



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

April 28, 1977

ATTORNEY GENERAL OPINION NO. 77- 144

Mr. Steven E. Worcester
Graham County Attorney
413 North Pomeroy Avenue
Hill City, Kansas 67642

Re: Counties--Levies--Health Fund

Synopsis: Under K.S.A. 1976 Supp. 65-204, a county which made no levy for the county health fund for the year 1974 may make a levy for that purpose in a subsequent year without a vote of the people so long as the rate of the levy does not exceed that which was authorized by law in 1973 to be made for that purpose for 1974.

Re: Counties--Officers--County Attorneys

Synopsis: The board of trustees of a county hospital may not contract with the county attorney on a fee basis to retain his or her services for the collection of overdue and delinquent accounts, because representation of the county hospital is among the statutory duties of that officer. However, should it deem it appropriate to do so, the board of trustees may retain a private attorney on a fee basis to furnish legal services and representation for the hospital.

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Dear Mr. Worcester:

K.S.A. 1976 Supp. 65-204 authorizes the board of county commissioners to make a levy for the county health fund, which must be used for the purposes set out in that statute. It provides in pertinent part thus:

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"No levy shall be made by any county for the county health fund in an amount in excess of that which such county was authorized to levy for the year 1974, without the question of making such levy having been submitted to and approved by a majority of the electors voting thereon"

You advise that in 1974, Graham County did not have a county health nurse, and it had no county health fund for that year. Thus, you inquire whether the county may make any levy for the health fund without a vote of the people. The quoted language prohibits any levy, without approval by a vote of the people, which is "in excess of that which such county was authorized to levy for the year 1974" Thus, even though the county made no levy in 1974 for the county health fund, it was authorized by K.S.A. 65-204 to make such a levy that year. Thus, the county may make a levy for the county health fund in 1977 without a vote of the people, so long as the levy does not exceed the rate applicable to Graham County in 1973, i.e., at the time of making the levy for 1974.

You also inquire concerning your duties as county attorney. In particular, the question has arisen whether the collection of overdue and delinquent accounts of the Graham County Hospital falls among your official duties as county attorney, or whether you may contract with the hospital board of trustees to do that work on a private fee basis. I enclose a photocopy of Opinion 73-78, dated February 21, 1973, in which the Attorney General concluded that representation of the county hospital was one of the official duties of the county attorney. This opinion followed previous opinions of prior attorneys general which have been issued over a period of more than twenty years. Thus, following this settled precedent, representation of the hospital in the collection of overdue and delinquent accounts is an official duty of your office. As that opinion indicates, however, the board of trustees could retain other or additional counsel if it deemed it appropriate, and pay him or her accordingly. However, because the board of trustees is entitled to your own services, should it wish to utilize them, it could not agree to pay you on a private basis for your representation.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj