

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 20, 1977

ATTORNEY GENERAL OPINION NO. 77- 307

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

Re: Counties and County Officers--Hospitals--Records and Board of Trustees

Synopsis: (1) Hospital financial records are not subject to public examination per K.S.A. 1976 Supp. 45-201.

(2) Hospital boards of trustees may exercise their statutorily delegated powers autonomously. A board of county commissioners enjoys no authority to supervise or control hospital board of trustees.

(3) Members of hospital board of trustees may be removed from office by and through ouster proceedings per K.S.A. 60-1205, *et seq.*

* * *

Dear Mr. Worcester:

You request the opinion of this office relative to several issues concerning financial records of public (county) hospitals and boards of trustees for such hospitals operating pursuant to the County Hospital Act, K.S.A. 19-1801 *et seq.* You express particular concern about the statutory relationship between a board of county commissioners and a hospital board of trustees insofar as the latter may be responsible to the former for the proper exercise of its statutory duties.

First, you inquire whether the financial records (including payroll information) of a county hospital must be made available for public examination pursuant to the express provisions of K.S.A. 1976 Supp. 45-201.

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K.S.A. 1976 Supp. 45-201 provides in pertinent part thus:

"(a) All official public records of the state, counties, municipalities, townships, school districts, commissions, agencies and legislative bodies, which records by law are required to be kept and maintained, . . . shall at all times be open for a personal inspection by any citizen, and those in charge of such records shall not refuse this privilege to any citizen." [Emphasis added.]

The foregoing quote clearly manifests the legislature's intent to limit the applicability of this act to only those records which the law expressly requires to be "kept or maintained." This office has consistently taken the position that a record is required to be "kept or maintained" if a particular statute clearly and expressly requires such.¹ We find no express duty imposed upon county hospital officials to keep or maintain the financial records of the county hospital. Absent such provision we can not but conclude that financial and/or payroll records of a county hospital do not fall within the purview of K.S.A. 1976 Supp. 45-201 and are therefore not subject to public scrutiny.

The board of hospital trustees is to file by January 15, an annual report referencing a statement of all hospital receipts and expenditures for the preceeding year per K.S.A. 19-1804(3). It has been suggested that this report would provide a limited means of public access to a hospital's financial condition and operations. This may in part be accurate, but it depends in large measure on how the report is received and treated by the board of commissioners. As noted above, the report need only be filed with the commissioners. The term "filed" obviously does not expressly nor impliedly require the report to be kept or maintained although keeping it may be an otherwise prudent means of conducting county business. So, again, absent such provision the report is protected, so to speak, from public examination per K.S.A. 1976 Supp. 45-201. This is not, however, meant to imply that the board of commissioners may

1. The Kansas Supreme Court has impliedly employed this same approach re K.S.A. 1976 Supp. 45-201. See *Atchison, Topeka and Santa Fe Railway Co. v. Commission on Civil Rights*, 215 Kan. 911, 919, 529 P.2d 666 (1974).

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not permit public access to the report if it so desires; nor may the public be excluded from a discussion of the report's content at a meeting of the board of commissioners per the Kansas Open Meeting Act, K.S.A. 75-4001, et seq. (as amended by Chapter 301, Laws of 1977.). It should also be pointed out that the board of hospital trustees is required to "keep a complete record of all its proceedings." K.S.A. 19-1804(3). This record, clearly accessible under K.S.A. 1976 Supp. 45-201, may provide yet another examination of the activities of the board of trustees which may or may not include financial records of the hospital. And, too, nothing herein is meant to imply that the financial records of the public hospital may not be made available to the public should the board of trustees desire otherwise.

Second, you ask whether the board of county commissioners may call or order a meeting with the hospital board of trustees to ascertain the status of the county hospital's operations and board of trustees' management and supervision thereof.

K.S.A. 19-1803 provides that a board of county commissioners shall appoint a board of trustees for a public hospital authorized pursuant to K.S.A. 19-1801 et seq. Once constituted the board of trustees is statutorily delegated broad powers to provide for the supervision, management and operation of the hospital. K.S.A. 19-1801(6) in part demonstrates the considerable authority granted by the legislature in this regard:

"The board of hospital trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the hospital as may be deemed expedient for the economic and equitable conduct thereof, not inconsistent with this act, the statutes of the state of Kansas and the ordinances of the city or town wherein such county hospital is located. The board shall have the exclusive control of the expenditures of all moneys collected to the credit of the hospital funds, and all expenditures, including compensation of members, shall be made only after approval of a majority of members appointed

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to said board; the board shall be charged with the businesslike supervision, care and custody of all hospital property. Said board shall have the power to appoint a suitable administrator and any other necessary assistants and personnel, shall fix the compensation or wages of all personnel, and shall have the power to remove all such appointees."

A close examination of the County Hospital Act discloses that a board of county commissioners has only two statutory duties relative to the operation of a public hospital once created under K.S.A. 19-1801 *et seq.*: (1) appointment of qualified individuals to serve as trustees (K.S.A. 19-1803, -1805), and (2) provide for adequate funding for hospital "operation, improvement, maintenance, furnishing and equipment" via the levying of necessary taxes. K.S.A. 19-1809; -1878). Thus, once constituted, a board of trustees for the hospital enjoys sufficient power to provide the necessary hospital needs of a community which is qualified only by the board of county commissioners securing the requisite funding by exercising the authority above noted.

It is clear then from the language of the Act that a hospital board of trustees has been delegated full authority to maintain a public county hospital save the power to levy necessary taxes. The array of powers conferred upon the trustees emanates directly and solely from the state legislature, not the county. On the other hand the board of commissioners is given no authority with respect to running the hospital aside from providing funds from tax levies. It is a general rule in this country that political subdivisions may exercise only those powers which are expressly conferred upon them by the state or are necessarily implied from those expressly given. *Jackson County v. Kaul*, 77 Kan. 715, 96 Pac. 45 (1908). See generally, 56 *Am. Jur. 2d Municipal Corporations* § 194. As noted there are no express provisions giving the board of commissioners authority to control the trustees, and in our judgment the statutory scheme manifested by the broad powers given the trustees effectively negates any implied authority the act may seem to convey to the commissioners. Thus, to answer your specific question in light of the foregoing conclusion, the board of county commissioners has no authority to call or order a meeting of the board of hospital trustees. But, again this should not be construed as prohibiting the two boards from meeting with each other in order to best serve the interests of the people they serve.

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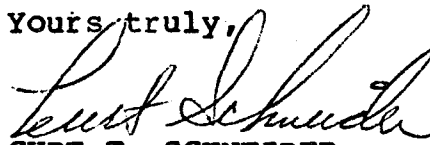
Your third question is what power and authority may a board of county commissioners exercise over the board of trustees for the hospital under the Act. In accord with the above conclusion the board has no express or implied authority or control over the board of trustees once the latter has been properly constituted save what may be achieved through the control of moneys needed and derived from the levy of taxes in the county.

Last you inquire regarding the removal of members from the board of trustees. The Act provides no procedure for such removal; neither does it delegate the board of commissioners to provide such removal. The trustees are however public officers, and as such fall within the purview of K.S.A. 60-1205 which provides thus:

"Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully misconduct himself or herself in office, (2) willfully neglect to perform any duty enjoined upon him or her by law, or (3) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his or her office and shall be ousted from such office in the manner hereinafter provided."

As is apparent the criteria for such ouster proceedings are expressly provided in the statute. The procedure to implement the same may be found at K.S.A. 60-1206 et seq.

Yours truly,



CURT T. SCHNEIDER
Attorney General

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