



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

May 12, 1975

Opinion No. 75-208

Mrs. Patricia Ridenour
City Attorney
Cimarron, Kansas 67835

Re: K.S.A. 12-1736, 12-1737, 12-1738

Dear Mrs. Ridenour:

You have requested an opinion from this office relative to an interpretation of K.S.A. 12-1736, 12-1737, and 12-1738. You advise that the city of Cimarron desires to construct a building for the express purpose of housing a medical clinic which it would lease to one or more doctors practicing in the community. Further, you indicate that the city governing body, faced with the increasingly difficult task of attracting medical doctors to practice in the community, believes the construction of such a facility would be helpful in securing such professional medical service. Specifically you ask whether the proposed medical clinic would fall within the purview of K.S.A. 12-1736. And, if such a facility is permissible thereunder, could the city then lease it to doctors practicing in a private capacity. You also inquire whether an election would be required to authorize the city to issue general obligation bonds to finance the clinic.

K.S.A. 12-1736 provides in pertinent part:

"Any city in this state may erect or construct, acquire by gift, purchase condemnation or lease a public building or buildings and procure any necessary site therefor by gift, purchase, or condemnation and may alter, repair, reconstruct, remodel, replace, or make additions to, furnish and equip a public building or buildings." [Emphasis supplied.]

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In Seltmann v. Board of County Commissioners, 212 Kan. 805, 512 P.2d 334 (1973), the county proposed "to construct a building as a medical clinic and then turn it over to the doctors for their private use." 212 Kan. at 811. The county proposed to construct the building under K.S.A. 19-15,114, which authorized the construction of a "public building," defined as "any building or structure determined by the board of county commissioners to be necessary to the county for any public county purpose," without an election. Plaintiffs argued that K.S.A. 19-1869 was applicable to the construction of the building used in connection with the operation of a county hospital, and that under this enactment, an election was required to obtain approval of the project. The conflict was, thus, between a general statute requiring no vote of the people, and a special statute which required a vote. The court held the special statute controlling, and that therefore a vote was required.

Of particular pertinence to the question presented here, the court observed thus:

"In their stipulation of fact the board of county commissioners specifically stated that they contemplated leasing the proposed diagnostic treatment center to two doctors for a rental fee, but if the court felt a rental fee is improper then no rent will be collected from the doctors. Whether or not a rental fee is to be charged the doctors, it is clear that the board of commissioners intend to construct a building for a private use. We question whether a board of county commissioners may construct a medical clinic under the provisions of K.S.A. 19-15,114, et seq., without a vote of the people on the theory that it is a public building necessary for a public county purpose, and then after it is built to immediately lease it for a private use on the theory that it is no longer required for county purposes as authorized by K.S.A. 19-15,117." 212 Kan. at 812.

K.S.A. 19-15,117 provides thus:

"Any county owning or hereafter acquiring any public building may, except as other-

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wise specifically provided by law, lease any such building or any part thereof, when the board of county commissioners shall by resolution determine that the same is not required for county purposes for a period not exceeding one (1) year. . ." [Emphasis supplied.]


This provision is identical to K.S.A. 12-1738, in the act under consideration here, which authorizes any city building or acquiring a "public building" under the act to "lease any such building or any part thereof, when such is not required for city purposes," the lease not to extend more than one year at a time.

K.S.A. 12-1736 et seq. sets forth a procedure whereunder any city may acquire or construct a "public building." The authority may be exercised "jointly or in cooperation with any other governmental unit so empowered." When a city proceeds alone, clearly any building acquired or constructed thereunder must be for public city purposes. E.g., although a school building is a "public building," it serves a different political taxing subdivision, i.e., a unified school district and thus may not be constructed by the city under this act. Thus, a city may not use the authority of this act to construct or acquire a "public building" for any purpose other than public city purposes. The city may lease any building acquired or constructed thereunder only when it is "not required for city purposes."

A city which wishes to proceed under this act to construct a medical clinic for use by private physicians thus faces a dilemma. To construct a building under the act, it must be for a public city purpose. Yet, to lease the building, it must be no longer required for a city purpose. Thus, when the city proposes at the outset, as in Seltmann, supra, to construct a building "on the theory that it is necessary for a public . . . purpose, and then after it is built to immediately lease it for a private use," the city thereby negates any justification for proceeding under the act under the theory that the building is sought to be built or acquired for a public city purpose. The building is, in fact, being built for private use.

It is accordingly our opinion that the authority provided by K.S.A. 12-1736 et seq. may not be used for construction of the building as described above.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:JRM:jj