

Subject

FILED
*Health, Public
Ambulances*

Copy to



STATE OF KANSAS

Office of the Attorney General

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

VERN MILLER
Attorney General

December 6, 1974

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...."

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shall have power to appoint a suitable administrator 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 therefrom. No powers are granted to the hospital board to operate an ambulance service either expressly or by reasonable implication. 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 legislature 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

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joint conduct and discharge of local municipal responsibilities. The constitutional power to determine "local affairs and government" 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 adequate service, and what, indeed, constitutes adequate service. For example, you question whether "adequate" service is provided 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).

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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