

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 14, 1976

ATTORNEY GENERAL OPINION NO. 76-365

Mr. James J. Smith
Attorney at Law
610 Bridge
Humboldt, Kansas 66748

Re: Counties--Mental Health Centers--Withdrawal by County

Synopsis: The right of a county to withdraw from an agreement establishing a multi-county center pursuant to K.S.A. 19-4001 *et seq.* is dependent upon the terms of the agreement establishing the center itself. Absent any provision therein, the county may presumptively terminate its commitments thereto on the same basis that it may terminate any other contractual commitment, although the resultant damages to other counties which participate in the center may possibly subject the withdrawing county to liability therefor. Approval by the Secretary of Social and Rehabilitative Services is not a prerequisite for withdrawal by a county from a multi-county center.

* * *

Dear Mr. Smith:

You inquire concerning unilateral action by a county to withdraw from or reduce its commitment to a community mental health center, established pursuant to K.S.A. 19-4001 *et seq.*

In particular, you advise that the Southeast Kansas Mental Health Center was established under the cited act in 1961, originally by two counties, Allen and Neosho. Since that time, three additional counties, Bourbon, Labette and Woodson have petitioned to join the original group and were accepted. The

Mr. James J. Smith
Page Two
December 14, 1976

Center has not been notified, you indicate, by Labette County that effective March 1, 1977, that county is going to change its support for mental health, and that the county will contribute to the Center only one-sixth of the amount previously budgeted for that purpose for the year 1977. The loss of financial support will work an obvious hardship on the center, and you inquire whether withdrawal of a county from a multi-county center is authorized by law.

You point out that ch. 19, art. 40, K.S.A., contains no provision for withdrawal by a county from a multi-county center once it is established. Whether this omission forecloses county action to withdraw is the question presented. In *Brown v. Arkansas City*, 135 Kan. 453, 11 P.2d 607 (1932), it was urged that a city which had adopted an ordinance creating a city court, as authorized by statute, had the implied and inherent power to repeal that ordinance and abolish the court. The court held that the only power granted to the city was a specific and limited one, to determine whether there was a need for the establishment of a city court, and once that determination was made and the power was exercised, the city has exhausted all of the power granted to it by the legislature on the matter. No power to repeal the ordinance or abolish the ordinance could be implied. The general rule remains that the grant of power to enact ordinances ordinarily implies the power to repeal them, but the rule does not apply where the power which is granted is specific, express and precise, and the legislation appears to describe *in toto* the authority to be exercised by the municipal body.

The act here is absolutely silent on the point. The act leaves much to the agreement of the parties respecting the operation of multi-county centers, and it cannot be described as exhaustive, comprehensive enactment which purports to describe in detail the powers of the county respecting mental health centers. Given the relative generality of the act, and its reliance upon the terms agreement of the parties to a multi-county agreement to provide the operative legal and administrative framework of multi-county centers, it is my opinion that the right of a particular county to withdrawal from a multi-county center must necessarily depend upon the terms of the agreement itself, and that an agreement establishing a multi-county center might lawfully include a provision respecting withdrawal and the procedure for doing so. In short, because the establishment of the multi-county center is based substantially on the contractual commitments of the counties which are party

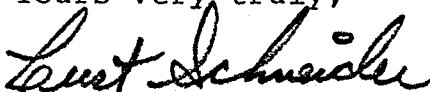
Mr. James J. Smith
Page Three
December 14, 1976

thereto, the right to withdrawal itself depends on that same agreement, absent any material statutory provisions. The language of the act itself does not support a legal conclusion that withdrawal may not be permitted, or agreed upon by the parties. If the agreement itself is silent, the county may, presumptively, terminate its contractual participation in the multi-county operation just as it may terminate any other contractual commitment.

Approval by the Secretary of Social and Rehabilitation Services is required for the establishment of the center. I do not believe that approval is required for withdrawal of a county from a multi-county agreement, however, for I see no statutory requirement for such approval.

You advise that the Southeast Kansas Mental Health Center has entered into a lease for the building used in Labette County, which continues for an extended period. The Center will be required to honor its commitment under the lease, although it may have no use for it as a result of the withdrawal by that county. You inquire what liability the withdrawing county may incur. As a matter of law, it is extremely difficult to attempt to predict the legal liability of a party based upon facts and circumstances which are not entirely known, as here, including the extent of the damages accruing to the Southeast Kansas Mental Health Center. I cannot offer any accurate and helpful predictions of its liability, based on the information I have at the present time.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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