



STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

**Curt T. Schneider**  
Attorney General

January 14, 1976

ATTORNEY GENERAL OPINION NO. 76-16

Mr. Raymond W. Radford  
Neosho County Attorney  
201 South Lincoln  
Chanute, Kansas 66720

Re: County and County Officers--Hospitals--Control and  
Investment of Bond Proceeds

Synopsis: Board of trustees for county hospital established per K.S.A. 19-1801 *et seq.* is authorized to exercise control over the deposit and investment of unused or surplus bond proceeds, and any income earned therefrom must be applied to the hospital fund and expended as per the requirements of K.S.A. 10-131.

\* \* \*

Dear Mr. Radford:

You have requested an opinion from this office relative to the control and use of county hospital bond proceeds. You advise that Neosho County has established and operated a county hospital pursuant to the provisions of K.S.A. 19-1801, *et seq.*, and has recently issued pursuant to K.S.A. 19-1878 additional bonds for the construction and equipping of an expansion to the present facility. Proceeds from this issue are being expended periodically as the building progresses which leaves a substantial amount of money available for investment. Essentially you ask two questions: (1) who may exercise exclusive control over the investment of unused, surplus or sinking funds; and (2) what use may be made of the income earned from the investment of such moneys?

K.S.A. 19-1804(4) in pertinent part provides thusly:

Mr. Raymond W. Radford  
Page Two  
January 14, 1976

"All hospital funds shall be credited to the treasury of the hospital board, and shall be paid out only upon claims and warrants or warrant checks as provided in K.S.A. 1971 Supp. 12-105a, 12-105b and 10-801 to 19-806, inclusive. *The said board may designate as a hospital depository for surplus hospital funds a bank located within the county, and shall require the same depository bond that is required in the case of county depositories. The board is also authorized and empowered to create a sinking fund for additional equipment and improvements, the maximum amount that may be credited to said sinking fund annually to be an amount not greater than would be obtained by a two (2) mill levy: Provided: That any tax levy for hospital purposes now provided for by law or that may be hereafter provided for shall not be construed as to be increased by this provision. The board may, by unanimous vote, invest surplus funds, sinking funds, and unused funds from the issuance of bonds in securities, and the income therefrom shall be credited to the hospital fund. Any surplus moneys remaining in the hospital fund for a period of five (5) years, and for which there is not an immediate or prospective need may, by action of the board be transferred to the county general fund.*" [Emphasis supplied.]

The foregoing is clear and unambiguous. The hospital board of trustees without question is empowered with at least that element of control over moneys credited to the hospital fund which allows it to select the depository for surplus funds. To this extent the board may take whatever steps required to effectuate the transfer of such money, but, of course, such authority cannot be construed to limit or qualify the statutory duties and obligations of the county treasurer with regard to such accounts. It is equally apparent that the hospital board may invest upon unanimous vote the surplus, sinking and unused funds derived from the sale of bonds, and that income earned from such investment is to be credited to the *hospital fund*. What is not clear, however, is whether this authority can be construed to permit the hospital trustees to expend such investment income for purposes other than the payment of interest on the bonds issued.

As aforementioned the bond proceeds in the instant case are authorized and issued pursuant to K.S.A. 19-1878 which specifically provides:

Mr. Raymond W. Radford  
Page Three  
January 14, 1976

". . . The board of county commissioners shall proceed to issue and sell bonds in accordance with provisions of article 1, chapter 10 of the General Statutes of 1949, and any amendments thereto [K.S.A. 10-101 *et seq.*] . . ."

Under ordinary circumstances then the provision of K.S.A. 10-131 would necessarily become a mandatory requirement. K.S.A. 10-131 in pertinent part states:

"The governing body of any municipality, as defined in K.S.A. 10-101 which has heretofore issued or may hereafter issue bonds for any purpose, is hereby authorized and empowered to invest any portion of the proceeds of said bonds, which is not currently needed, in direct obligations of the United States government, which mature or are redeemable without loss of principal within one year from date of purchase, the principal and interest whereof are guaranteed by the government of the United States, or in the municipality's temporary notes issued pursuant to K.S.A. 10-123 or in interest-bearing time deposits in commercial banks or trust companies located in the county or counties in which the municipality is located. *All interest received on any such investment shall upon receipt thereof be set aside and used for the purpose of paying interest on the bonds issued . . . .*" [Emphasis supplied.]

It has been suggested though that the specific provision of K.S.A. 19-1804(4), *supra*, should be considered controlling in this case inasmuch as K.S.A. 19-1804(4) appears to qualify any broad reference to the general bond law found in the County Hospital Act. In fact Attorney General Kent Frizzell appears to support this argument in an opinion dated December 5, 1969,<sup>1</sup> which concluded:

". . . that the specific authority of [K.S.A.] 19-1804(4) supersedes the general provision of Chapter 10 and that in your situation, [K.S.A.]

---

<sup>1</sup> Opinion issued to Mr. Daniel D. Metz, Lincoln County Attorney.

Mr. Raymond W. Radford  
Page Four  
Janaury 14, 1976

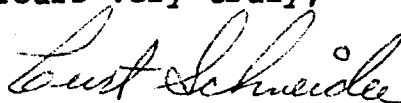
19-1804(4) would be the governing statute. It necessarily follows that the investment plan proposed by your Board of Trustees would be permissible."

The "plan" referred to in that opinion called for the investment of unused bond proceeds (issued via K.S.A. 19-1878) and the expenditure of the income earned therefrom for construction costs additional to the amount initially covered by the bond issue. Unfortunately the limited rationale employed in that opinion is somewhat misleading and cannot support the conclusion drawn.

It is important to note that while the board of trustees is empowered to select a depository for the hospital fund and invest the unused or surplus portion of bond proceeds, nowhere does the County Hospital Act authorize the expenditures of income earned from such investments for purposes beyond the general bond law requirements. Merely crediting funds to the hospital account per K.S.A. 19-1804(4) cannot be construed to empower the hospital board to use the investment income for whatever purpose it deems appropriate. K.S.A. 19-1878 by virtue of the specific reference to the general bond law encumbers the interest income outright and for this reason no other use may be made of such moneys.

Accordingly it is the opinion of this office that the hospital board is empowered to designate the depository for the hospital fund, to invest surplus, sinking and unused funds and credit income earned from such investment to the hospital fund, and to use the investment income for payment of interest on the bonds issued. To this extent the earlier opinion issued by this office is rescinded.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj

cc: Mr. Richard G. Tucker  
Fleming & Forsyth  
Post Office Box 67  
Erie, Kansas 66733