



STATE OF KANSAS

Office of the Attorney General

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

Curt T. Schneider
Attorney General

September 27, 1977

ATTORNEY GENERAL OPINION NO. 77- 315

Ms. Shelley D. G. Bloomer
Osborne County Attorney
Osborne County Courthouse
Osborne, Kansas 67473

Re: Counties--Hospitals--Funds

Synopsis: County hospital funds may not be used to provide a guarantee of the personal net income of physicians derived by them from their private professional medical practice.

* * *

Dear Ms. Bloomer:

You advise that the board of trustees of the Osborne County Memorial Hospital is considering entering into an agreement with two doctors, which is designed to encourage them to enter into the practice of medicine in Osborne County and in conjunction with the hospital.

You enclose a copy of the proposed agreement. Under section 1, the board agrees to guarantee the doctors a total minimum net income of \$96,000 during their first year of medical practice, computed and payable on a monthly basis of \$8,000 per month. You advise that the obligation would be funded primarily from levies made for the operation of the hospital pursuant to K.S.A. 19-1801 and -1804, and as limited by K.S.A. 1976 Supp. 79-1947. K.S.A. 19-1804 authorizes the board to "expend funds deemed necessary in the recruitment of professional staff." Recruitment expenses commonly include such items as travel for interviews, lodging and other subsistence, and perhaps moving expenses and like costs which the prospective employer agrees to defray in order to encourage and facilitate the recruitment of professional staff. The term is not, however, an unlimited grant of authority for

Ms. Shelley D. G. Bloomer
Page Two
September 27, 1977

the payment of public funds to physicians. In Opinion No. 77-269, we considered the use of the proceeds of the industrial levy, which under K.S.A. 12-1617h may be used "for the purpose of inducing industries to locate within the said city or near its environs" We stated thus:

"Doubtless, the offer of public funds as a source of financing to meet operating expenses would constitute an effective inducement to an industrial prospect. However, the use of proceeds of the levy to provide operating capital for a private enterprise would constitute the use of public funds for a private purpose. The kinds of inducement which a city may offer through its public funds are doubtless broad. However, the uses to which the industrial fund may be put are not unlimited, and a paramount restriction is that the funds not be used for private business and industrial purposes. In my judgment, use of the funds to pay rental for an office for the practice of medicine, and to pay overhead expenses of the practice, are not permissible uses of the fund."

Under the proposed agreement, hospital funds would be used merely to guarantee the physicians' personal net income from the private practice of medicine, effectively assuring them of a minimum combined net annual income of \$96,000. The payment is not based upon any services which the physician will perform as professional employees of the hospital, for clearly, the agreement does not contemplate that the hospital and the physicians are thereby entering into an employer-employee relationship. The guarantee is designed merely to supplement the physicians' joint net annual income should it fall below \$96,000 in the first year of their practice. Clearly the funds obligated by this agreement are devoted to no public purpose, but are to be applied solely to supplement and augment the personal income of private individuals from their private professional medical practice. In my judgment, this is an entirely impermissible use of public funds for a private purpose, and is not authorized by law.

Yours truly,



CURT T. SCHNEIDER
Attorney General