ATTORNEY GENERAL OPINION NO. 76-176

Mr. Thomas C. Lysaught  
Wyandotte County Counselor  
511 Huron Building  
Kansas City, Kansas 66101

Re: Counties--Mental Health Centers--Acquisition of Property

Synopsis: The governing board of a center or facility established under K.S.A. 19-4001 et seq. is vested with final authority concerning the acquisition of property for establishment and operation of the facility or center and its programs. Title to property so acquired is vested in the board of county commissioners, when the center is operated by one county only, and title is vested in the governing board when the center or facility is established by more than one county.

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Dear Mr. Lysaught:

You enclose a copy of your opinion of May 5, 1976, addressed to Matthew Podrebarac, Chairman of the Wyandotte County Board of County Commissioners, concerning whether authority to acquire sites for and/or build, equip, repair, remodel and furnish facilities for a community mental health center and/or community facilities for the mentally retarded established pursuant to K.S.A. 19-4001 et seq. is vested in the board of county commissioners or in the governing board of the center appointed pursuant to K.S.A. 19-4002.

Obviously, it is in the best interests of the successful operation of the center that the board of county commissioners and the governing board act in a cooperative spirit. Generally speaking, the act contemplates such cooperation, for it does not precisely define
the respective powers of the board of county commissioners and
the governing board in this regard. The latter body is given
important operational and policy-making responsibilities regard-
ing the center. For example, it is charged with "[f]ormulating
and establishing policies for the operation of the mental health
center and/or facilities for the mentally retarded and employment
of personnel." K.S.A. 19-4003(b). In addition, it has important
advisory responsibilities to the board of county commissioners.
It must annually review, evaluate and report to the board of
county commissioners on the services provided by the center, and
it must prepare and submit the annual plan and budget, together
with recommendations thereon. K.S.A. 19-4003(c) and (d).

The act does not expressly identify whether final decisions regard-
ing property acquisition for center facilities shall be made by
the board of county commissioners or the governing board. As you
point out, K.S.A. 19-4004 states in pertinent part thus:

"[T]itle to the building or buildings of
the community mental health center, and/or
facility for the mentally retarded, shall
vest in the governing board which is respon-
sible for the maintenance and operation of
the facilities if a combination of counties
has established the center, but, if only one
county has established the mental health cen-
ter or facilities for the mentally retarded,
title shall vest in the board of county
commissioners of such county. . . ."

In the instance of a multi-county center, nothing in the act sug-
gests that the governing board is required to seek approval from
the boards of county commissioners of participating counties in
order to acquire property. In implicit recognition of this, the
act vests title to property acquired for the center in the govern-
ing board, in the case of multi-county centers. In the instance,
as here, of a single-county center, title vests in the board of
county commissioners. While title is so vested, it does not neces-
sarily follow that the decision to acquire such property rests with
that board.

K.S.A. 19-4003(a) directs thus, in pertinent part:

"All money provided for mental health and/or
mental retardation purposes under the pro-
visions of this act shall, when collected,
be paid over to the treasurer of said
governing board for the purposes of this
act. Such governing board shall have
exclusive control over the expenditures
of all moneys paid to its treasurer under
the provisions of this act, and no money
shall be paid therefrom, except upon
vouchers signed by the treasurer and on
order of the governing board."

K.S.A. 19-4004 authorizes levies for the center. Proceeds from
the levy for "mental health services" and for "mental retardation
services" shall "be placed in the hands of the appropriate govern-
ing board to be administered as provided by this act." Separate
provision is made

"to provide for the purchase of or the
construction of facilities for the com-
munity mental health center, and/or
facility for the mentally retarded. . . ."

The board of county commissioners may levy an annual tax of not
in excess of one-quarter mill and may sell general obligation
bonds of the county. Funds received for these capital purposes
certainly constitute money received for "mental health and/or
mental retardation purposes," which are required to be paid over
to the treasurer of the governing board, under K.S.A. 19-4003(a).

This is so whether the center is established by one county or by
several. The governing board thus becomes the statutory instru-
mentality of the county or counties participating in the center,
for the disbursement of all moneys collected and received for the
establishment and operation thereof and for capital expenditures
in connection therewith. The governing board has "exclusive
control" over the expenditures of such money.

Because the governing board is vested with final and exclusive
control over public funds collected for the center, I must neces-
sarily conclude that the governing board is lawfully empowered to
make the final decisions regarding acquisition of property for
establishment and operation of the center and the conduct of its
programs. Title to property so acquired is vested in the board of
county commissioners. For these reasons, I cannot concur in your opinion enclosed with your letter.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj