



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 8, 1976

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.

* * *

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

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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 regarding 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 regarding 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 responsible 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 center 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 suggests 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 governing 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 necessarily 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 provisions of this act shall, when collected,

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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 governing 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 community 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).

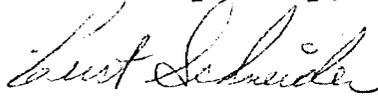
This is so whether the center is established by one county or by several. The governing board thus becomes the statutory instrumentality of the county or counties participating in the center, for the disbursement of all moneys collected and received for the establishment and operation thereof and for 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 necessarily 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

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county commissioners. For these reasons, I cannot concur in your opinion enclosed with your letter.

Yours, very truly,

A handwritten signature in cursive script, appearing to read "Curt Schneider".

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj