Opinion No. 74-384

Mr. Granville M. Bush  
Attorney at Law  
Lyons, Kansas 67554

Dear Mr. Bush:

As attorney for the City of Sterling, Kansas, you state you have been requested to join with the County Attorney of Rice County, in the formulation of a contract between Rice County and the Sterling Hospital Board to provide ambulance service under the provisions of K.S.A. 1973 Supp. 19-261 et seq. That numbered section commences thus:

"The board of county commissioners of any county may provide as a county function or may contract with any city, person, firm, or corporation for the furnishing of ambulance services within all or any part of their respective counties upon such terms and conditions, and for such compensation as may be agreed upon which shall be payable from the county general fund...."

You inquire, first, whether a hospital board formed under the authority of K.S.A. 14-602, with the powers granted by K.S.A. 14-605, may enter into a contract with the board of county commissioners, or should the contracting body be the City of Sterling on behalf of the hospital board. The powers of the hospital board are set out at K.S.A. 1973 Supp. 14-605:

"The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economical and proper conduct thereof not inconsistent with this act and the ordinances of the city. They shall have the exclusive control of the expenditure of all moneys collected to the credit of the hospital fund....Said board...."
shall have power to appoint a suitable administra-
tor and necessary assistants, and fix their
compensation, and to do all and everything
necessary to properly conduct said hospital...."

The hospital board has only that authority conferred on it
by statute, and that which may be reasonably inferred there-
from. No powers are granted to the hospital board to operate
an ambulance service either expressly or by reasonable impli-
cation. The board's responsibilities to operate the institution
do not extend, in our view, to the operation of an ambulance
service. Thus, based upon the present statutory authority,
in our view, the hospital board has no authority to enter into
a contract such as you have described.

The City of Sterling is, however, a proper body to contract
with the Rice County Board of County Commissioners. You ask
whether, if this is so, by what statutory authority may the
city operate an ambulance service. As you suggest, there
appears to be no specific statutory authority granting such
a power, although K.S.A. 12-110a, 110b, and K.S.A. 19-261
provide some basis for such an inference. Specific authority
is not always necessary. As stated by the court in Claflin
v. Walsh, 212 Kan. 1, 509 P.2d 1130 (1973):

"Prior to the home rule amendment Kansas cities
were seriously limited in their power to solve local
problems by local legislation. Cities existed by and
through statutes and had only such powers as were
expressly conferred by statute without resort to
implication....This concept was substantially changed
by the home rule amendment effective July 1, 1961....
No longer are cities dependent upon the state legis-
lature for their authority to determine their local
affairs and government. Since home rule, cities have
power granted directly from the people through the
constitution without statutory authorization."
212 Kan. at 6.

Under Art. 12, § 5, of the Kansas Constitution, cities are
constitutionally empowered "to determine their local affairs
and government...." We have, in the consideration of other
questions, concluded that the home rule power to determine
"local affairs and government" authorizes a municipality to
enter into an interlocal agreement with another city for the
joint conduct and discharge of local municipal responsibilities.
The constitutional power to determine "local affairs and govern-
ment" does not necessarily, however, authorize a city to enter
into a contract to provide services for another governmental
entity, such as here a county, within the territorial jurisdiction
of that other governmental entity. The city in such an
instance becomes a vendor of services to that other governmental
entity, and in such a capacity, does not generally exercise
powers involving "local affairs and government." [Emphasis
supplied.]

K.S.A. 1973 Supp. 19-261, quoted at the outset of this
opinion, empowers the county to contract with a city for the
furnishing of ambulance service. This grant of power to
the county, express in its terms, necessarily implies, in
our view, a correlative grant of power to the city to enter
into such a contract to provide ambulance service to the
county and throughout its territorial jurisdiction.

K.S.A. 1972 Supp. 19-261 states in part thus:

"The board of county commissioners shall not
provide ambulance service under the provisions
of this act in any part of the county which
receives adequate ambulance service...."

You pose the very reasonable question, just who is to make
the determination that some part of the county receives ade-
quate service, and what, indeed, constitutes adequate service.
For example, you question whether "adequate" service is pro-
vided if one may call an ambulance from another city or area
even though it may be thirty miles distant. The determination
of what part or parts of the county are receiving "adequate
ambulance service" from other sources must be made by the
county commissioners, in the exercise of sound discretion and
judgment. Similarly, the determination of what in fact
constitutes an "adequate" standard of service must also rest
with the board of county commissioners. A helpful discussion
of these questions may be found in Robinson v. Board of County
Commissioners of Osborne County, 210 Kan. 684, 504 P.2d 263
(1972).
If further questions arise concerning this matter, please feel free to call upon us.

Yours very truly,

VERN MILLER
Attorney General

VM:JRM:tp
cc: Barry Bennington
    Wendell Yockey