous because the term "hospital . . . includes within its meaning any clinic."¹⁵ Thus, K.S.A. 19-4606(b) applies to the establishment of a clinic. It states:

After a hospital has been established, the commission may issue additional general obligation bonds for the purposes of constructing, purchasing or leasing and equipping a new hospital separate and apart from an existing hospital or an additional hospital, or constructing and equipping an addition to an existing hospital, or equipping and improving an existing hospital, or acquiring the necessary site or sites therefor or for any or all such purposes and for the purpose of paying a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto.¹⁶

⁷ *Id.*

⁸ K.S.A. 19-4611(b) and (c).

⁹ K.S.A. 2014 Supp. 19-4610(a).

¹⁰ *McIntosh v. Sedgwick County*, 282 Kan. 636, 642 (2006) (the fundamental rule of statutory construction is that the intent of the legislature governs; to determine the legislative intent of a particular statutory provision, several provisions of an act must be construed together with a view of reconciling and bringing them into workable harmony if possible).

¹¹ K.S.A. 19-4624. See also K.S.A. 19-101 *second* (each county shall be empowered "to purchase and hold real and personal estate for the use of the county").

¹² K.S.A. 19-4613.

¹³ K.S.A. 19-4625(a).

¹⁴ Attorney General Opinion No. 90-102.

¹⁵ K.S.A. 19-4601(c).

¹⁶ Emphasis added.

We do not believe the authority in K.S.A. 19-4606 to create an additional clinic is limited only to instances where the commission issues bonds to create the clinic. If it was limited to such instances, both the commission and the board could create clinics, which could impair the functioning of both the hospital and clinic. We also note that K.S.A. 19-4603 has similar language authorizing the issuance of bonds to construct, purchase, or lease the initial hospital; yet, there is no other provision authorizing the establishment of the county hospital without the issuance of bonds. Because the Kansas Legislature has used similar language in K.S.A. 19-4603 and K.S.A. 19-4606, these statutes should not be interpreted differently. Accordingly, K.S.A. 19-4603 and K.S.A. 19-4606 authorize the commission to create a hospital or a clinic regardless of whether it issues bonds.

Based upon the above analysis, we conclude that K.S.A. 19-4606 grants to the commission the authority to establish a clinic separate from or in addition to the existing hospital.

The Authority to Purchase or Lease Property

We now turn to the crux of your concern—does the commission have authority to purchase or lease property for the purposes of operating a clinic outside the county's territorial boundaries. "The general rule is that a municipal corporation has no power to purchase and hold land for a park or other municipal purpose beyond its corporate limits unless the power has been specially conferred by the Legislature."¹⁷

K.S.A. 19-4606 authorizes the commission to purchase property for hospital purposes. However, the Act does not include a specific provision authorizing the commission to purchase or acquire land outside the county's territorial boundaries for the purposes of establishing a hospital or clinic.

Rather, K.S.A. 19-4624 requires the "[t]itle of any real or personal hospital property [to] be vested in the county where the hospital is located." As noted above, the terms "hospital" and "clinic" are synonymous. If the hospital and clinic were located in different counties, under K.S.A. 19-4624, the title to the clinic would be different from the title to the hospital. We do not believe the Legislature intended to authorize a commission to acquire property in another county and thereby impose ownership of that property onto the other county. Thus, we conclude that the commission cannot purchase property to operate a clinic outside the county's territorial boundaries.

However, K.S.A. 19-4606 also authorizes the commission to lease property for hospital purposes. To determine whether the Legislature authorized the commission to lease property for the purposes of operating a clinic outside the territorial boundaries of the

¹⁷ *City of Wichita v. Clapp*, 125 Kan. 100, 107 (1928). (In response to *Clapp*, the Kansas Legislature amended the specific statute governing airports as noted in *Wendler v. City of Great Bend*, 181 Kan. 753, 767-68 (1957).

county, our analysis reads several provisions of the Act and other acts governing municipal hospitals *in pari materia*.¹⁸

The Act requires board members to be "residents of the county in which the hospital is located,"¹⁹ but has no provision for adding board members who reside in the area of the expansion. The Act authorizes the commission, or an elected hospital board, to levy an annual "tax for the purpose of operating, maintaining, equipping and improving any hospital managed and controlled under the provisions of this act and for the purpose of paying a portion of the principal and interest bonds."²⁰ Neither the commission nor the elected hospital board has authority to levy a tax on residents living outside the territorial boundaries of the county.

By contrast, other statutes governing municipal hospitals expressly authorize the operation of a hospital outside of the municipality's territorial boundaries. For example, K.S.A. 13-14b01 authorizes a city of first class to issue bonds "for the purpose of acquiring a site within or without the corporate limits of said city and building and equipping a hospital thereon," if a majority of electors vote in favor of issuing the bonds.²¹

Similarly, K.S.A. 14-693 authorizes certain second-class cities "for hospital purposes" to "include territory outside the regular city limits and which territory is not in any hospital district . . . and such added territory shall be considered within such city only for the purposes specified in [K.S.A. 14-602 to 14-614], and for the further purposes of this act." The procedure for such expansion includes the adoption of an ordinance by the city and provides for an election on the expansion question. If the expansion is approved, the city must appoint two persons residing in the added territory to the hospital's board of trustees; the board must thereafter consist of five trustees, including two trustees who are residents of the added territory.²²

Under K.S.A. 80-2503, any two or more adjoining political subdivisions are "authorized to join in the establishment of a hospital district and in the acquisition, construction or reconstruction, improvement, enlargement, remodeling or repairing of a hospital within such hospital district and in the operation and maintenance of any such hospital." However, an existing hospital district can only be included in a new hospital district if approved by a majority of the voters in the existing hospital district.²³

¹⁸ *Oshman Sporting Goods Co.*, 275 Kan. at 768 (to determine legislative intent, "several provisions of act or acts, in pari materia, must be construed together with a view of reconciling and bringing them into workable harmony if possible").

¹⁹ K.S.A. 19-4605 (c).

²⁰ K.S.A. 19-4606(a).

²¹ The same procedure is used to issue additional bonds "for such purposes, and for the further purpose of building and constructing an addition to the hospital and furnishing and equipping the same." K.S.A. 13-14b08.

²² K.S.A. 2014 Supp. 14-695.

²³ K.S.A. 80-2503(c).

We also recognize that the Legislature has authorized counties "to exercise the powers of home rule to determine their local affairs and government."²⁴ However, counties cannot use their home rule authority to "exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625 [the Act], and amendments thereto."²⁵ This language means a county cannot use its home rule powers as concurrent supplemental authority on the basis that the state statute does not expressly prohibit such act; if it were to do so, the county has effected a change in the state statute and exceeded its home rule power.²⁶ Thus, county hospitals and clinics separate from and in addition to the existing hospital must be established and operated pursuant to the Act.

By reading the provisions of the Act together, and reading those provisions with the provisions governing other municipal hospitals, we conclude that the Act does not authorize the commission to purchase or lease property for the purposes of operating a hospital or a clinic outside the county's territorial boundaries. Based upon this conclusion, your question concerning the title to the real property for the clinic is moot.

The Authority to Provide Hospital Moneys for a Clinic

As noted above, the board has exclusive control over the expenditures of hospital moneys. Accordingly, the next question is whether the board may provide hospital moneys for the operation of a clinic that is located outside the county's territorial boundaries.

Hospital moneys includes, "but is not limited to, moneys acquired through the issuance of bonds, the levy of taxes, the receipt of grants, donations, gifts, bequests, interest earned on investments authorized by this act and state or federal aid and from fees and charges for use of and services provided by the hospital."²⁷ Hospital moneys are deemed public moneys.²⁸ All moneys received by the hospital, except those acquired through the issuance of revenue bonds, are allocated to and accounted for in separate funds or accounts of the hospital. *The board may transfer hospital moneys that are not restricted to specific expenditures to its general fund and use such moneys for the operation of the hospital or to a special fund for additional equipment and capital improvements for the hospital.*²⁹ Here, the hospital moneys would not be used for the operation of the existing hospital or a clinic that is located in the same county as the existing hospital.

However, the Act also authorizes the board to invest hospital moneys "in joint enterprises for the provision of health care services."³⁰ A joint enterprise is "a business undertaking by a hospital and one or more public or private entities for the provision of

²⁴ K.S.A. 19-101Fifth and K.S.A. 2014 Supp. 19-101a(a).

²⁵ K.S.A. 2014 Supp. 19-101a(11).

²⁶ See *David v. Board of Norton County Comm'rs*, 277 Kan. 753, 756-58 (2004).

²⁷ K.S.A. 19-4601(d).

²⁸ K.S.A. 19-4608(c).

²⁹ K.S.A. 19-4608(d). Emphasis added.

³⁰ K.S.A. 19-4608(c).

health care services." Like the term "clinic," the term "joint enterprises for the provision of health care services" is synonymous with the term "hospital" because the definition of "hospital . . . includes within its meaning any . . . joint enterprises for the provision of health care services operated in connection with the operation" of the hospital.³¹ Thus, the hospital and the clinic operated by the joint enterprise must be located in the same county. Otherwise, the board has exceeded its authority in a joint enterprise agreement with a not-for-profit corporation.

Additionally, because the commission and the board are creatures of statute, they can only exercise such powers as are expressly conferred upon them or are clearly implied by the legislative enactment.³² As discussed above, the Legislature gave the *commission* the authority to establish a clinic separate from or in addition to the existing hospital but only within the territorial boundaries of the county.³³ If a board gave hospital moneys to fund a joint enterprise for the operation of a clinic outside the territorial boundaries of the county where the existing hospital is located, the board would be setting out to accomplish indirectly what the Legislature did not authorize it to do directly. This it cannot do. The Act expressly requires the board to manage and control the hospital consistent with the Act and state and local laws.³⁴

Based upon the above analysis, we conclude that, under the current statutory provisions, the board cannot use its hospital moneys to fund a clinic located outside the territorial boundaries of the county where the existing hospital is located.

The Authority to Provide Hospital Moneys Indirectly for a Clinic

The last question to resolve is whether the board may indirectly provide hospital moneys for the operation of a clinic outside the county's territorial boundaries through a not-for-profit corporation. You advise that a county hospital board has formed a not-for-profit corporation; the board wants to have that corporation own and operate a clinic outside the county's territorial boundaries. You do not provide any information on the structure and operation of the not-for-profit corporation or the receipt of other funds to operate the clinic. Nevertheless, as discussed above, the Act does not authorize the board to fund directly a clinic outside of the county's territorial boundaries; thus, this procedure is questionable because the board would be attempting to do indirectly what it cannot do directly. Such action would be inconsistent with the Act.

We also point out that the Act places limitations on the transfer of hospital moneys to a not-for-profit corporation. It authorizes the board to only "transfer any moneys or property a hospital receives by donation, contribution, gift, devise or bequest to a Kansas not-for-profit corporation" that meets specific criteria.³⁵ The board must also comply with the following provision:

³¹ K.S.A. 19-4601(a).

³² *Weber v. Board of Marshall County Comm'rs*, 287 Kan. 1166, 1176 (2009).

³³ K.S.A. 19-4606(b).

³⁴ K.S.A. 2014 Supp. 19-4610(a).

³⁵ K.S.A. 2014 Supp. 19-4608(f)(1)-(3).

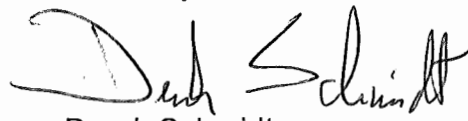
Before making any such transfer, the board shall determine that the amount of money or the property to be transferred is not required by the hospital to maintain its operations and meet its obligations. In addition, the board shall determine that *the transfer is in the best interests of the hospital and the residents within the county the hospital has been organized to serve.*"³⁶

The question of whether a transfer of hospital moneys is in the best interests of "the residents within the county the hospital has been organized to serve" is a factual determination made by the board.

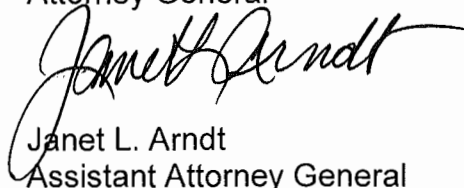
Summary

In summary, we make the following conclusions. The board of county commissioners has the authority to establish a county hospital and an additional hospital or clinic under the Hospital and Related Facilities Act. Under current law, such hospital or clinic must be located within the territorial boundaries of the county. The title for the property of the hospital and clinic is vested in the name of the county where they are located. The board that operates and manages the county hospital cannot use hospital moneys to fund directly a clinic located outside the territorial boundaries of the county where the county hospital is located. The board also is limited in the types of hospital moneys that it can transfer to a not-for-profit corporation and must first determine if such transfer is in the best interests of the hospital and the residents within the county that the hospital serves.

Sincerely,



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³⁶ K.S.A. 2014 Supp. 19-4608(g). Emphasis added.