



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

May 6, 1976

ATTORNEY GENERAL OPINION NO. 76-149

Mr. Lawrence E. Sheppard
Culp & Sheppard
Suite 118 - Mark I Building
10100 Santa Fe Drive
Overland Park, Kansas 66212

Re: Counties--Mental Retardation Centers--Cash Basis Law

Synopsis: The governing body of the community mental retardation center established pursuant to K.S.A. 1975 Supp. 19-4001 *et seq.* is not subject to the Kansas cash basis law.

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Dear Mr. Sheppard:

On behalf of the Johnson County Mental Retardation Center, you inquire whether the Center is subject to the cash-basis law, K.S.A. 10-1101 *et seq.* The center is established by the board of county commissioners pursuant to K.S.A. 19-4001 *et seq.* Its revenue is derived from taxes levied by the county, fees collected from services to clients, and payments made for and on behalf of clients by governmental agencies.

The center is operated by a governing board, the members of which are appointed by the board of county commissioners. K.S.A. 19-4002. The governing board prepares the annual budget for the center, for submission to the county commissioners. K.S.A. 19-4003(d). The governing board has exclusive control of the expenditures of all monies provided and collected for mental health and/or retardation purposes. K.S.A. 19-4003(a). Levies for the center are extended by the board of county commissioners. K.S.A. 19-4004.

K.S.A. 10-1113 provides in pertinent part thus:

"[I]t shall be unlawful . . . for any member of any governing body of any municipality to knowingly vote for or in any manner aid or promote the passage or adoption of any order . . . creating an indebtedness in excess of the amount of funds actually on hand at the time for such purpose"

The terms "municipality" and "governing body" are defined by K.S.A. 10-1101 thus:

"(a) 'Municipality' shall be construed and held to mean county, township, city, municipal university, school district, community junior college, drainage district, and any other similar political subdivision or taxing district of the state.

(b) The words 'governing body' shall be construed and held to mean board of county commissioners of any county, township board . . . mayor and councilmen or board of commissioners of any city, board of education of any school district . . . and any other governing body or board of a municipality having authority under the laws of this state to create indebtedness against the municipality."

In Opinion No. 63-50, dated July 3, 1973, and issued to John K. Corkhill, Attorney General William Ferguson concluded that a community mental health center and its governing board did not constitute a quasi-municipal corporation or instrumentality separate and independent from the county, but was merely an administrative arm or agency of the county, for purposes of coverage under the Kansas Public Employees Retirement Act.

I agree fully with that conclusion. The center is established by the board of county commissioners, not as a quasi-municipal or corporate entity whatever, but as an agency for the furnishing of mental retardation services by the county. The governing body of the center is vested only with administrative authority and responsibility for the center, and acts in that capacity solely as an instrumentality of the county.

Mr. Lawrence E. Sheppard

Page Three

May 6, 1976

The cash-basis law applies only to municipalities and governing bodies as those terms are defined in K.S.A. 10-1101(b) and (c). The governing body of a mental health center established pursuant to K.S.A. 19-4001 *et seq.* is not the "governing body" of a "municipality" as those terms are defined in the cash-basis law, and accordingly, K.S.A. 10-1113 does not apply to indebtedness incurred by the governing board of the center.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj