



STATE OF KANSAS

## Office of the Attorney General

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Curt T. Schneider  
Attorney General

November 15, 1976

ATTORNEY GENERAL OPINION NO. 76- 345

Mr. Charles V. Hamm  
General Counsel - Legal Division  
Department of Social and  
Rehabilitation Services  
State Office Building  
Topeka, Kansas 66612

Re: Counties--Mental Health and Retardation Services--  
State Assistance

Synopsis: A county mental retardation governing board which does not itself operate a community facility for the mentally retarded, but which provides mental retardation services only through grants to and contracts with independent nonprofit organizations and facilities is not itself an eligible grantee under the Kansas Community Mental Health and/or Community Facility for the Mentally Retarded Assistance Act.

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Dear Mr. Hamm:

You inquire concerning the eligibility of the Sedgwick County Mental Retardation Governing Board, established by the Board of County Commissioners of Sedgwick County, Kansas, by resolution dated February 13, 1974, for state financial assistance under the Kansas Community Mental Health and/or Community Facility for the Mentally Retarded Assistance Act, K.S.A. 1975 Supp. 65-4401 *et seq.*

K.S.A. 1975 Supp. 65-4403 commences thus:

"For the purposes of insuring that adequate community mental health and mental retardation services are available to all inhabitants of the state of Kansas, the state shall participate, from and after January 1, 1975, in the financing of the operation of mental health centers and facilities for the mentally retarded in the following manner: Each mental health center and each facility for the mentally retarded applying for state financial assistance shall receive assistance in an amount not to exceed fifty percent (50%) of the total estimated income of such . . . facility for the mentally retarded for the next fiscal year . . . ." [Emphasis supplied.]

K.S.A. 1975 Supp. 65-4401(b) defines "facility for the mentally retarded" as

"any community facility for the mentally retarded organized pursuant to the provisions of K.S.A. 19-4001 to 19-4015, inclusive, or acts amendatory thereof or supplemental thereto, and licensed in accordance with the provisions of K.S.A. 1975 Supp. 75-3307b, or any amendments thereto."

Thus, insofar as pertinent here, state aid may go only to a "facility for the mentally retarded" which is organized pursuant to K.S.A. 19-4001 *et seq.*, and which is duly licensed under K.S.A. 1975 Supp. 75-3307b.

Any county may establish a community facility for the mentally retarded under K.S.A. 19-4001 *et seq.* Any county which desires to do so must establish a community mental retardation governing board, which serves as the governing board of the facility. Its duties are prescribed by K.S.A. 19-4003 to include the following:

"(a) . . . Such governing board shall have exclusive control over the expenditures of all moneys paid to the credit of its treasurer under the provisions of this act . . . .

(b) Formulating and establishing policies for the operation of the mental

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health center and/or facilities for the mentally retarded and employment of personnel.

(c) Annually reviewing, evaluating and reporting of community mental health and mental retardation services provided by the center pursuant to this act to such board or boards of county commissioners.

(d) Preparing and submitting the annual plan and budget and making recommendations thereon."

You enclose a copy of an opinion furnished by the Sedgwick County Counselor concluding that the Board in question does in fact perform each of these responsibilities. Concerning the second of these duties, *i.e.*, the adoption of policies for the operation of facilities for the mentally retarded, the opinion states thus:

"Since the Sedgwick County Mental Retardation Governing Board delivers services to the community via various independent non-profit facilities the above referred to policy control is primarily carried out through agreements and communications between the Mental Retardation Governing Board and the particular facility as well as through the budget control process."

The Board does not operate a facility itself, but apparently disburses funds under its control to various community agencies and organizations which do maintain programs appropriate for the mentally retarded. It is urged that the disbursement of such moneys, pursuant to agreements and understandings as to the use thereof, entails the formulation and establishment of policies for the operation of facilities for the mentally retarded.

Clearly, however, the Board does not itself operate a facility for the mentally retarded, as that term is defined by K.S.A. 1975 Supp. 65-4401. Under K.S.A. 1975 Supp. 65-4401 *et seq.*, eligible grantees of state financial assistance thereunder are limited to centers established and operated under K.S.A. 19-4001 *et seq.*

The Sedgwick County Mental Retardation Governing Board obviously provides valuable support for community mental retardation programs

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through grants to and contracts with various independent non-profit organizations and facilities in the county. While Sedgwick County has established the board, it has not established a community facility for the mentally retarded. Under the Kansas Mental Health and/or Community Facility for the Mentally Retarded Assistance Act, K.S.A. 1975 Supp. 65-4401 *et seq.*, state assistance is available, insofar as pertinent here, to community facilities for the mentally retarded which are established by the counties under K.S.A. 19-4001 *et seq.* The various independent nonprofit organizations and facilities whose mental retardation programs have been supported by the board are not eligible grantees under the act, either directly or as vendors of services to the Sedgwick County Mental Retardation Governing Board.

If the board of county commissioners determines "that it is more practicable to contract for . . . services with a nonprofit corporation" and it wishes to provide services to the mentally retarded then K.S.A. 19-4007 authorizes the board to contract with a nonprofit corporation to provide such service. The county mental retardation governing board established under K.S.A. 19-4002 has no statutory role in the execution of contracts for services which are provided by such corporations and not through a center established by the county itself. The board, as a party to contracts with independent providers and not as an operator of a community facility for the mentally retarded established by the county itself, is not an eligible grantee for assistance under K.S.A. 1975 Supp. 65-4401 *et seq.*

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj

cc: Mr. Theodore Hill  
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