



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 21, 1976

ATTORNEY GENERAL OPINION NO. 76- 186

Mr. Granville M. Bush
City Attorney
124 South Broadway
Sterling, Kansas 67579

Re: Cities--Hospitals--Management

Synopsis: Proceeds of ad valorem levies for the operation of a city hospital in a city of the second class may not be diverted to operation of ambulance or emergency medical services upon the closing of the hospital, unless the steps required by K.S.A. 79-2958 are followed. It is within the authority of the hospital board of such city to continue to manage and wind up the affairs of the hospital until all of its accounts are settled and disposed of. Authority to lease the hospital property in a city of the second class may be vested either in the hospital board or in the city governing body by enactment of an ordinary ordinance, except when and as specific leasing authority is vested in the hospital board.

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Dear Mr. Bush:

You inquire concerning ambulance service presently being furnished by the City of Sterling, Kansas. You advise that pursuant to K.S.A. 1975 Supp. 65-4301 *et seq.*, the city entered into a contract with Rice County, Kansas, to provide ambulance service throughout the county in return for certain specified funds derived by the county through a levy for that purpose. At the time this contract was entered into, the City of Sterling operated a hospital pursuant to K.S.A. 14-602 *et seq.* Since that time, however, the hospital in Sterling has been forced to close its doors, and the hospital board is in the process of winding up the financial affairs of the hospital.

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You inquire, first, whether the City of Sterling may use monies which are the proceeds of a levy for the operation of the hospital for 1976 for the continued operation of the ambulance service, along, of course, with funds received from Rice County under the contract described above. Article 11, § 5 of the Kansas Constitution states thus:

"No tax shall be levied except in pursuance of a law, which shall distinctly state the object of the same; to which object only such tax shall be applied."

The use of the proceeds of any ad valorem tax is governed by this provision. Thus, the proceeds of any levy which was made for the purpose of equipping, maintaining, operating or improving the hospital must be spent for that purpose. The hospital having closed, they may not be diverted to another purpose, except by following the procedure specified by K.S.A. 79-2958. Thus, it is my opinion that funds presently on hand which are derived from city ad valorem taxes for the operation of the hospital may not lawfully be diverted from that purpose, upon the closing of the hospital, to the operation of ambulance service except as and when the steps required by K.S.A. 79-2958 are followed.

Secondly, you ask whether the hospital board may continue to serve to wind up the affairs of the hospital and to operate the ambulance for the City of Sterling. The powers of the hospital board of trustees are set out at K.S.A. 14-605. In my opinion, those powers properly extend to the winding up of all the affairs of the hospital. However, for those powers extend to all things necessary and desirable for the "economical and proper conduct [of the hospital] not inconsistent with the act and the ordinances of the city." The board has "exclusive control of the expenditure of all moneys collected to the credit of the hospital," and of necessity, must continue to exercise its powers until accounts of the hospital are properly settled and disposed of. However, on the face of the cited statute and others in article 6, chapter 14, K.S.A., the board has no statutory authority for the operation of ambulance and emergency medical services provided by the city or county under K.S.A. 1975 Supp. 65-4301 *et seq.* The city might by ordinance assign responsibility for operation of the ambulance service to the hospital board. However, the statutory authority of the hospital board does not on its face extend to the operation and supervision of ambulance and emergency medical services under K.S.A. 1975 Supp. 65-4301 *et seq.*

You inquire, further, whether the City of Sterling may lease the hospital building to a private organization for the operation of a nursing home or skilled nursing home when the building is no longer

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in use as a city hospital. The provisions found in chapter 14, article 6, relating to hospitals are, unfortunately, a hodgepodge of special acts, for the most part, relating to cities of the second class within special population brackets. The basic general act, K.S.A. 14-602 *et seq.*, enacted in 1917, applies to all cities. I do not find express leasing authority in that act. The leasing authority in K.S.A. 14-634 applies, for example, only to cities within the population brackets specified in K.S.A. 14-633. Specific leasing authority in K.S.A. 14-644 also applies to a highly restricted group of cities of the second class. Again, the leasing authority of K.S.A. 14-660, applies only to those cities within the scope of K.S.A. 14-655, the latter being section 1 of the 1941 enactment of which K.S.A. 14-660 is section 6. Similarly, K.S.A. 14-667, which again provides leasing authority was enacted as section 6 of ch. 164, L. 1941, and applies only to those cities within the scope of section 1 of that 1941 act, now found at K.S.A. 14-662. In short, each of the specific provisions I have found which authorize lease of the hospital applies only to highly restricted groups of cities of the second class which are defined by narrow population brackets, in none of which the City of Sterling appears to fall. It is my opinion, however, that this lack of authority may be remedied by the city governing body, by the adoption of an ordinary ordinance which confers upon the hospital board of trustees that specific leasing authority which it does not now have. Alternatively, the city governing body might again by ordinary ordinance, wish to vest that leasing authority in itself, as it deems most appropriate and in the interests of the city. In view of the fact that the hospital board will be *functus officio* when the affairs of the hospital are concluded, the city governing body may wish to vest leasing authority in itself unless it wishes by ordinance to reconstitute the hospital board as an instrumentality of the city for the management of the property formerly used as a hospital.

If further questions arise in further consideration of these matters, please do not hesitate to call upon us.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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