



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

April 27, 1977

ATTORNEY GENERAL OPINION NO. 77-134

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: Under statutes amended by 1977 Senate Bill 154, the Sedgwick County Mental Retardation Governing Board is an eligible recipient of state financial assistance under the Kansas Community Mental Health and/or Community Facility for the Mentally Retarded Assistance Act, K.S.A. 1976 Supp. 65-4401 *et seq.* as amended. Senate Bill 154 does not apply retroactively, however, and the first quarterly payment of funds to that Board under the 1977 legislation may not be made until July 1, 1977.

* * *

Dear Mr. Hamm:

You inquire whether the Sedgwick County Mental Retardation Board is eligible for state financial assistance under the Kansas Community Mental Health and/or Community Facility for the Mentally Retarded Assistance Act, K.S.A. 1976 Supp. 65-4401 *et seq.*, under the terms of 1977 Senate Bill 154, which amends K.S.A. 19-4001 through -4003, -4007 and K.S.A. 1976 Supp. 65-4401.

In Opinion No. 76-345, I concluded that that board was not entitled to such financial assistance because it was not a governing board of a mental health center or a facility for the mentally retarded, as defined by K.S.A. 1976 Supp. 65-4401. The bill

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authorizes counties which do not wish to establish such centers or facilities themselves to create a mental retardation governing board which contracts with nonprofit corporations to provide services to the mentally retarded, and includes such boards within the definition of "facility for the mentally retarded" at K.S.A. 1976 Supp. 65-4401(b) as eligible recipients of state financial assistance under that act. Thus, the Sedgwick County Mental Retardation Governing Board is an eligible recipient of such assistance, with the passage of this bill.

The further question is raised whether the bill may be applied retroactively to entitle that board to payments which fell due in October, 1976, and on January 1 and April 1, 1977. The bill is stated to be effective upon its publication in the official state paper, and there is nothing whatever in the bill which indicates that it is to be applied retroactively. Thus, in my judgment, it operates prospectively only. K.S.A. 1976 Supp. 65-4405(b) provides for the distribution of state funds due to each eligible recipient in four quarterly installment payments:

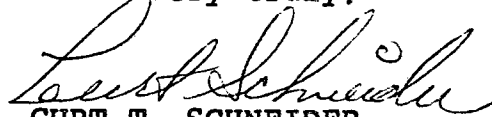
"Installments shall be paid as follows:
January 1st for the quarter beginning January 1 and ending March 31; April 1st for the quarter beginning April 1 and ending June 30; July 1st for the quarter beginning July 1 and ending September 30; and October 1st for the quarter beginning October 1 and ending December 31."

The bill, I understand, was passed and became effective by publication after the April 1 distribution date had passed. The money due on that date is for the quarter ending June 30. While the quarter has not yet passed, the payment date did, prior to the effective date of the bill. In Kansas a statute does not operate retroactively unless it clearly expresses a legislative intention that it be applied retroactively. *Allen v. City of Ogden*, 210 Kan. 136, 499 P.2d 527 (1972). The Sedgwick County Mental Retardation Governing Board did not become an eligible recipient of state financial assistance until after the April 1 date for distribution of that quarterly payment had passed. It was not an eligible recipient on that date, and in my judgment, it must

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await the next statutory payment date for the initial receipt
of any monies to which it is entitled under Senate Bill 154.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: The Honorable James L. Francisco
State Senator
3rd Floor - State Capitol
Topeka, Kansas 66612

Mr. Arthur Schumann
Director
Institutional Management Section
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