

Subject

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*Health Public
Hospitals
Administration and
Operations*



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

August 8, 1974

OPINION NO. 74- 268

John E. Fierro
County Attorney
Ford County, Kansas
County Courthouse
Dodge City, Kansas 67801

Dear Mr. Fierro:

You inquire about the validity of the certificate of need issued by the coordinating council for health planning to the Minneola District Hospital pursuant to K.S.A. 65-2a03. Specifically, you take issue with the procedure which was followed regarding notice, public hearing, and the presentation of oral or written evidence. You note that had other nursing homes been notified and accorded the opportunity to make presentations, the existence of unused capacity would have been shown, directly affecting the need for the proposed facility.

We have reviewed the procedure followed by the coordinating council for health planning and, at least in the area of notice, concur that the procedure was deficient. We conclude that the certificate of need is, accordingly, void and will instruct the coordinating council and the licensing agency to this effect.

In the absence of an approved local planning agency, the coordinating council for health planning undertook to consider the application of the Minneola District Hospital for a certificate of need for a proposed nursing home facility. K.S.A. 65-2a03. While the procedural requirements for such a consideration by the coordinating council are not specifically stated, we cannot but conclude that they are at least as strict as those established for approved local planning agencies. Those requirements are set out in K.S.A. 65-2a02, and include "(1) A public hearing" and "(2) Reasonable notice".

The coordinating council held no public hearing. Instead, they relied upon the judgment of the yet to be approved local planning agency, which held a meeting to consider the application on February 14, 1974, at St. Mary of the Plains College in Dodge City, Kansas. The only notice which we have been able to locate concerning that meeting is the agenda mailed by the staff of the coordinating council to the members of the local planning agency. While the membership roster of the local agency contains thirty names and is comprised of both consumers and providers of medical services drawn broadly from the geographic area of the local planning agency, we cannot accept that notice of such an application which goes only to those persons who are to consider the application, and not to the public at large, is "reasonable notice" of a "public hearing."

In addition, it is not even clear that the entire local planning agency considered the application. The agenda states:

" 7:00 p.m. -- Facilities Committee Meeting

A. Renewal of application of
Minneola District Hospital
for an ECF and Nursing Home
combination.

8:00 p.m. -- Full Council Meeting

. . . "

It may have been that only a committee of the local planning council actually considered the application.

We conclude that the certificate of need, granted in this case without the statutorily required notice, is void and a nullity.

"If there is a right to a hearing in a particular instance, then such hearing must be accorded in all its essential elements, or the determination made is not within the jurisdiction of the agency, is invalid or void, and may be annulled or other judicial relief granted."

2 AmJur §398, Administrative Law
(emphasis supplied). See Morgan et al.
v. United States et al., 304 U.S.1 and
Interstate Commerce Commission v. Louisville
and Nashville Railroad Company, 227 U.S. 88.

Sincerely,



VERN MILLER
Attorney General

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